

Independent Review of the Foreign Arrangements Scheme 2 August 2024

Key takeaways:

1. The Foreign Arrangements Scheme has been useful in raising awareness of the risks of foreign interference through international collaborations
2. The Scheme could be refined to reduce the burden on public universities in a risk-proportionate way
3. An improved feedback loop would provide greater clarity and minimise over-reporting

The Australian Technology Network of Universities (ATN Universities) welcomes the opportunity to provide feedback on the Foreign Arrangements Scheme through the 2024 legislative review. References to the Scheme below refer to both *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* and related measures under the Foreign Arrangements Scheme.

The Foreign Arrangements Scheme has been useful in raising awareness of the risks of foreign interference through international collaborations

In an environment of increasing foreign interference, ATN Universities acknowledges the rationale behind the broad-based approach that the Scheme takes towards protecting Australia's national security interests and managing our foreign relations. We recognise and respect the role public universities play in contributing to the collective assessment of risks.

Our member universities agree that the Scheme has been useful as an educative tool. Particularly when considered in conjunction with activities undertaken through the University Foreign Interference Taskforce, **the Scheme has increased the sector's awareness of the risks of entering agreements with international partners, and options to mitigate those risks.** The requirement to make such assessments and notify the Department of Foreign Affairs and Trade (DFAT) has been incorporated into business-as-usual due diligence processes, and facilitated a more consistent approach to risk management.

The Scheme could be refined to reduce the burden on public universities in a risk-proportionate way

The current operation of the Scheme places a high assessment and reporting burden on public universities: **in the 2023 calendar year alone, ATN's six member universities notified DFAT of over 300 arrangements between them.** There are opportunities to streamline the scope of the

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Scheme and thresholds for notifications in a way that still captures high-risk activities while reducing the compliance workload for universities.

Scope

The Scheme has an extremely broad scope, defining an arrangement as ‘any written arrangement, agreement, contract, understanding or undertaking, whether or not it is legally binding...’. This means it does not distinguish between the different levels of risk that are presented by research collaborations as compared to non-binding MOUs, and agreements related to teaching or material/data transfer. **ATN Universities would support a narrowing of the scope of arrangements that need to be reported on to remove those that are unlikely to present a high risk to foreign relations.**

We appreciate that the Scheme has been set up in a way which means public universities are subject to fewer requirements than ‘core arrangements’ – for example, by only being required to report university-to-university arrangements where foreign universities are not deemed to have institutional autonomy. However, this still requires assessment of most university-to-university arrangements to be satisfied that they don’t fall within the scope of the Scheme.

Additionally, universities have many university-to-foreign government arrangements, all of which must automatically be reported. In some cases, such as those related to AUKUS cooperation, reporting on arrangements with foreign governments may have the unintended consequence of providing a level of visibility of proposed research that neither Australia nor its partners necessarily want. **These issues could be alleviated in part by exempting arrangements with Five Eyes countries, similar to the approach taken in the Safeguarding Australia’s Military Secrets (SAMS) legislation.**

Double notifications

The requirement to provide a notification at the draft contract stage and then again upon signature seems duplicative. **We would support the removal of the requirement to notify on signature, or at a minimum an increase in the 14-day time limit for notification.**

Whatever changes are made to the Scheme, **we urge that they be considered in the context of complementary regulatory frameworks** including the Guidelines to Counter Foreign Interference, the Foreign Influence Transparency Scheme and Defence Export Controls. Harmonisation of approaches where possible would ensure consistency and reduce the reporting burden on institutions.

An improved feedback loop would provide greater clarity and minimise over-reporting

ATN’s member universities welcome DFAT’s increased engagement and the productive working relationships that have been developed. A number of useful resources and guidance materials on the Scheme have been provided. **We would, however, welcome greater clarity on why many**

notifications are deemed to be ‘out-of-scope’ to ensure that effort is not unduly spent on similar arrangements in the future. Further guidance on best-practice compliance would assist.

We would also support DFAT continuing to provide regular advice on the high-risk countries or evolving threats on which universities should focus their assessments. DFAT has done this in the past, but information is not provided consistently to all universities and tends to focus on a smaller range of countries than those included in the arrangements listed on the Public Register. **This makes it difficult for individual universities to assess whether certain countries are in scope, and increases the likelihood of over-reporting.**

Further, it is inefficient for up to 39 public universities independently to conduct due diligence processes on the same countries. **This process could be streamlined by DFAT circulating advice regularly on countries or arrangements of concern, drawing on its greater access to relevant intelligence.** Such sharing of information could model the approach taken by Canada in publishing a list of Sensitive Technology Research Areas and Named Research Organisations, or could be managed through classified briefings or housed on a secure platform. This would greatly assist a highly regulated sector to target its limited resources most effectively and would ensure that each university receives the same information through authorised channels.

ATN Universities is committed to working with Government to find a balance that recognises both the value of cross-border collaborations and the need for oversight of the higher education sector to ensure activities align with Australia’s national interests. We believe refining the scope of the Scheme and improving information-sharing would relieve the administrative burden on public universities while achieving the objective of the Scheme in safeguarding Australia’s foreign relations.

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