

The University of Sydney submission to the Legislative Review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* July 2024

The University of Sydney welcomes the opportunity to make a submission to the independent review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the **Act**), which underpins the Foreign Arrangements Scheme (the **Scheme**).

This feedback is intended to complement the submissions being made by the Group of Eight universities and Universities Australia on behalf of their member institutions.

Public universities, their staff and students engaged in international collaborations make important contributions to Australia's foreign policy objectives by fostering trust and enduring links between people and institutions for mutual benefit. In this context, the University of Sydney welcomes the opportunity to collaborate with the independent review of the Scheme to identify ways to strengthen the effectiveness and efficiency of a regulatory regime that was legislated by the former government following limited consultation with universities and other entities that must comply with its requirements.

The Scheme has established a significant additional administrative burden on Australian public universities at a time when they are faced with an increasing volume and complexity of compliance activities in the national security and defence environment.

It is our view that the Scheme is too broad in operation and diverts university resources that could be better used elsewhere. In April 2024, advice about the Scheme provided to the sector by the Department of Foreign Affairs and Trade (DFAT) indicated that of the many thousands of notifications made by public universities, only four resulted in negative determinations by the Minister in relation to those written arrangements. These figures indicate that other than increasing transparency about universities' formal engagements with foreign entities covered by the Scheme, it has had minimal practical impact, relative to the significant compliance burden and cost imposed on the sector.

Another noteworthy component of the Scheme's compliance load is the need to conduct assessments of all foreign entities potentially within scope. The University estimates that, in order to determine whether an arrangement falls within the operation of the Scheme, we conduct between 10 and 15 entity assessments for every notification made to DFAT. For these reasons, we believe that the administrative burden on universities is disproportionate to the legislative framework achieving its objectives.

In our responses below - to four of the eight consultation questions - we make a number of recommendations to improve the operation of the Act and Scheme.

Consultation question 2: How could the operation of the Foreign Relations Act be improved? Are there amendments to the Foreign Relations Act that would enhance its operation?

The University proposes the following amendments to the Scheme and its operation:

- Amend the Scheme to require DFAT to **provide written reasons when arrangements are deemed "out of scope", or "in scope but exempt"**. The provision of more comprehensive details from DFAT would assist universities with future entity assessments.
- Amend the Scheme to require DFAT to establish an **authoritative list of foreign universities that lack institutional autonomy**. The absence of a master list results in duplication of effort by Australian universities.
- Currently, the FAQs issued by DFAT under the Scheme expressly exclude international and regional organisations such as the World Trade Organization (WTO), the United Nations (UN) and

the European Union (EU) from the operation of the Scheme. **We recommend that this exclusion be formalised in the Act, and not just in the FAQs.**

- DFAT to provide case studies to **assist with assessing arrangements with government corporations**. At present, it is very difficult to determine whether any particular entity falls within the scope of the Scheme, where that corporation has both a public purpose and is being run on a commercial basis (at least on appearances).

Consultation question 5: Should the scope of the Foreign Relations Act be changed to apply to a broader or narrower range of international cooperation?

- The scope of the Scheme should be narrowed in order to **exclude low-risk non-core arrangements**, such as:
 - agreements for self-sourced student placements
 - agreements with public entities such as hospitals, libraries or museums.

Consultation question 6: Does the Foreign Relations Act strike the right balance between achieving its objectives and the administrative requirements it places on states, territories, local governments, and universities?

- **Remove the two-step notification requirement for non-core entities, and replace it with a one-step notification, so that non-core entities only need to notify DFAT once a written arrangement has been entered into.** The legislation does not require an Australian university to receive approval before entering into a written arrangement with an entity that falls within the operation of the Scheme. Further, the Scheme does not prescribe a minimum period of time between the first notification and the University entering into the written arrangement. Accordingly, the two-step notification requirement adds an additional administrative burden that does not appear to serve a practical purpose.

Consultation question 7: Are there additional ways that the Foreign Relations Act can improve transparency and awareness of international engagement, including through the Public Register?

- The Public Register would be improved by adopting the following changes:
 - In order to provide accurate reporting, **written arrangements should be removed from the Public Register once they have expired.**
 - Similarly, **if a written arrangement is replaced or renewed with a subsequent written arrangement, the original arrangement should be removed from the Public Register.** Otherwise, the register creates a false impression that a university has multiple written arrangements with the same entity on the same subject matter (when in fact, one often supersedes and replaces the other).
 - Only non-core written arrangements which have been entered into should appear on the Public Register (instead of including those for which only a notification of our intention to enter into has been submitted). It is our understanding that the purpose of the Public Register was to make available for public viewing, arrangements which are actually entered into with foreign government-controlled entities, not those which non-core entities intend to enter into. By making this change, the register would align better with that purpose. **Non-core arrangements which have not been entered into should be removed from the Public Register.**