



Innovative
Research
Universities

IRU submission

Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020

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IRU recommendations

The IRU makes the following recommendations:

- The Government should use the successful University Foreign Interference Taskforce to identify and propose a fix for any gaps in the existing rules and regulations around foreign interference, instead of imposing additional laws.
- If the Government remains convinced that university agreements should remain within the scope of the Bills, it should reverse the arrangements requiring all agreements to be registered and instead provide for the Minister to:
 - define the risk areas where universities should identify agreements as potentially problematic;
 - allow universities to refer such agreements to DFAT for further assessment of foreign policy risk; and
 - retain the power to identify other agreements the Government wishes to consider.
- The legislation should be amended to allow for universities to appeal any ministerial decision to cancel an agreement with a foreign entity, to ensure the process remains fair, transparent and trusted by all participants.

IRU response

The Innovative Research Universities (IRU) group welcomes the opportunity to provide feedback on Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020.

The legislation is intended to “protect and manage Australia's foreign relations” including through requiring universities to register all current and future agreements with qualifying foreign entities.

The IRU is concerned the legislation as drafted will create significant new burdens for Australian universities that are disproportionate to the risks the Government seeks to mitigate.

IRU members are particularly concerned the legislation will require registration of hundreds if not thousands of arrangements per university with foreign partners, ranging from routine activity like student exchange visits and software licensing agreements through to commercial partnerships and multi-country research projects.

Under current proposals, each of those activities would need to be registered; a significant bureaucratic burden for universities, as well as for DFAT as the administrative body.

Even accepting the Government's assumption that further scrutiny is required the IRU is concerned the legislation does not target the risk factors that would lead to Government intervention concerning a particular agreement. Instead, it proposes to capture the full suite of connections between universities and a broad set of foreign government-related bodies, which would then be sorted and assessed. All activities caught by the legislation would need to be registered in the same way regardless of clear differentiation in risk.

If the legislation passes as proposed, it will entail many additional hours of work for universities and significant financial costs. It will inevitably draw university staff away from their core work and lead to additional delays in negotiating and finalising agreements.

It could even put otherwise viable international partnerships at risk, if the regulatory burden becomes too much for both sides to bear, in turn leading to lost investment and lost institutional reputation.

There is no question that the Government must take practical steps to protect and manage national security. However, universities make the point that they already greatly strengthened their procedures across activities, including the array of international agreements, to test the likely level of national security risk.

This is due to the Universities implementing the requirements of multiple regulatory and legislative controls, such as the *Defence Trade Controls Act*, the *Autonomous Sanctions Act 2011* and the *Foreign Influence Transparency Scheme Act* (the FITS Act).

Universities have worked closely with the Government in the Universities Foreign Interference Taskforce (UFIT) to establish world-leading guidelines around cybersecurity and intellectual property.

The Parliamentary Joint Committee on Intelligence and Security (PJCIS) is about to undertake an inquiry into foreign interference in Australian universities, at the request of the Minister for Home Affairs. This committee is due to report in July 2021.

IRU members are concerned the various laws and initiatives on foreign interference are becoming increasingly numerous and disjointed, potentially leading to additional complexity and confusion in an already complex area of public policy. We urge the Government to take a more holistic approach to this issue and to work with universities through the UFIT to identify and fix any perceived gaps in the current laws and regulations. UFIT is a more appropriate and likely more effective vehicle for dealing with such concerns than further laws.

Finally, the legislation does not provide universities with any recourse of appeal should the Foreign Minister cancel an agreement of concern. The Consequential Bill seeks to remove the possibility of judicial review. As a point of fairness and due process, the Government should ensure an appeals process is available to ensure any misunderstandings are rectified, and the process is as transparent as possible.

25 September 2020

About the IRU

Innovative Research Universities (IRU) is a coalition of seven comprehensive universities committed to innovation and inclusive excellence in teaching, learning and research in Australia.

The members' impact is local and global with a focus on advancing communities through education, resources, opportunities, translational research and enterprise.

Through its members working collectively, the IRU seeks to be at the constructive centre of Australian university policymaking.

The membership is Charles Darwin University, Flinders University, Griffith University, James Cook University, La Trobe University, Murdoch University and Western Sydney University.