

# WESTERN SYDNEY UNIVERSITY



**Western Sydney University**  
**Submission for the Consultation of the Review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*, and the Foreign Arrangements Scheme.**

**July 2024**

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## **Executive Summary**

Western Sydney University recognises the critical importance of the Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the Foreign Relations Act or AFRA) and the accompanying Foreign Arrangements Scheme (the Scheme) in safeguarding national interests and enhancing institutional due diligence. This submission outlines our experiences and insights gained from implementing the Scheme since mid-2021. It emphasises the necessity for ongoing legislative review and adaptation to address the evolving global threat landscape.

### **Key Recommendations Include:**

- Recognise that limitations on international engagement could adversely affect the higher education sector, which is crucial for Australia's economy and foreign policy.
- Ensure the Act operates in tandem with other relevant Australian laws like the Defence Trade Controls Act, Autonomous Sanctions Act, Security of Critical Infrastructure Act, and the Foreign Influence Transparency Scheme Act.
- Support universities in diversifying their international engagements by reducing reporting requirements, encouraging new partnerships with non-traditional markets, providing benefits/reduce reporting with strategic alliances, such as the QUAD, Five-Eyes, and AUKUS.
- Collaborate with universities to build expertise in emerging fields and bolster Australia's strategic capabilities.
- Engage with universities more personally, and understanding the individual and diverse risk profiles of different institutions, and taking those perspectives into account.
- Balance foreign policy objectives with the need for international collaboration to avoid adversely affecting Australia's foreign policy and national interests.

- Ensure ongoing reporting and consistent transparency from the Commonwealth regarding the outcomes and benefits of compliance.
- Offer comprehensive rationale for decisions on arrangements to help institutions understand compliance requirements and expedite identification of ‘in-scope’ arrangements.
- Streamline administrative processes and reduce redundant costs by providing timely and consistent guidance and resources.
- Provide annual reports from the Department of Foreign Affairs and Trade detailing notified arrangements, due diligence processes, and key areas of focus.
- Improve inter-departmental collaboration to provide comprehensive understanding and meet the requirements for mitigating foreign threats.

Through this submission, Western Sydney University aims to contribute to the continuous improvement of the Foreign Relations Act, fostering a secure and functional environment for the Australian higher education sector amidst dynamic global challenges.

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## **Background**

Western Sydney University acknowledges that the *Australia’s Foreign Relations (State and Territory Arrangements) Act 2020* (the Foreign Relations Act or AFRA), and the Foreign Arrangements Scheme (the Scheme) is an opportunity to build more robust due diligence practices, enhance our risk assessment and impact strategies, and to evaluate more effective partnerships, opportunities for research and international collaborations.

As the global threat landscape evolves through new technologies, strategic interests, and foreign capabilities, legislation targeted at protecting Australia’s assets and critical industries requires ongoing review and evolution. The opportunity to provide feedback through consultation is a welcome method of introducing first hand experience and knowledge from those sectors at risk, to guide the Commonwealth in understanding our needs and concerns and addressing legislative gaps to provide protection in an ever-changing environment. The applicability of the Act, as presented by the sector, can help to shape an understanding of how foreign policy is interpreted, and how we meet our obligations, as is proportionate to each institutions risk appetite and due diligence practices.

Through the Foreign Arrangements Scheme and the University Foreign Interference Taskforce, Western Sydney University has been encouraged to build a stronger understanding and application of due diligence processes. As an early adopter in mid-2021, shortly after the 10 June deadline of the Foreign Arrangements Scheme, Western Sydney University implemented a notification platform for all staff to notify of their intention to

enter into a foreign arrangement, ensuring our compliance with the Scheme. This provided the University with an opportunity to track and monitor our international engagement, helping to guide strategy and further partnership development. The introduction of the Scheme encouraged a stricter awareness of our partnership base, and through our dedicated Foreign Arrangements resources, has allowed us to streamline many of our reporting requirements through individual work streams.

Western Sydney University welcomes the opportunity to make a submission to the review of the Foreign Relations Act. We are eager to present our experiences under the Act and the Foreign Arrangements Scheme, in hopes of further consultation and collaboration with the Commonwealth Government. This will help ensure a stronger alignment between the intention of the Foreign Relations Act, and the functionality of the Australian higher education sector, while meeting the needs of an evolving threat environment.

### **Effectiveness of the Foreign Relations Act in Delivering Against Its Objectives**

The objectives of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) ('Foreign Relations Act'), per div 2 s 5 of the Act, are 'to ensure that the Commonwealth is able to protect and manage Australia's foreign relations by ensuring that any arrangement between a State/Territory entity and a foreign entity does not, or is unlikely to, adversely affect Australia's foreign relations, and is not, or is unlikely to be inconsistent with Australia's foreign policy'.<sup>1</sup> The Foreign Relations Act, as a tool to manage foreign policy, has had minimal impact on Western Sydney University, largely due to the nature of the Act, requiring the University to report on engagement with foreign non-autonomous entities. Outside of its reporting function, the Act has not changed how the University engages internationally, as by nature, Western Sydney University does not engage with foreign parties in a way that could be deemed as 'adverse' to Australia's foreign relations, or 'inconsistent with Australia's foreign policy'.

The nature of the Australian higher education Sector encourages international engagement, whether through collaborative research projects, student recruitment and mobility, or in the exchange of knowledge through visiting scholars and joint publications. The University Foreign Interference Taskforce has created a more risk aware and threat resilient environment for many universities, however, only as guidelines and only within the framework of what is proportional to the risks that are faced by each individual institution. For the sector, Australian universities are reliant on foreign engagement to expand on learning and research, for funding and income, and as seen through reduced international collaboration during the Covid-19 pandemic, a growing economic crisis globally, and recent discussion regarding international student caps, the proportionality of risk is offset by the financial and operational instability that the sector currently faces. Likewise, potential barriers in knowledge exchange through perceived bias against international collaboration further limits Australia's ability to compete globally by preventing engagement with regional partners who excel in areas of research compared to our capabilities domestically.

In evaluating the effectiveness of the Foreign Relations Act in ensuring that any arrangement does not, or is unlikely to, adversely affect Australia's foreign relations or foreign policy, it is

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<sup>1</sup> Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (Cth) s 5(1)

important to consider that limitations on international engagement for education, one of Australia's largest export sectors, could itself adversely affect Australia's foreign policy objectives and national interests.

Additional consideration should be given to how the Act interacts with other laws, and with entities designed to assist in the mitigation of foreign, or domestic, threats in Australia. As was raised during the Foreign Affairs, Defence and Trade Legislation Committee in October 2020<sup>2</sup>, where it was addressed that there was minimal cross-over between the Act and, for example, the *Foreign Influence Transparency Scheme Act 2018 (Cth)*. The Act does not impose or guide methodologies to prevent the impact or likelihood of foreign interference, or conflicts against Australian foreign relations, it instead is targeted specifically at the 'notification' of the intention to enter a foreign arrangement. While its objective is to ensure that 'a foreign entity does not, or is unlikely to adversely affect Australia's foreign relations', it is unclear how a notification process, that is not aligned with other Australian laws, nor provides comprehensive reporting or rationale on outcomes, can protect Australia's foreign relations accurately, particularly in providing advice back to an institution on whether or not an arrangement is 'within scope' of the Scheme.

While Western Sydney University does not support the notion of removing the Foreign Relations Act, it does support further action to enhance the Act to provide stronger guidance, or to direct universities to operate within Australia's best interests, in a way that promotes international collaboration, the enhancement of Australia's foreign policy and relationship building with key strategic and regional partners. Additional consideration should be provided to ensuring that the Act operates in tandem with, and enhances other existing entities and laws in Australia, including the *Defence Trade Controls Act 2012 (Cth)*, *Autonomous Sanctions Act 2011 (Cth)*, and the *Security of Critical Infrastructure Act 2018 (Cth)*.

### **Balance Between Objectives and Administrative Requirements & Transparency and Awareness**

The Australian Foreign Relations Act still does not provide accurate guidance or information around institutional autonomy, nor does it provide substantial information on outcomes for those arrangements that have been reported. This ambiguity breeds confusion for the sector, where arrangements that, by all measures of the Act, should be reportable, come back as 'out-of-scope', with minimal guidance provided. While the administrative requirements are straightforward, the impact or objective does not align with the outcomes provided and does nothing to guide institutions on further reporting requirements. The accompanying resources that have been dedicated to Australian institutions in maintaining our administrative requirements have been significant, with individuals or teams having been employed to manage the administrative burden, adding additional costs to a sector which is still recovering from the impact of Covid, and will soon be impacted further by limitations on international student numbers, and barriers in partnerships and prospective international funding.

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<sup>2</sup> Commonwealth, Parliamentary Debates, Senate, Foreign Affairs, Defence and Trade Legislation Committee, 13 October 2020

Accountability on behalf of the Commonwealth relating to the return-on-investment that universities are providing to mitigate foreign interference should be addressed, with ongoing reporting, and consistent transparency to demonstrate the value that compliance and collaboration between the sector and the government provides. The reasonable expectation from the sector was, at a minimum, for educational materials and further guidance or education and training to be provided back to institutions to maintain compliance and understand or expand on our capabilities at threat identification and mitigation.

While resources have slowly been made available, these have come in more than 24 months after the requirements of the June 10 deadline were implemented. The costs associated with the internal development of educational materials, in lieu of government collaboration, have been significant, and with such a delayed response, change in expectations and sector wide understanding of the Scheme, have led to institutions needing to constantly update and change education and training guides, leading to further costs, changes in administrative processes, and continued ambiguity and uncertainty around additional costs to meet Commonwealth expectations. While it is understood that the sector needs to invest heavily to enhance our due diligence processes and to create barriers and mitigations to external threats, universities are not intelligence agencies, and the availability of information and guidance was critical in establishing true best practice and reducing redundant costs through trial-and-error processes.

For continued engagement with the Scheme, outcomes in the assessment of arrangements by the Department need to be delivered with a rationale, to help institutions to understand whether they are adhering to the Scheme or not. Annual reporting from the Department of Foreign Affairs and Trade, with information relating to notified arrangements, their own due diligence process, key areas of attention or autonomy assessments would help enhance individual institutions assessment processes, and ensure a more unified response from the sector, reducing 'out-of-scope' arrangements from being reported, preventing time-wastage both for the Commonwealth and universities.

### **Improvements to the Operation of the Foreign Relations Act & Better Calibration to Address Foreign Policy Risks**

It is recommended that a stronger emphasis on strategic partnerships be introduced, particularly in supporting regional or strategic alliances such as QUAD or Five Eyes partners. This could be achieved by removing reporting requirements. Alternatively, increasing reporting requirements for specific markets could encourage universities to seek alternative partnerships, diversifying away from current key focus regions and collaborating with less traditional markets.

Since the June 10 2021 deadline for the implementation of the Foreign Arrangements Scheme, no university has experienced a negative outcome for any arrangement. This brings into question the purpose of ongoing reporting, or the potential for the Review to remove specific reporting requirements, as this demonstrates that Australian institutions, over the past three years, have not engaged in any practices that would be contrary to the objectives of the Act. Through data driven guidance from the Department and further transparent reporting and threat guidance, the sector would better be able to prevent any engagement

with foreign arrangements which may pose threats to Australia and its national interests.

In building on Australia's foreign relations, and enhancing regional collaboration, Western Sydney University, has sought to enhance its engagement with markets in Indonesia, Vietnam, and India by expanding its presence through opening local campuses or enhancing educational operations with existing institutions. The Hon Jason Clare MP has stated how these types of partnerships enhance Australia's regional position, building lasting and strengthened relationships, "working together – like neighbours should, like friends do", Minister Clare emphasised that "Australia is good at international education, and it is good to us. It is not like any other export. When you come to Australia to study, a little bit of Australia rubs off on you. We hope that you get to know us, that you fall in love with our country, and that when you come home, you take that love and affection home with you"<sup>3</sup>.

While Western Sydney University does not disagree that there are threats to our national interests, international collaboration leads to stronger relationships, and enhances our research output, the knowledge of our academics, and in turn, builds on Australia's expertise and capability around cognate fields such as quantum, artificial intelligence, cybersecurity, or other Pillar 2 interests.

As Australian universities seek to diversify their engagements, support from the Commonwealth in expanding international collaboration is paramount to developing stronger foreign policy and supporting Australia's regional interests. Implementing barriers through the need to report intent to collaborate, while a minor administrative burden, does not protect the sector or Australia from foreign policy risks. However, further personalised engagement from the Commonwealth helps guide universities to understand appropriate market opportunities, align investments and strategies with Australian foreign policy, and leverage existing and developing treaties and agreements between Australia and its foreign partners.

## **Further Engagement with the Commonwealth**

Further engagement and consultation with the Commonwealth is essential. We acknowledge that there is significantly more engagement from the Department of Foreign Affairs and Trade in 2024 than there has been over the first 24 months of the Scheme. However, engagement is often superficial, and is often viewed by the sector in a cynical light, where decisions have been made regardless of input provided. While Western welcomes increased outreach initiatives and more accessible public information to support compliance, it would be better received if it were more bespoke per the needs of the individual institutions, or if it addressed sector perspectives specifically.

While the higher education sector seeks to create new knowledge and understanding, we need further cooperation from the Commonwealth to understand evolving threats. Inter-departmental collaboration between the Department of Foreign Affairs and Trade, Home Affairs, and Defence is paramount to provide a cohesive and comprehensive understanding

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<sup>3</sup> Australian Government, Department of Education, 'Western Sydney University Soft Launch Ceremony' (23 February 2023) <https://ministers.education.gov.au/clare/western-sydney-university-soft-launch-ceremony>.

back to Australian entities, to understand and meet the requirements of mitigating foreign threats.

## **Conclusion**

Western Sydney University supports the continuation and enhancement of the Australian Foreign Relations Act. We advocate for clearer guidance, stronger strategic partnerships, and more meaningful engagement with the Commonwealth to ensure the Act effectively aligns with Australia's foreign policy objectives.

As is expected of universities, likewise comparative investment should be undertaken by the Commonwealth to develop and enhance its training and education materials for universities, and should we maintain further reporting requirements, for the information that we provide to be used for accurate and transparent reporting from the Commonwealth back to the sector, to allow universities to understand foreign policy objectives, trends and opportunities for collaboration, and to mitigate the potential costs involved with maintaining compliance under the Act.

An expectation to report without outcomes, leads to unreasonable administrative and staffing costs, and if the Commonwealth is not willing to support institutions further, despite the presentation of data through the notification process, then it's proposed that the reporting process be redeveloped or removed, as there is no discernible value for either the Commonwealth, or the sector.

This response outlines our experiences and suggestions for improving the Act and its implementation. We look forward to continued collaboration with the Department of Foreign Affairs and Trade to refine and enhance the Foreign Relations Act for the benefit of the higher education sector and Australia's international engagements.