

UNSW Submission – Review of the Foreign Arrangements Scheme

UNSW welcomes the opportunity to contribute to the review of the Foreign Arrangements Scheme (‘the Scheme’) as established by the *Australia’s Foreign Relations (State and Territory Arrangements) Act 2020*. As a public institution, UNSW is committed to supporting Australia’s national interests, including through foreign policy. As a university with global reach and global impact, UNSW is well positioned to comment on the Scheme and its interaction with our own risk assessments for engaging with foreign entities.

This submission provides UNSW’s feedback on the administration and effectiveness of the Scheme, offered in support of UNSW’s commitment to protecting Australia’s national interests and economic advantage through higher education and research outcomes consistent with Australian foreign policy.

UNSW understands and supports the need for the Commonwealth to protect and manage Australia’s foreign relations at all levels of government. The value of the Scheme to supporting this objective as applied to Australian public universities is less clear, particularly when the effectiveness of the Scheme is compared to the administrative burden it places on university resources, given the duplication with other measures.

In its four years of operation, the Scheme’s application to universities appears to have had or contributed to a number of unintended effects, including a cooling effect on international collaboration, a reduced competitiveness of Australian public universities compared to private sector alternatives and industry partners, and a hesitancy to invest in long-term international partnerships which lack certainty, as they are never approved under the Scheme and remain subject to cancellation without appeal at any time.

UNSW encourages further consideration of whether the Scheme is an appropriate vehicle for the government’s stated objectives, in particular as it relates to universities.

Recommendations

As a result of its experience with the Scheme, UNSW proposes the following amendments be explored and developed in consultation with universities:

1. The Scheme should focus on a narrower range of international cooperation with exemptions from notifying arrangements to countries that are closely aligned to Australia on foreign policy and are a low risk of adversely impacting Australia’s foreign relations.
2. The administrative requirements of the Scheme should be reduced, for example, by requiring agreements to only be registered with DFAT once at a specified stage of maturity rather than twice.

3. Further development of the institutional autonomy test should be undertaken, to avoid loopholes.
4. There should be greater protection/exclusions within the Scheme for commercial-in-confidence and Defence arrangements.

About UNSW

UNSW is ranked in the world's top 20 universities with more than 70,000 students and over 4,200 higher degree research candidates. UNSW is a world-leading research and teaching-intensive university, known for innovative, pioneering research and high-quality education with a longstanding global impact. Since our foundation in 1949 and through celebrating our 75th anniversary year, our aim has been to improve and transform all lives through excellence in research, outstanding learning and teaching experiences, and a commitment to advancing Australia's economic growth and prosperity.

Administration

UNSW has notified the Minister of more than 800 foreign arrangements under the Scheme, and estimates it has assessed more than double that number to determine if they are within scope of the Scheme. UNSW continues to assess many more arrangements than it registers, and the administration required to assess arrangements which ultimately do not need registration remains significant-. The initial surge of effort required to meet the original 10 June 2021 deadline of the Scheme was a significant investment of resources and required the commitment of the UNSW Compliance team over several months. This included employing additional staff to assess arrangements and prepare notifications, and engaging with business units across UNSW to develop new workflows for the identification and processing of arrangements that fall within the scope of the Scheme. Currently, UNSW has three staff within the Compliance team who have administration of the Scheme embedded in their position descriptions, whilst many more staff across UNSW assist the core team by identifying and forwarding arrangements in need of assessment. While ensuring our compliance is an important task for universities, the dedication of resources to duplicative compliance is an inefficient use of resources that would otherwise be allocated to teaching and research activities.

The requirement to assess foreign entities with whom UNSW is engaging to determine whether they are a "foreign entity" for the purpose of the Scheme is one aspect of the overall assessment of an arrangement that takes significant resources. The *institutional autonomy* test prescribed by the Scheme for foreign universities requires each such institution to be assessed individually (rather than assessing institutions by country). It also requires access to governance information for such institutions that is often not publicly available or available in the English language, making it difficult to make accurate and consistent assessments on whether an institution will fail the *institutional autonomy* test and be within the scope of the Scheme. Similar issues arise in assessing whether foreign hospitals and research institutes are within scope of the Scheme, as well as determining if a corporation is established for a public purpose or operating on a commercial basis.

Each potential registrable arrangement also requires the UNSW Compliance team to engage the staff driving the arrangement and understand what is being proposed. Responsibility then transfers to the UNSW National Security team which manages the ongoing correspondence with DFAT following up on registered arrangements, and sometimes arrangements which are not registered which DFAT becomes aware of, in an ongoing dialogue.

The requirement for each arrangement to be registered both at the time of its serious consideration and at the time of the final arrangement being signed is a significant burden compared to the additional assurance it provides and contributes to the sense of uncertainty around the Scheme and the processes required in each university to support it.

Effectiveness

The Scheme as it currently operates does not appreciably reduce the risk of a university acting contrary to Australia's foreign policy. UNSW's decision-making around its institutional agreements already considers whether proposed agreements are in the national interest or not, what the national benefit of such an agreement may be, and alignment with Australia's foreign policy settings. While in 2020 the Scheme may have had an initial value in raising awareness of foreign policy alignment within universities, the national security landscape at universities has changed significantly since the commencement of the Scheme, with the refresh of the University Foreign Interference Taskforce (UFIT) Guidelines in late 2021 increasing focus on due diligence, including questions of foreign policy alignment. The initial value of the Scheme has been largely exhausted and overtaken by the broader and more detailed UFIT Guidelines, which is developed through a collaboration between the higher education sector and relevant government agencies.

Of note, the very real and acute risk of foreign interference does not tend to manifest in high-level institutional arrangements such as those requiring registration, but rather relates to the lower-level individual arrangements researchers enter into with foreign counterparts.

Overall, the effectiveness of the Scheme as it pertains to universities is not commensurate to its administrative burden. In the greater scheme of national security within Australian universities, the Scheme as it currently operates demands resources from the same very limited pool which universities have to deal with the far greater risk of foreign interference, and in many cases the increasingly complex Defence exports regulatory regime.

Unintended Effects

Over the four years of its operation, UNSW has observed a number of unintended effects which the Scheme has introduced to the way universities collaborate internationally.

- *Reduced competitiveness of Australian public universities:* Australian public universities are less agile and less competitive compared to universities and research partners outside of the Scheme, companies which are explicitly not covered by the scheme, and foreign large public universities including in the UK and the US.
 - o Universities are required to register arrangements with certain foreign institutions, but companies signing the same arrangement with the same foreign institution is not.
 - o Australian public universities are not positioned to be the kind of dependable and robust long-term partners one would expect of a liberal democracy.
 - o Foreign partners looking to invest in expensive joint ventures are uneasy about the prospect of the government being able to unilaterally veto the agreements at any time.
 - o This is particularly true of new collaborations with non-traditional partners.
- *Inverse consequences:* Through its focus on the act of registration, the Scheme incentivises universities to prioritise regulatory compliance over proper risk management of their exposure to foreign entities, such as that laid out in the UFIT Guidelines.

- *Cooling effect on international collaboration:* The additional barriers created by the Scheme have disincentivised Australian researchers to seek out international partnerships. While this cannot be wholly portioned to the effect of the Scheme, the Scheme has contributed to a sense among researchers in particular that international collaboration is often not worth the trouble. Particular to the Scheme, there is persistent confusion among academics around the Scheme's function and purpose, and how it differs from the Foreign Influence Transparency Scheme. This is important, because it also limits the flow of knowledge into Australia, which in turn is used to address national challenges, such as, for example, the COVID-19 pandemic.
- *Introduced vulnerability through lack of certainty:* the Scheme introduces a very one-sided vulnerability for any university covered by its operation, in that for non-core arrangements there is no 'approval' and instead it is simply 'the absence of veto', meaning the arrangements and the investments which flow from it are forever subject to the exercise of the Minister's discretion. The potential for future governments, who may not value international collaboration between universities to the same degree as the current government, to use this power to upend a university's partnerships for political reasons is of significant concern and disincentivises investment.
- *Inconsistency of institutional autonomy:* Inconsistency between universities on the institutional autonomy test: the test of 'institutional autonomy' requires further development and ideally would be like the test in Canada where the government applies it.
- *Transparency of arrangements:* UNSW, like the Australian Government and most Australian universities, is subject to applicable right to information laws and is cognisant of the need to be open and transparent in its operations. The Scheme as it currently operates creates inconsistency through the publication of foreign arrangements on the FAS Public Register, yet arrangements with Australian Government agencies do not have the same level of transparency (noting that the AusTender website does not publish project titles of arrangements with Australian universities).
- *Inconsistency with associated regulatory frameworks:* The Scheme currently operates to capture all foreign arrangements, including arrangements with foreign governments with whom Australia is aligned on foreign policy. By comparison, amendments to the *Defence Trade Controls Act 2012* (Cth) that are soon to take effect will reduce the need for export permits when engaging with countries with whom Australia is closely aligned on foreign policy.

UNSW provides the recommendations in this submission with a view to seeing the Scheme improved and further developed into a suitable tool for DFAT as well as Australian universities to protect Australia's foreign policy interests.

Conclusion

UNSW is again grateful for the opportunity to provide this submission.

Should you wish to discuss any issue raised in this submission, please do not hesitate to contact our UNSW Director of International Engagement and National Security, Mr Christopher White, at christopher.s.white@unsw.edu.au.