

Senate Foreign Affairs, Defence and Trade Legislative Committee Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and related Bill

25 September 2020

The Australian Technology Network of Universities (ATN), in collaboration with The University of Newcastle and Deakin University, welcome the opportunity to provide a submission on the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and related Bill ('the Bill'). ATN is the peak body representing Australia's four most innovative and enterprising universities: Curtin University, RMIT University, University of South Australia and University of Technology Sydney. The University of Newcastle and Deakin University are also important community institutions in the regional gateway cities of Newcastle and Geelong. References to ATN below should be read as representing all six universities.

ATN acknowledges the importance of an effective and harmonised approach to safeguarding Australia's national interest. The Bill as currently drafted, however, does not achieve this in relation to the university sector.

Recommendations

ATN strongly believes universities should be excluded from the scope of this Bill on the basis that the sector is already heavily regulated in this area. The case has not been made that a new or different approach is needed.

We recommend that the Government works with the sector on a proportionate and risk-based approach to managing university agreements with foreign governments and related entities.

Alternatively, if universities are to be included, before the ATN could support the Bill, significant changes are required to make it fit for purpose.

We have reached this conclusion based on the following:

- 1. The Government should work on a separate process in consultation with the university sector.** The existing regulatory and legislative framework governing the operations of universities is significant, rigorous and effective - particularly in relation to foreign interference transparency, defence trade controls and University Foreign Interference Taskforce (UFIT). It is unclear what additional benefit the legislation would have and indeed it has the potential to create confusion and reduce the effectiveness of the current system.
- 2. Significant drafting gaps and flaws** create uncertainty and increase the potential for significant unintended consequences.
- 3. If universities are included in the Bill, then the Government should seek alternative options to achieve its policy objectives** in consultation with the sector.
- 4. A lack of consultation with the sector has meant the measures in the Bill are poorly designed for universities and give little thought to the risks to international collaborations, including:**
 - a.** the significance of managing several thousand agreements that exist between universities and foreign entities
 - b.** potential risks for Australia's world class research and innovation systems that are highly interdependent on international collaboration
 - c.** the disadvantage that would be created for Australian universities in collaborating with industry and businesses, particularly in an increasingly integrated global economy.

In collaboration with

1. The Government should work on a separate process in consultation with the university sector

The management of Australia's national strategic interests is an important issue for universities. In recent years, the sector has worked closely and constructively with Government to achieve sensible, risk-based and proportionate approaches to complex issues including foreign interference and defence trade policy changes.

ATN notes that the Government has not provided a compelling rationale for needing additional oversight in terms of universities' international agreements. If such a rationale does exist, ATN recommends that Government could achieve a more robust and workable approach if it enhanced and further harmonised a regulatory system based on the existing frameworks and legislation. This should be done in collaboration with the university sector. This would ensure a design of a long-lasting, constructive, complementary and shared approach to managing university relationships with foreign governments.

The *Defence Trade Controls Act 2012*, the Foreign Interference Transparency Scheme and the University Foreign Interference Taskforce (UFIT) are good working models for effective and practical cooperation between universities and Government.

ATN is of the view that the policy objectives sought by the Government may be achieved via a re-working of existing models and frameworks. Building on those existing arrangements is preferable to something new and could include consideration of the successful and evolving cooperative UFIT model. Sharing the administrative and regulatory load should be a key design consideration.

This would recognise the unique nature of universities and the way we operate in the internationalised sphere of education and research. It could also provide opportunities for more effective coverage of universities in Australia, both public and private, which this Bill currently does not.

We also acknowledge the sheer volume of agreements – potentially tens of thousands – that could create an unsustainable administrative burden and backlog for the Department of Foreign Affairs and Trade (DFAT). This is why a proportionate and risk-based approach is needed to ensure we focus our efforts on the areas that need the most attention.

2. Significant drafting gaps and flaws

The current scope of the Bill is vast, but as drafted lacks significant detail.

The Bill is silent on the key definitions (e.g. foreign policy, non-autonomous universities, what criteria will be brought to bear on deciding which agreements can proceed and which will be vetoed) and relies heavily on Ministerial discretion. Given the significance of the agreements captured by the scope of this Bill, passage of the Bill without these key issues being defined should not be countenanced.

As currently drafted, the Bill potentially captures thousands of agreements and does not recognise the interconnected way in which Australian universities operate with their international partners. It will be important to guard against any system that impacts at the researcher to researcher level, where most foreign agencies are involved.

The retrospective nature of the Bill is also a concern. This is impractical and inconsistent with general drafting principles applied to Bills such as this.

In addition, the Bill includes potential for a double notification process which again is impractical and increases the administrative burden for DFAT and the Minister. It also increases the complexity of negotiating agreements for universities.

It is difficult for Australian universities to proactively engage with the process when foreign policy is not defined and there are no guidelines as to which foreign universities are autonomous.

At a minimum, and prior to the Bill passing, these definitions and guidelines need to be circulated and open for consultation. This will provide an opportunity for all stakeholders (including universities) to better understand the objectives of the Government and to constructively contribute to the design of the policy.

We would urge the Senate to seek answers to the vital questions of:

- **What are the specific policy objectives of this Bill?**
- **Have these policy objectives been defined adequately?**
- **What problems is this Bill is seeking to solve?**
- **How will the Bill, as drafted, solve these problems?**

3. Alternative options to achieve the policy objectives

If universities are included in the Bill, then there will need to be changes to make it workable. This will also require further consultation with the sector. We recommend the following:

A. An annual disclosure system

ATN recommends that the Government consider an alternative system of visibility of university relationships, **for the information only of the Department**, through a system of annual disclosure.

This approach would still allow for Departmental visibility but overcome the significant administrative burden to the Government and better fit with the principle of proportionate regulation.

B. Amendments to definitions and a process to review decisions

ATN recommends that the Government agree to amending the Bill to define key terms and issues and commit to a system of review.

Our position is based on the fitness of existing cooperation and regulation in this area, the desire to work in partnership with the Government, the relatively low risk of the vast majority of university agreements, the importance and benefit of international collaborations for Australia, and maintaining our place as part of the global research community.

In this circumstance, ATN would recommend the following steps and amendments to the Bill:

- i. sharing of information about the nature and types of agreements that are considered higher risk in terms of the Government's objectives
- ii. clearer definitions of reportable arrangements and non-autonomous foreign universities
- iii. a more just legal framework for the review of Ministerial declarations that better align to principles of administrative law.

4. Risk to international collaborations

This Bill potentially captures thousands of agreements between universities. **Currently there are over 8,500 formal agreements between Australia universities and their global counterparts (up from 4,474 in 2003).**¹ **These agreements enable crucial research collaborations and the exchange of students and staff.** This includes 1,237 agreements in China, 967 in the United States, 479 in Japan and 466 in France.

We are concerned that for all major contracts universities enter into on a regular basis, we would need to draw attention to the sovereign risk posed by the legislation as currently drafted. This would discourage others from working with our universities.

One example is the Australia–Germany Joint Research Cooperation Scheme, an initiative of Universities Australia and the German Academic Exchange Service (DAAD) - Germany’s national agency for the support of international academic cooperation. It supports exchanges for researchers from Australian universities to spend time at partner institutions in Germany, and for collaborating German researchers to spend time at Australian universities.

There were 49 projects in 2019, including projects in important areas such as teaching health professionals (Curtin University), carbon fibre materials (Deakin University), materials research (RMIT University), electrochemistry (The University of Newcastle), sports science (University of South Australia) and plasmonics (University of Technology Sydney).

Student exchange programs also provide valuable opportunities for Australian students to study abroad with the support of their Australian university. Universities have agreements with hundreds of partners around the world to enable student exchange. For example:

- Curtin University has 120 partners
- University of South Australia has 84 partners
- Deakin University has over 200 partners
- RMIT University has over 200 partners
- University of Technology Sydney has over 240 partners
- The University of Newcastle has over 100 partners.

There are many areas of research where universities partner with governments, as well as businesses and other universities. Just like the Australian Government, other governments are heavily invested in health and medical research which helps run public health systems and improve public health initiatives – partnerships involving other governments are key to conducting this research. Governments around the world are also heavily invested in shared priorities, such as improving agricultural yields and drought resistance.

The Bill creates uncertainty and exposes international partners to unacceptable sovereign risks with no appropriate recourse or appeal. The appeals process as drafted within the Bill is peculiarly structured and given the stated classification of universities as non-core, ATN recommends that if universities must be included in the scope of this legislation, the usual process of appeal through the Administrative Appeals Tribunal be implemented. Given a Ministerial declaration may be made against any agreement at any time (including those previously approved), this is an extraordinary risk for universities and their partners.

¹ <http://keepitclever.com.au/the-facts/>

This Bill as drafted captures agreements with universities that have similar levels of autonomy to Australian universities. Under the Bill's definitions, most European and United States universities would be non-autonomous because they are constituted by legislation and publicly funded. It is common for universities to be constituted and regulated under relevant government ministries, but exercise similar autonomy to Australian universities.

This Bill is out of step with the other liberal democracies that are our key political and economic partners and allies. This goes beyond what Australia's other Five Eyes alliance partners have legislated and would diminish Australia's relative advantage in the globally connected and competitive area of research.

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Appendix: Further observations

Universities support and are actively engaged with partners around the world. Australian society, our economy and our standing in the world benefit from our broad engagement with a range of international partners.

Australian universities are connected into global networks of teaching, learning, scholarship and research, but they are locally grounded. Their aim is to benefit Australian students and society as a whole – this is embedded within the foundational acts of our universities and the culture we foster on campus. Australian universities (and Australian society) benefit from the exchange of knowledge and expertise with global partners – disproportionately restricting our own access to this will disadvantage our research, our industries and our economy.

The *Guidelines to Counter Foreign Interference in the Australian University Sector* produced by UFIT state:

A defining factor in the world-class performance and reputation of Australia's university system is its openness to the world. The globally engaged nature of our universities is indispensable to their success. Indeed, it is the bedrock of their competitiveness.

...

The Australian Government supports such international collaborations through its programs and policy settings across a wide range of initiatives and portfolios. These include appropriate visa settings and the new Global Talent visa; a comprehensive program of Australian Trade Commission work to promote international education; the New Colombo Plan; the eligibility of international academics for several Australian National Competitive Grant schemes; the provision of targeted research funds such as the Australia-China Science and Research Fund and the Australia-India Strategic Research Fund; and providing support for Australian students and academic staff to travel internationally.

The UFIT Guidelines make clear the importance of mature governance and risk frameworks, building a positive culture of security, proper due diligence processes, and knowledge sharing between universities and security agencies. This provides the assurance that universities, the Government and our international partners need in order to confidently and safely make arrangements that benefit all parties.

What universities and the Government need is a robust and trusted system which allows for the effective identification and management of risks, so that together we can safely realise the benefits of international partnerships.

ATN earned \$35 million in research income from international sources in 2018 (\$190 million since 2014) and universities as a whole earned \$465 million in 2018 (\$2.2 billion since 2014).² Overseas funding was the source of \$390 million universities spent on research and experimental development in 2018 (more than the \$301 million from donations, bequests and foundations, and not far behind the \$457 million from state and local governments).³

In 2019, 81 per cent of commencing ARC projects involved international collaboration (945 out of 1,170) including 160 in engineering and 138 in biological sciences.⁴ The most common partners in ARC projects were organisations from the United States (512 projects), the United Kingdom (321), Germany (177), China (166) and Canada (116).

² <https://docs.education.gov.au/documents/research-income-data-1994-2018>

³ <https://www.abs.gov.au/statistics/industry/technology-and-innovation/research-and-experimental-development-higher-education-organisations-australia/latest-release>

⁴ <https://www.arc.gov.au/grants-and-funding/apply-funding/grants-dataset#arc-research-funding-trend-data>

The NHMRC–European Union Collaborative Research Grants scheme supports Australian participation in leading international collaborative research under the EU Framework Programme. The Framework Programme is the EU’s main instrument for funding research and development.

In 2017, 53 per cent Australia’s Web of Science documents were co-authored with international researchers, compared to 42 per cent in 2012.⁵

It is important to note that at a university level, the legislation as currently drafted would capture agreements designed to increase staff, researcher and student mobility, with both universities and governments internationally. These number in the hundreds per institution.

University activities do not limit the ability of the Government to pursue and manage foreign policy matters. While we are constituted under state or territory legislation, we are not arms of state and territory governments and nor do we purport to be. We are autonomous, not-for-profit community institutions run to provide education and conduct research for the benefit of Australians.

Universities assist the Government’s soft diplomacy efforts by teaching students and working with researchers from around the world and improve Australia’s standing in the region and the world.

The Government has clear responsibility for Australia’s foreign policy and external relations and universities respect that. This does not mean that the Government has to act alone in safeguarding Australia’s interests and ensuring the prosperity and security of Australians.

While the Government can set foreign policy, genuine collaborations and partnerships with Australian universities can implement and enable the fulfillment of this policy. A partner-led approach would be more effective at embedding the responsibility for security within the operations and culture of all Australian universities interacting with international partners.

As it stands, this Bill adopts a reductive and compliance-led approach to these agreements. It shifts the burden to the DFAT, rather than promoting and enabling Australian universities to engage with these issues directly. An approach which enables two-way information sharing and collaborative threat and risk assessments would go beyond regulation and enforcement.

Supporting the existing proportionate and risk-based approaches adopted by Australian universities would concentrate the efforts of the Government and Australian universities on the agreements and factors that are most important and critical. This could involve the setting of clear thresholds and boundaries within which Australian universities can operate and provide all partners with the confidence and security they need to enter into these agreements.

⁵ <https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/08/190716-Facts-and-Figures-2019-Final-v2.pdf>