Submission to Ms Rosemary Huxtable AO PSM

Legislative Review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*

Outline and Summary

Thank you for the opportunity to make a submission to the public consultation on the legislative review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) ("the AFRA").

I am currently employed as a Senior Lecturer in the Law Discipline at Southern Cross University. However, the views expressed below are entirely my own and are not representative of the Discipline of Law, the Faculty, Southern Cross University or any other government, organisation or agency.

From a professional perspective, I conduct legal research into the concept of "research security", the laws, policies and practices of securing sensitive research in both Australia and abroad, usually at higher education institutions ("HEIs"). Currently, the AFRA imposes a number of disclosure and reporting obligations on HEIs to register and seek approval of teaching and research arrangements, and thereby fulfils a number of policy aims within the research security space.

This submission engages with only some aspects of the AFRA and some questions outlined in the Consultation Paper; namely, those that apply to HEIs. This should not be read as an endorsement or rejection of any of the matters in the Consultation Paper that are not considered in this submission.

Background to the AFRA and its influence on Research Security

The Foreign Arrangements Scheme ("the Scheme") seeks to regulate certain aspects of foreign engagement across all levels of government: Commonwealth, State and Territory, and local. The purpose of the AFRA is to provide the ability for the Commonwealth to ensure that arrangements between State and Territory entities and foreign entities are not prejudicial to Australian foreign policy. Such foreign policy includes unwritten policy, and incorporates 'policy that the Minister is satisfied is the Commonwealth's policy on matters that relate to… Australia's foreign relations; or… things outside Australia'.[1]

The Scheme commenced on 10 December 2020, with a transitional period requiring existing arrangements by universities with foreign national and sub-national governments to be notified to the Foreign Minister before 10 June 2021. Further, after 10 March 2021, all states, territories, local governments and universities have been obligated to notify new arrangements to the Minister. The Foreign Minister may also make rules under the AFRA.[2]

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[1] Which would include matters relating to protecting Australia's security from foreign threats: AFRA, s 5(2).
[2] The most recent version being the *Australia's Foreign Relations (State and Territory Arrangements) Rules 2020* (Cth) ("AFRA Rules").

The AFRA applies to all 43 of Australia's universities by virtue that they are all a 'State/Territory entity' by operation of section 7(e) of the AFRA.[3] Any arrangements that Australian universities make with a 'foreign entity' – defined broadly in section 8 of AFRA – are covered. Universities in Australia are not capable of being a 'core State/Territory entity',[4] and so cannot enter into 'core foreign arrangements' irrespective of the nature of the foreign entity.

This means that all arrangements between Australian universities and foreign entities are 'non-core foreign arrangements'. That position gives universities significant benefits in the preparation or negotiation of foreign arrangements, as they can proceed up to the point of execution without the Minister's approval.[5] Instead, the Minister retains a discretion to issue directions that negotiations of the arrangement must not go ahead or must cease,[6] or that the Australian entity must not enter into the arrangement.[7] In issuing such directions, the Minister must be satisfied that the non-core foreign arrangement will either 'adversely affect, or is likely to adversely affect, Australia's foreign relations' or the arrangement 'is, or is likely to be, inconsistent with Australia's foreign policy'.[8]

By allowing the Foreign Minister to block proposed collaborations between Australian universities and foreign entities on scientific or technological developments in the interests of foreign policy, the AFRA therefore plays a critical role in the provision of "research security":

> Research security is the ability to identify possible risks to your work through unwanted access, interference, or theft and the measures that minimize these risks and protect the inputs, processes, and products that are part of scientific research and discovery.[9]

Australia has no such unified government agenda on research security. Although the Australian government (through the Universities Foreign Interference Taskforce – "UFIT") published *Guidelines to counter foreign interference in the Australian university sector*[10] ("UFIT Guidelines") in 2019 (and refreshed them in 2021), the UFIT Guidelines are voluntary. They are not universally applied by all Australian universities in the same way and are not applied as requirements for seeking federal funding. Finally, despite an inquiry by the Parliamentary

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[3] Being 'a university established by, or under, a law of a State or a Territory'. The Australian National University is also a 'State/Territory entity' by virtue of s 55(1).

[4] Applying only to those entities in AFRA, ss 7(a)-(c) and excluding 7(e). See also Department of Foreign Affairs and Trade, *Fact Sheet 4 – Australian Universities* (online, February 2021) <https://www.foreignarrangements.gov.au/sites/default/files/2021-02/Fact%20sheet%204%20-%20Australian%20Universities.pdf> and *Fact Sheet 7 – University Grant Applications* (online, December 2020) <https://www.foreignarrangements.gov.au/sites/default/files/2020-12/fact_sheet_7_-_grant_applications.pdf>.

[5] As AFRA, ss 15(1) and 22(1) do not apply.

[6] AFRA, s 35(2).

[7] Ibid, s 36(2).

[8] AFRA, ss 35(1)(d) and 36(1)(c).

[9] Chief Science Advisor of Canada, *Why safeguard your research?* (website, March 2023) <https://science.gc.ca/site/science/en/safeguarding-your-research/general-information-research-security/why-safeguard-your-research>.

[10] Department of Education, *Guidelines to counter foreign interference in the Australian university sector* (17 November 2021) <https://www.education.gov.au/guidelines-counter-foreign-interference-australian-university-sector>.

Joint Committee on Intelligence and Security making 27 recommendations in March 2022,[11] almost none of those recommendations have been successfully completed and some were outright rejected.[12]

Since the completion of that review by the PJCIS, both the educational and national security environments confronting Australia have undergone drastic change. Australia has entered into the AUKUS agreement to fast-track the delivery of certain cutting-edge capabilities, including nuclear powered submarines, hypersonics, undersea autonomous vehicles, robotics and quantum computers. The receipt of this technology will largely through universities, and research to advance – and the teaching of skills to maintain – these technologies will also occur at universities. However, the continuation of this arrangement will likely require a significant security uplift for segments of university research being conducted in the national interest.

It is important therefore that if the Review were to consider any proposed amendments (whether to the AFRA, the policy objectives of the Scheme, or the AFRA Rules), those amendments must be consistent with the application of the Scheme to the provision of research security in Australian universities.

Outcomes of the recent review of the *Foreign Influence Transparency Scheme Act* 2018 (Cth)

On 27 March 2024, the Parliamentary Joint Committee on Intelligence and Security ("PJCIS") handed down its statutory review of the *Foreign Influence Transparency Scheme Act 2018* (Cth) ("FITSA").[13] Although the two schemes operate separately, they nevertheless have a combined effect to shape the nature, scope and content of agreements between Australian HEIs and foreign nationals.

> ***Recommendation 1:*** *The Reviewer should consider the outcomes of the PJCIS Review of the FITSA in considering what (if any) findings should be made.*

Operating together, the FITSA and the AFRA constitute strong legal measures to combat foreign influence and interference across Australia. However, the PJCIS review has identified that the FITSA contained 'significant flaws', requires 'substantial reform' if it was to meet its policy objectives and 'as currently constructed… is largely ineffective, with such meagre results that it would be difficult to justify the ongoing compliance burden and resources without major reform if it is to achieve its key objective'.[14] For the reasons which follow, the AFRA may require similar modification.

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[11] Parliamentary Joint Committee on Intelligence and Security, *Inquiry into national security risks affecting the Australian higher education and research sector* (Final report, March 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/NationalSecurityRisks/Report>.

[12] For example, Recommendation 10 – which called on the Australian Security Intelligence Organisation to mention threats to higher education in their annual risk assessment – was "not supported": Australian Parliament, *Australian Government response to the _Parliamentary Joint Committee on Intelligence and Security report: National security risks affecting the Australian higher education and research sector* (report, February 2023).

[13] Parliamentary Joint Committee on Intelligence and Security, *Review of the Foreign Influence Transparency Scheme Act 2018* (Final report, March 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/FITSAct2018/Report>.

[14] Ibid, 76.

Overall concern with the AFRA and the enactment of the Scheme

Although the Scheme was enacted with the very best of intentions of promoting active transparency in foreign engagements – especially in the opaque world of HEI funding and agreement-making – one of the principal concerns I hold about the Scheme is that the AFRA does not currently protect Australian foreign policy in a manner that reflects emerging geopolitical and research security trends.

In October 2023, together with two colleagues at the University of Queensland, I completed research into the extent of foreign arrangements on the Public Register between Australian HEIs and foreign entities. These results, published here and here, demonstrate that as of last year the following agreements had been executed:

- 3,363 with China
- 690 with the United States
- 152 with the United Kingdom
- 119 with universities located in the Indo-Pacific region (excluding New Zealand)
- 98 with New Zealand
- 93 with Japan
- 46 with India.

With respect with Chinese entities, a brief comparison with the Australian Strategic Policy Institute's *China Defence Universities Tracker* shows that 2,112 agreements were executed with universities that have no identified risk. Of the remaining 1,030 agreements, 494 (nearly 48 per cent) were with institutions or entities in China who ranked 'High' or 'Very High' risk.[15]

These numerous research agreements, staff and student exchange programmes, joint doctorate or cotutelle arrangements which exist between Australian universities and foreign institutions have obviously been reported to the Minister, so the failure of the Minister to issue a notice to cancel or annul these arrangements suggest they are not averse to Australia's foreign policy.

The evidence suggests otherwise. Consider for example agreements between the University of Adelaide and two Chinese entities, Shanghai Jiao Tong University and Tianjin University. Adelaide University receives direct funding from the Department of Defence for military law, as well as robotics and autonomous systems, including funding from 2023–2026 under the Department of Education's Trailblazer Universities Program. On the foreign entity side, both Shanghai Jiaotong and Tianjin University are both considered "High Risk" entities by ASPI, as they possess "Secret" security credentials issued by the central government, allowing them to undertake classified military research. Both Shanghai Jiaotong and Tianjin University are also suggested to have links to state security and cybersecurity forces, as well as persons alleged

[15] For risks such as co-hosting Key Defence Laboratories, staff with joint political or military appointments, allegations of espionage or intellectual property theft, the possession of military security credentials, and/or designated research specialities or institutes in areas relevant to defence or "dual use" capabilities: Australian Strategic Policy Institute, *China Defence Universities Tracker* (website) <https://unitracker.aspi.org.au/glossary/>.

to engaged in acts of espionage and intellectual property theft.[16]

For that reason, I submit the Reviewer should consider whether the AFRA and/or AFRA Rules should be amended to require State/Territory entities (especially HEIs) to submit additional information that would enable the Minister to more correctly assess the likelihood of risk of the arrangement could be contrary to Australia's foreign policy and/or reach a higher level of granularity in making his or her decisions.

When entering into non-core foreign arrangements, HEIs must give a notice to the Minister consistent with the AFRA.[17] This includes 'a copy of the proposed arrangement' but also 'any information' and 'any documents' prescribed by the AFRA Rules.[18] Currently, the AFRA Rules requires the title, parties, and a 'brief statement summarising the subject matter and effect of the arrangement'.[19] Thus, one simple amendment could be requiring the submission of 'any information known to the State/Territory entity that could affect the Minister's decision as to whether the arrangement is contrary to Australian foreign policy' or like wording. This could encourage a more robust due diligence process being adopted by HEIs in their research ventures and promote a more appropriate sharing of risk between HEIs and the government.

> ***Recommendation 2:*** *The Reviewer should consider whether the AFRA and/or AFRA Rules should be amended to require State/Territory entities to disclose any information that could 'rationally affect the Minister's decision' (or like wording) on whether the arrangement could be contrary to Australian foreign policy.*

Another such amendment could be 'the extent to which the arrangement relates to, concerns, or involves, the research or development of a critical technology'.[20] I submit such an amendment is necessary, to bring the AFRA into line with other recent changes to national security laws such as the PACT Regulations, which limit or constrain the issue of visas to persons who pose an 'unacceptable risk of technology transfer' in an area relating to a Critical Technology in the National Interest. By requiring Australian parties to non-core foreign arrangements to submit such information, the Minister would be in a better position to consider whether the type of arrangement being pursued is, or could, contrary to Australian foreign policy.

> ***Recommendation 3:*** *The Reviewer should consider whether the AFRA and/or AFRA Rules should be amended to require State/Territory entities to disclose whether the arrangement will relate to a Critical Technology in the National Interest.*

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[16] See ASPI, *China Defence Universities Tracker*, <https://unitracker.aspi.org.au/universities/shanghai-jiaotong-university/> and <https://unitracker.aspi.org.au/universities/tianjin-university/> respectively.
[17] AFRA, ss 34(1) and (2), and 38(1) and (2).
[18] AFRA, ss 34(2)(d) and (e).
[19] AFRA Rules, s 5F(1).
[20] For example, see how this has been enacted in the Protecting Australia's Critical Technologies ("PACT") Regulations (the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022* (Cth) and the *Migration Amendment (Postgraduate Research in Critical Technology—Student Visa Conditions) Regulations 2022* (Cth)) and the current *List of Technologies in the National Interest*: <https://www.industry.gov.au/publications/list-critical-technologies-national-interest>.

Overall concern with monitoring and enforcement activities of the Scheme

The second broad concern I hold is the lack of monitoring and enforcement activities undertaken by the Department of Foreign Affairs and Trade as administering department for the Scheme. Instead, the Scheme appears to rely almost entirely upon the good faith engagement of researchers and research institutions in making "self-declarations". Although Australia's research and higher education industry has a world-leading level of integrity and honest, malicious actors do exist and mistakes can still be made.

For example, in February 2024 the *Guardian* published a story announcing collaboration between academics in Australia, the UK, the US, and academics at the Sharif University of Technology in Iran.[21] The work related to anti-jamming technology in drones, a technology with a direct military use, published by the Institute of Electrical and Electronics Engineers (IEEE). Sharif University of Technology is subject to financial sanctions imposed by the EU and UK, and has been "black-listed" by the US Department of Commerce and the Japanese Ministry of Economy, Trade and Industry.

This is no suggestion that the Australian-based academics contravened the law, and public reporting was unclear whether the arrangement was of a kind that would require notification to the Minister as a 'non-core foreign arrangement' under the AFRA; however, this seems precisely the kind of collaboration contrary to Australian foreign policy to which the AFRA should have been dedicated.

As another example of the importance of compliance and monitoring activities, the Reviewer should consider the experience of the Canadian National Microbiology Laboratory (NML).[22] As a research entity receiving Federal funding, the NML and its employees were obligated to disclose funding arrangements from foreign sources under Canadian law. Despite that self-reporting obligation, the Canadian Security Intelligence Service (CSIS) found that between 2015 and 2019, Dr Xiangguo Qiu received hundreds of thousands of dollars in payments from the Chinese government, as well as filing patents in China with a senior military officer in the People's Liberation Army and illegally sending virus samples to the Wuhan Institute of Virology.

To prevent against the deliberate or inadvertent non-disclosure of arrangements, the AFRA could be reformed to include a monitoring and enforcement regime. Core foreign arrangements do not strictly require such a framework, because the AFRA already annuls any core foreign arrangement which has not received the Minister's approval as an operation of statutory law. Yet the same cannot be said of non-core foreign arrangements, as these arrangements do not

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[21] Jonathan Yerushalmy, Johana Bhuiyan, 'Academics in US, UK and Australia collaborated on drone research with Iranian university close to regime', *The Guardian* (online, 15 February 2024) <https://www.theguardian.com/world/2024/feb/14/academics-in-us-uk-and-australia-collaborated-on-drone-research-with-iranian-university-close-to-regime>.

[22] Catherine Tunney, 'Lies and scandal: How two rogue scientists at a high-security lab triggered a national security calamity', *CBC News* (online, 2 March 2024) <https://www.cbc.ca/news/politics/winnipeg-lab-firing-documents-released-china-1.7130284>; see also the declassified reports themselves, available at <https://www.theglobeandmail.com/files/editorial/politics/nw-na-labs/winnipeg-scientists-doc.pdf>.

require disclosure to the Minister to be legally enforceable, and the preparations and negotiations in advance of non-core foreign arrangements do not need to be disclosed at all.

The AFRA requires a monitoring and enforcement framework to ensure that all non-core foreign arrangements have properly come to the Minister for their scrutiny, and to discourage and disincentivise entities operating "under the radar". There are three ways to do this.

Firstly, the Reviewer should consider whether the AFRA ought to be amended to include a power for the Minister to forcibly register arrangements on his or her own initiative which have not been disclosed by the parties. An example of such a power can be seen in the "transparency notice" framework in the FITSA.[23] The issue of a transparency notice contains appropriate procedural fairness safeguards,[24] and otherwise permits the Home Affairs Secretary to declare an individual as a foreign entity to whom the FITSA applies. This enables the appearance of that individual on the Public Register, informing the wider public as to the individual's association with foreign entities.

A scheme similar to the FITSA transparency notice scheme could be adopted in the FITSA. I accept that Australian HEIs expressed a dim view of the transparency notice framework under the FITSA during the PJCIS Review;[25] however, those criticisms were largely pointed towards whether Australian HEIs were covered by the FITSA scheme (and in almost every case, they were not). In the case of the AFRA, Australian HEIs are explicitly included in the Scheme.

> ***Recommendation 4:*** *The Reviewer should consider whether the AFRA should be amended to include a framework for the issue of transparency notices in a similar format to the FITSA.*

The second compliance and enforcement power which the Reviewer should consider is a "call-in" power for the Minister, such as exists in the *National Security and Investment Act 2021* of the UK ("NSI Act"). Under the NSI Act, the Secretary of State may issue a notice (including to a university) where an act of foreign direct investment (a "trigger event"[26]) has occurred or is being contemplated, and that trigger event 'has given rise to or may give rise to a risk to national security'.[27] Following the Secretary of State's exercise of a call-in, the Secretary of State may then interim or final orders, which may impose conditions, prevent or annul such trigger events occurring, or compel natural or corporate entities to perform or not perform certain acts.[28]

The Minister has no power to "call-in" arrangements and subject them to Ministerial scrutiny at any time, and the Minister's power under the AFRA is only to cancel, cease or annul arrangements without condition or compromise.[29] A more nuanced and discretionary form of intervention by the Minister under AFRA to a.) seize jurisdiction over non-core foreign arrangements which have not been voluntarily disclosed, and b.) issue varied forms of

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[23] FITSA, Div 3 of Pt 1.
[24] In that the affected person must be invited to provide submissions about the proposed notice: FITSA, s 14C.
[25] PJCIS (n 13) 66-69.
[26] NSI Act, s 5(1).
[27] Ibid, s 1(1).
[28] Ibid, ss 25 and 26.
[29] AFRA, ss 35(2) and 36(2).

directions related to such arrangements, is arguably more appropriate, as well as permitting closer tailoring and reduction in the compliance burden in achieving the AFRA's policy objectives.

> ***Recommendation 5:*** *The Reviewer should consider whether the AFRA should be amended to include a framework for the issue of call-in notices in a similar format to the UK's NSI Act.*

I also note that in contemplating an agreement called-in under the NSI Act, the Secretary of State is vested with powers to obtain further information and compel attendance at interviews.[30] Under the FITSA, the Home Affairs Secretary has nearly identical powers to compel information or documents relevant to the administration of that scheme.[31] Paradoxically, the Foreign Minister has no powers to compel additional information or documents from any person in the conduct of his or her investigations or decision-making under the AFRA.

Given that this aligns with the Minister's already considerable discretion to assess a range of information in making a declaration under the AFRA,[32] I see no reason why the Minister should not have the full range of information relevant to the making of a declaration.

> ***Recommendation 6:*** *The Reviewer should consider whether the AFRA should be amended to include a framework for the issue of notices compelling the provision of additional information or documents in a similar format to the FITSA.*

The third mechanism for improved monitoring and enforcement is the insertion of provisions providing for civil or criminal penalties for failing to comply with obligations under the Scheme.

There are analogues again to be found in the FITSA. Failure to apply for registration, failure to abide by obligations of the FITSA or notices issued by the Secretary, or the provision of false or misleading information to the Secretary in the administration of the scheme, are all established as criminal offences.[33] However, the FITSA Review by the PJCIS was very critical of the fact that the Department had not commenced any prosecutions for such offences since the FITSA commenced.[34] They further accepted a suggestion that infringement notices for such offences could not be properly or safely implemented because of the complexity of the offences.[35]

On that basis, the Reviewer should contemplate whether the Minister (and DFAT) should be empowered to commence civil penalty proceedings in the Federal Court of Australia for persons who do not comply with the Scheme. This would align with and deepen support for the only relevant enforcement provision currently in the AFRA, allowing the Foreign Minister to apply to the court for an injunction in respect of a person's non-compliance.[36]

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[30] NSI Act, ss 19-22.
[31] FITSA, ss 45 and 46.
[32] The Minister must consider 'any other matter that the Minister considers is relevant': AFRA, s 51(2)(h).
[33] Ibid, ss 57, 58, 59 and 60.
[34] PJCIS (n 13) 86.
[35] Ibid, 62.
[36] Either the High Court of Australia or the Federal Court of Australia: AFRA, ss 4 and 52(2).

Recommendation 7: *The Reviewer should consider whether the AFRA should be amended to permit the Foreign Minister the power to commence civil pecuniary penalty provisions against entities which fail to abide by the obligations contained in the AFRA or the Rules.*

Patently, any one or all of these suggestions will require a significant uplift of DFAT capabilities in terms of funding, staffing and training, to provide for an active compliance and enforcement regime under the AFRA. The worst possible outcome would be legislative amendment to prohibit or outlaw certain conduct, but then leaving DFAT with responsibility to figure out "how to do more with less" in terms of financial support and physical resources.

Recommendation 8: *The Reviewer should consider whether DFAT should receive additional funding and resourcing in support of any increased compliance or enforcement responsibilities that the Reviewer may recommend.*

Overall concern regarding the bar for Ministerial intervention

A third broad concern I hold is that the Minister may not be adequately considering intervention in agreements which run contrary to Australian foreign policy. According to the Annual Reports of the Scheme published under section 53A of the Act,[37] there have only been four arrangements cancelled by the Minister since the Scheme began in 2020.

This is perhaps because the agreements between Australian HEIs and foreign entities are always 'non-core foreign arrangements', and this leads to a perception that such agreements do not have the potential to compromise Australia's foreign policy. The Note to section 10 of the AFRA explicitly states that 'Core foreign arrangements are a particular subset of foreign arrangements. There are special requirements for them because they are more likely to affect Australia's foreign relations'.

That position is no longer accurate.

In 2020 news broke of a $10 million research agreement between Monash University and the Chinese-owned Commercial Aircraft Corporation of China (COMAC). That agreement came after an earlier Memorandum of Understanding between Monash and COMAC in 2017 regarding the designed of 'specialised new 3D printed alloys for the design and construction' of Chinese aircraft.[38] That arrangement was examined by the PJCIS in 2021 by the PJCIS during their Review into national security risks in higher education and research.[39] In their final report, the PJCIS issued recommendation 8 to the Foreign Minister, suggesting that they use their power under AFRA to annul an agreement between Monash University and COMAC.

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[37] Currently the *Foreign Arrangements Scheme: Annual Report 2021*, the *Foreign Arrangements Scheme: Annual Report 2022* and the *Foreign Arrangements Scheme: Annual Report 2023.*

[38] Anthony Galloway, Fergus Hunter, 'Australian uni continuing work on Chinese plane linked to espionage claims', *ABC News* (online, 11 June 2020) <https://www.smh.com.au/politics/federal/australian-uni-continuing-work-on-chinese-plane-linked-to-espionage-claims-20200610-p5517a.html>.

[39] Parliamentary Joint Committee on Intelligence and Security, *National security risks affecting the Australian higher education and research sector* (Final report, March 2022).

That recommendation was not acted upon by government, who merely "noted" that the arrangement between Monash and COMAC concluded in the first half of 2023.[40]

Section 51(2) of the AFRA lists the matters that the Foreign Minister must take into account when considering making a declaration. This list is balanced heavily towards considerations tied to the potential adverse effects of making the declaration,[41] and almost none which reflect the seriousness of the threat of the arrangement to Australian foreign policy. Whilst this may reflect the onerous impact of Ministerial intervention curtailing the ordinary human and commercial freedoms of entities to contract with whom they please, it arguably sets the bar too high and impedes the Minister from using the AFRA as a proper tool for shaping foreign policy.

Consider for example the Foreign Minister's powers under the *Migration Regulations 1994* (Cth). The Foreign Minister may determine that a person applying for a visa is a 'a person whose presence in Australia is, or would be, contrary to Australia's foreign policy interests'.[42] There are no precursors to the exercise of that determination, and courts and tribunals have expressed a general unwillingness to "go behind" the Minister's exercise of that power.[43]

Further, the fact that there is no recourse to prosecutions or enforcement actions of any kind under the AFRA and the Minister has intervened in only four cases since the commencement of the Scheme is highly concerning. When a similar outcome was identified by the PJCIS in the FITSA Review, the PJCIS said:

> The small quantum of registrations, and almost non-existent use of transparency notices and other enforcement options under the FITS Act, suggest that **there is a fundamental flaw in the tests that either the parties liable to register must apply to themselves, or that the Department has to satisfy in its investigations** in order to pursue transparency or enforcement actions against those entities.[44] (emphasis added)

Similar criticisms must be applied to the AFRA.

The Reviewer should therefore consider whether it would be appropriate to "lower the bar" on the making of Ministerial determinations that a given foreign arrangement is contrary to Australian foreign policy. The Minister could be obligated to consider the potential impacts if a declaration is <u>not</u> made and the arrangements go ahead (such as the risk of "unwanted technology transfer" of theft of trade secrets, the mischiefs which the PACT Regulations were enacted to prevent). The Minister should also be obligated to consider the potential impact of the foreign arrangement on Australian foreign relations (in particular our relations with allies) and whether a given arrangement could form an avenue of compromise for security arrangements with friendly countries.

> ***Recommendation 9:*** *The Reviewer should consider whether section 51(2) of the AFRA ought to be amended to oblige the Foreign Minister to consider additional criteria that*

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[40] Australian Government, *Response to the Parliamentary Joint Committee on Intelligence and Security report into national security risks affecting the Australian higher education and research sector* (Report, February 2023).
[41] AFRA, ss 51(2)(c)-(g).
[42] *Migration Regulations 1994* (Cth), Sch 4, PIC4003(a). See also the PACT Regulations.
[43] *Chen (Migration)* [2023] AATA 297; *Luo (Migration)* [2024] AATA 285; *Zhu v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FedCFamC2G 411.
[44] PJCIS (n 13) 79.

would operate to protect Australian investment and our operability with allied nations and counterbalance the existing lean towards impacts on the States and Territories.

In addition, I submit that the Reviewer should consider whether there are limited circumstances (and if so, what those circumstances are) where the Minister ought to be compelled to issue a notice under the AFRA to prevent an entity from entering into non-core foreign arrangements, i.e., use of the word "must" instead of "may". The Minister has only exercised his or her powers four times since the Scheme commenced to block a foreign arrangement from proceeding, and there are arguably arrangements in place now between Australian HEIs and foreign entities which ought to have been the subject of Ministerial intervention. Such a situation cannot be allowed to continue if Australia intends to protect its HEIs from adverse influence and interference.

Recommendation 10: *The Reviewer should consider whether, and under what emergency circumstances, the Foreign Minister might be obligated to issue a declaration under the AFRA to stop the negotiations or entry into a non-core foreign arrangement.*

Additional reform opportunities for the AFRA, Scheme, and Rules

Amendment of the core foreign arrangement scheme

I have above suggested some amendments to the AFRA which I submit would assist in achieving the policy goals of the government. Subordinate to that argument, I believe that there may be some submitters to the Review which might suggest that the requirements of core foreign arrangements – to seek the Minister's approval prior to entering into negotiations – should apply to Australian HEIs.

I do not agree with such a proposal.

The imposition of core foreign arrangements on Australian HEIs would be a significant shift in higher education regulatory policy and likely require a large step change by our HEIs in adapting to it. Smaller and/or regional universities may in fact struggle to meet the requirements of the core foreign arrangements scheme. In my submission, Australian universities would lose ground internationally in research and development terms if they were required to submit to the Minister's scrutiny at the stage of negotiating terms. I also consider it likely the changes would have a chilling effect on Australian HEIs capacity to negotiate with international counterparts, even in circumstances where the arrangement would actually be to Australia's benefit or in the national interest.

Therefore, to ensure that Australian universities do not lose their international competitiveness and remain institutionally nimble, I submit that it would not be appropriate for the core foreign arrangements scheme to apply to Australian HEIs.

Recommendation 11: *The Reviewer should not consider making any recommendations which would have the effect of applying the restrictions of the "core foreign arrangements" scheme to Australian HEIs.*

Proscription of named entities in the AFRA Rules

One observation of similar schemes to the AFRA in foreign jurisdictions is the willingness, in the name of foreign policy interests, to "name and shame" particular foreign entities from

participation in research arrangements with HEIs. Although most of these schemes are connected to export control regimes, they nevertheless supply highly useful examples of restrictions of contracting or supply arrangements on the grounds of foreign policy.

For example, the United States publishes an "Entity List" as a supplement to Part 744 of the *Export Administration Regulations* (EAR).[45] Under the EAR, an entity may be listed for 'activities contrary to the national security or foreign policy interests of the United States'. Inclusion on the entity list is not a direct ban on engagement; instead, it imposes the export licensing controls in the EAR and permits the imposition of additional controls dependent on the entity's listing, as well as 'any other applicable review policy stated elsewhere in the EAR'.[46]

Similar schemes exist in Canada and Japan. Canada's *Policy on Sensitive Technology Research and Affiliations of Concern*[47] adopts a two-step process for screening all research arrangements for federally-funded HEIs. Firstly, HEIs must consider if the research involves any listing in the *Sensitive Technology Research Areas* (such as artificial intelligence, advanced weapons, space technology, robotics or biotechnology);[48] and secondly, whether those agreements are undertaken with any entity on the *Named Research Organizations* list.[49] Such agreements cannot go ahead and will result in the revocation of Federal funding if proceeded with. Equally, the Japanese Ministry of Economy, Trade and Industry publishes an End-User list of 'foreign entities for which concern cannot be eliminated regarding involvement in activities such as the development of weapons of mass destruction (WMDs) and missiles'.[50] Research collaborations with such entities are not permitted.

A pathway to list named entities that pose a risk to Australian foreign policy does not currently exist, and so the Reviewer would need to consider whether a specific amendment of the AFRA could create a provision allowing the Minister to include "named entities of concern" in the AFRA Rules. Any arrangement with "named entities of concern" would likely require the Minister to reach a higher level of satisfaction that the arrangement did not adversely affect Australia's foreign relations or policy. Once enacted, that provision could also enable the Minister to speedily change, update, review or revoke listings in the AFRA Rules as he or she sees fit, rather than relying on the slow and cumbersome law amendment process in Parliament.

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[45] 15 CFR 744.
[46] Ibid, §744.11
[47] Government of Canada, *Policy on Sensitive Technology Research and Affiliations of Concern* (website, 9 May 2024) <https://science.gc.ca/site/science/en/safeguarding-your-research/guidelines-and-tools-implement-research-security/sensitive-technology-research-and-affiliations-concern/policy-sensitive-technology-research-and-affiliations-concern>.
[48] Government of Canada, *Sensitive Technology Research Areas* (website, 9 May 2024) <https://science.gc.ca/site/science/en/safeguarding-your-research/guidelines-and-tools-implement-research-security/sensitive-technology-research-and-affiliations-concern/sensitive-technology-research-areas>.
[49] Government of Canada, *Named Organisation List* (website, 9 January 2024) <https://science.gc.ca/site/science/sites/default/files/documents/2024-01/1082-named-research-organizations-list-09Jan2024.pdf>.
[50] METI, *Review of the End User List Providing Information on Foreign Entities for which Concern Cannot be Eliminated Regarding the Development of Weapons of Mass Destruction and Missiles* (website, 6 December 2023) <https://www.meti.go.jp/english/press/2023/1206_001.html>.

Alternately, the AFRA could be amended in conjunction with the AFRA Rules to expand the definition of 'core foreign arrangements' to include any arrangement with "named entities of concern" (including between that entity and a non-core entity like an Australian HEI).[51] This would in turn annul any arrangements with "named entities of concern" without the Minister's approval, and apply Ministerial scrutiny to all arrangements even being contemplated or pursued with "named entities of concern".

> ***Recommendation 12:*** *The Reviewer should consider whether the AFRA should be amended to allow for the proscription of "named entities" on the basis of their risk to Australia's foreign policy. Such "named entities" could be listed in the AFRA Rules because of 'activities contrary to Australia's national security or foreign policy', in a manner similar to the US' Entity List.*

University-aligned corporations: commercialisation, spin-offs and spin-outs

Another anomaly in the current construction of the AFRA is the exemption applied to 'a corporation that operates on a commercial basis', preventing it from being a State/Territory entity and therefore the Scheme.[52] Whilst there are sound policy reasons for excluding the vast majority of trading corporations in Australia, there remains a risk where a corporation has been created to commercialise, spin-off or spin-out technologies arising from the fundamental research at an Australian HEI. This concern is heightened by recent Australian governmental initiatives intended to incentivise Australian HEIs into commercialising their research, such as Australia's Economic Accelerator, the National Industry PhD Program, the Trailblazer Universities Program and the National Reconstruction Fund Corporation's priority funding areas.[53]

Universities commonly establish companies to commercialise research as this helps them properly integrate and discriminate academic from industrial knowledge, whilst limiting the risk associated with new commercial ventures.[54] However, the broad exemption under the AFRA means that entities that may have been created or originated from an Australian HEI escape the obligations under the AFRA, even where these entities may possess substantial holdings of information, research data, or intellectual property on advanced technologies.

As an example, in 2019 it was revealed that a former professor of the University of Queensland ("UQ"), Heng Tao Shen, created a company called Koala AI which was implicated in the supply of facial recognition software to the Chinese government to suppress the Uighur minority in Xinjiang.[55] According to allegations, Professor Shen operated the company whilst still employed by UQ, and received up to $1.6 million in Australian government funding.[56]

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[51] AFRA, ss 7, 8 and 10(2).
[52] AFRA, s 7(g).
[53] Department of Education, *Research Translation and Commercialisation Agenda* (website, 9 May 2024) <https://www.education.gov.au/research-translation-and-commercialisation-agenda>.
[54] James Guthrie, Adam Lucas, 'How we got here: The transformation of Australian public universities into for-profit corporations' (2022) 41(1) *Social Alternatives* 26.
[55] I note that the registration of Koala AI occurred in China, and so would not have been considered a 'State/Territory entity' under the AFRA. I provide this case study as contextual information around the possible risk of commercialised research spun out of universities.
[56] Alex Joske, 'UQ researcher probed over AI Uighur surveil', *The Strategist* (online, 26 August 2019) <https://www.aspistrategist.org.au/the-company-with-aussie-roots-thats-helping-build-chinas-surveillance-

Even if the company itself did not possess any sensitive or critical research information or intellectual property, the association of an Australian HEI with a foreign entity involved in alleged racial suppression is arguably a matter 'contrary to Australian foreign policy'.

The AFRA already permits a State/Territory entity for the purposes of section 7 by inclusion in the AFRA Rules, so the Reviewer should consider whether the AFRA Rules ought to be amended to include corporations that operate on a commercial basis, but have been established from and/or have significant influence or control exerted by an Australian HEI.

> ***Recommendation 13:*** *The Reviewer should consider whether the AFRA Rules be amended to include corporations 'that operates on a commercial basis' but are controlled or operated by an Australian HEI in the definition of State/Territory entities proscribed under section 7 of the AFRA.*

Application to private universities

Under the current construction of the AFRA does not apply to private universities in Australia.[57] This was a deliberate choice by Parliament when the AFRA was introduced,[58] and so private universities in Australia are not required to notify the Minister of *any* foreign arrangements they enter into, irrespective of the foreign entity with whom they are undertaken.

There are several reasons why the jurisdiction of the AFRA should be expanded to include private universities.

Firstly, private universities in Australia do undertake research which is in the national interest and may require protection. For example, Bond University houses a Centre for Data Analytics (examining uses of big data and actuarial science), the Clem Jones Centre for Regenerative Medicine (which performs stem-cell research) and the Tactical Research Unit (which 'focuses on the safety and physical and cognitive capabilities of tactical personnel in military and first responder roles').[59] Torrens University Australia features a Centre for Healthy Sustainable Development (conducting research aligned to the UN Sustainability Goals) and the Centre for Artificial Intelligence Research and Optimisation.[60]

Secondly, private universities have a much stronger financial incentive to collaborate with foreign entities than public universities do. As private universities do not participate in the Commonwealth Grant Scheme and receive the some of the lowest amounts of research block funding across the sector,[61] they must overwhelmingly look to external sources to fund research. This could lead our private universities more robustly engaging with risks associated

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state/>; Ben Packham, '', *The Australian* (online, 26 August 2019) <https://www.theaustralian.com.au/nation/politics/uq-researcher-probed-over-ai-uighur-surveil/news-story/33a6ae6b304c6363d2a4be6a22bc4887>.

[57] Currently, these are Avondale University, Bond University, Torrens University Australia and the University of Divinity.

[58] Explanatory Memorandum to the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020, 34 [209].

[59] Bond University, *Research centres and institutes* (website, 2024) <https://bond.edu.au/research/research-centres-and-institute>.

[60] Torrens University Australia, *Research centres* (website, 2023) <https://www.torrens.edu.au/research/research-institutes>.

[61] Department of Education, *2024 Research Block Grant allocations* (website, 18 December 2023) <https://www.education.gov.au/research-block-grants/resources/2024-research-block-grant-allocations>.

with research funding, and entering into collaborations which could be contrary to Australian foreign policy.

Thirdly, private universities contribute significantly to Australia's research and development ecosystem outside of academia. A study in 2021 showed that the funding for venture capital start-ups awarded to university alumna overwhelmingly preference Bond University, which produced 75 start-up founders per 100,000 graduates and outstripping much larger public universities like University of Technology Sydney, Monash University and the Queensland University of Technology.[62]

For the sake of protecting Australian research security, this situation should not be allowed to continue. No doubt the private universities of Australia will object to their inclusion in the Scheme, citing overregulation and "red tape", but there are no longer compelling policy reasons for the exclusion of foreign arrangements made with Australian private universities from the scrutiny of the Foreign Minister.

> ***Recommendation 14:*** *The Reviewer should consider whether to expand the jurisdiction of the AFRA to include Australia's private universities.*

Issues with the significance of control of a 'foreign university'

Another concept of relevance to research security is the definition of 'foreign university' in section 8(i) of AFRA, which captures universities as a 'foreign entity' if (and only if) they are located in a foreign country and do not have 'institutional autonomy'.[63] Whether a university has institutional autonomy is a subjective test: it hinges on whether a 'foreign government' (of any kind) is in a position to exercise 'substantial control' over that university.[64]

Section 8(3) of the AFRA then supplies three exclusive conditions, the satisfaction of any of which will mean 'a foreign government is in a position to exercise substantial control over a university':

a. a majority of the members of the university's governing body are required, by a law or the university's governing documents,[65] to be members or part of (however described) the political party that forms the foreign government;

b. education provided or research conducted at the university is required, by a law or the university's governing documents, to adhere to, or be in service of, political principles or political doctrines of:

   i. the foreign government; or

   ii. the political party that forms the foreign government;

c. the university's academic staff are required, by a law or the university's governing documents, to adhere to, or be in service of, political principles or political doctrines

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[62] Tim Dodd, 'For its size, Bond University has produced most entrepreneurs', *The Australian* (online, 10 November 2021) <https://www.theaustralian.com.au/special-reports/for-its-size-bond-university-has-produced-most-entrepreneurs/news-story/8ac88b080841bd302532598d4013ce45>.
[63] AFRA, s 8(i)(ii).
[64] Ibid, s 8(2).
[65] Defined to include 'the constitution, rules or other official documents by which the university is constituted or according to which the university operate': ibid, s 8(4).

referred to in paragraph (b) in their teaching, research, discussions, publications or public commentary.

For the reasons which follow, there is significant motivation to consider varying the definition of whether a foreign government 'is in a position to exercise substantial control over a university'.

Firstly, the current test in the AFRA for 'substantial control' hinges upon satisfaction of influence in the university 'by a law or the university's governing documents'. Whilst some foreign jurisdictions impose controls through such mechanisms, other jurisdictions utilise other "soft power" tools (i.e., cultural obligations, extra-legal governmental interference, or acts *ultra vires* by law enforcement or intelligence forces). Human Rights Watch has reported on numerous such acts by authorities in Iran, such as the Supreme Council for the Cultural Revolution's institution of 'ideological and political requirements' for enrolling university students.[66] Iranian authorities have also subverted legal standards for education by denying funding to particular university programs, or scheduling examinations in languages that discriminate against ethnic minorities.[67]

Similarly, interferences in academic freedoms in South-East Asia – typified by acts in Vietnam and Thailand – involve imposition of moral- and culture-based controls which prohibit criticism of ruling government officials. Such controls can include educational policies (but not laws) which restrict publication of papers or dissertations, or expressions of moral or religious positions which encourage the suppression of dissent.[68]

> ***Recommendation 15:*** *The Reviewer should consider recommending that the test for loss of institutional autonomy under section 8(3) of the AFRA be amended to change the words 'by a law or the university's governing documents' to a more inclusive definition that recognises the breadth of governmental controls over foreign universities.*

Secondly, the abrogation of institutional autonomy in the AFRA is founded upon a link between 'a law or the university's governing documents' and elements of 'political' parties, principles or doctrines. The specificity of this link could lead to Australian HEIs not reporting foreign arrangements to the Minister because the foreign university is under substantial control of a non-political element, where instead the focus should be upon the risk of the loss of institutional autonomy threatening Australian foreign policy or foreign relations. As an example, China's interference in the Canadian NML discussed above involved collaborations between Canada-based Chinese researchers and the director of a Chinese virology laboratory, who also held a senior rank in the People's Liberation Army.

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[66] Human Rights Watch, *Joint Statement on theRight to Education and Academic Freedom in Iran* (website, 5 May 2012) <https://www.hrw.org/news/2012/05/31/iran-government-assault-academic-freedom>.
[67] Human Rights Watch, *Iran: Events of 2016* (website, 2017) <https://www.hrw.org/world-report/2017/country-chapters/iran>.
[68] Alexandre Sisophon, 'Vietnam's clampdown on Academic Freedom', *New Internationalist* (online, 18 February 2019) <https://newint.org/features/2019/02/13/vietnam%E2%80%99s-clampdown-academic-freedom>; Association for Asian Studies, *AAS Statement on Academic Freedom in Thailand* (website, 7 April 2021) <https://www.asianstudies.org/aas-statement-on-academic-freedom-in-thailand/>.

To prevent this situation, the AFRA could be amended to include additional subsections in section 8(3) to include further conditions which would meet the test for whether a foreign government has 'substantial control' over a foreign university

> ***Recommendation 16:*** *The Reviewer should consider recommending that the test for institutional autonomy under section 8(3) of the AFRA be amended to include any of the following as a condition for a foreign government having 'substantial control' over a foreign university:*
>
> *a. The university employees or has appointed staff holding active, reserve, adjunct, or voluntary appointments with the military, security, intelligence or policing forces of that country (or a third country);*
>
> *b. The university engages in research programs, institutes or centres which substantially focus on the research, investigation, development or design of technologies for the sole or substantial utility of the military, security, intelligence or policing forces of that country (or a third country);*
>
> *c. The university receives a significant proportion of its funding from the military, security, intelligence or policing forces of that country (or a third country).*

Thirdly, the definition where a university loses its institutional autonomy is founded on whether a foreign government can exert "substantial" control over that university. The need for the Minister to be satisfied of "substantial" control is a higher bar than that set for (as an example) the Treasurer to examine 'reviewable national security actions', where entities come under the ambit of that definition when a change allows them to 'influence or participate in the central management and control of the entity'.[69]

The Minister's satisfaction of "substantial control" of the foreign entity will also be difficult to evaluate, as it does not adequately recognise the influence exerted by some foreign government entities in the operations of their universities. As an example, in China the State Administration of Science, Technology and Industry for National Defence (SASTIND) funds defence research and dedicated defence laboratories at universities but does not *per se* exert "significant control" over those universities.[70] Nevertheless, the association of SASTIND with a Chinese foreign entity would be cause for concern. In the NSI Act of the UK, an entity can 'gain control' of an entity in a variety of ways, but most relevant is where it 'enables the person materially to influence the policy of the entity'.[71] An association such as SASTIND would likely trigger consideration under the NSI Act, but not the AFRA.

> ***Recommendation 17:*** *The Reviewer should consider recommending that the test for institutional autonomy under section 8(3) of the AFRA be amended to consider where a*

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[69] As universities are an 'Australian corporation that carries on an Australian business' as they are all 'a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory': *Foreign Acquisition and Takeovers Act 1975* (Cth), s 55D(3) and s 4. Universities also qualify as a 'national security business' under several of the limbs, including being pieces of 'critical infrastructure' and custodians of large amounts of personal information: *Foreign Acquisition and Takeovers Act 1975* (Cth), s 8AA.
[70] Australian Strategic Policy Institute (n 15).
[71] NSI Act, s 8(8).

foreign government can 'influence or participate in the central management and control of the entity' and/or 'materially influence the policy of the entity'.

Interaction between the Minister's powers under AFRA and other Ministerial discretions

Given the suggestions for wide-ranging changes across the AFRA, I would also suggest that the Foreign Minister should be vested with a power to disclose certain information to other Ministers (and their delegates) to ensure that other powers that operate in the protection of HEI research are not exercised capriciously or incongruously with the Scheme. Currently the Minister has no power in the AFRA to disclose information provided to them by notifiers, or information obtained by the Minister in the course of administering the Scheme (other than what is specified for listing on the public register).

For example, the Minister for Education retains a veto power under the *Australian Research Council Act 2001* (Cth) ("ARC Act") in circumstances where he or she is satisfied that 'for reasons relevant to the security, defence or international relations of Australia' a grant of financial assistance to a research program should be refused,[72] a grant for a research project in relation to a designated research program should be refused,[73] or a funding approval should be terminated.[74] The DFAT fact sheets on the Scheme indicate that research grants may be considered 'non-core foreign arrangements' if they incorporate a foreign entity, and should be notified to the Minister. Situations where either the Minister for Education or the Foreign Minister use their discretionary powers to block research arrangements should be exchangeable between the two officers.

Further, the *Foreign Acquisition and Takeovers Act 1975* (Cth) vests power in the Treasurer to "call-in" certain investments in national security businesses or enterprises, or on the occurrence of 'reviewable national security actions'.[75] A reviewable national security action could occur for example, on the founding of a joint research centre or institute between a foreign university and an Australian institution; however, this would also be a 'non-core foreign arrangement" that requires disclosure to the Foreign Minister under AFRA. Again, the Foreign Minister has no power to inform the Treasurer of any matters that may be relevant to a 'reviewable national security action' that may come to his or her attention in the course of an AFRA notification.

In the circumstances, it should be appropriate for the Minister (and his or her office) to have the ability to communicate and where necessary deconflict the execution of Ministerial powers across multiple portfolios. Not only will this prevent regulatory overlap and inconsistent decision-making between Ministers, but will provide a more seamless experience for universities seeking to have their agreements registered under the AFRA.

At a higher level of risk, the Foreign Minister also lacks the power to share information with law enforcement or intelligence agencies of potential matters which fall within those agencies' purview. Although those agencies have access to compulsory powers of their own,

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[72] *Australian Research Council Act 2001* (Cth), s 47(8).
[73] Ibid, s 48(6).
[74] Ibid, s 52(1).
[75] *Foreign Acquisition and Takeovers Act 1975* (Cth), ss 55D and 66A.

it seems curious that the Home Affairs Secretary can disclose 'scheme information'[76] under the FITSA for an 'enforcement related activity', 'protection of the public revenue' and the 'protection of security',[77] but the Foreign Minister lacks any similar power under the AFRA.

> ***Recommendation 18:*** *The Reviewer should strongly consider recommending that the AFRA be amended to permit the Minister to share information with other Ministers and government agencies in circumstances commensurate with the sharing of 'scheme information' in the FITSA.*

Reporting on compliance activities

Section 53A of the AFRA outlines the requirements for the Minister to 'cause to be prepared, as soon as practicable after the end of each calendar year, an annual report on the exercise of the Minister's decision-making powers under this Act during the year'. Yet although some aspects of the Minister's decisions are proscribed in section 53A(2) of the Act, they do not require the Minister to provide information on injunctions sought or obtained in relation to the Act.

The injunction power is a key safeguard in the AFRA and should be reported on in the annual report. The institution of such injunctive proceedings is (currently) the only form of enforcement in the Act, so it makes logical sense to ensure that the Minister is reporting on the scope of use of that power.

> ***Recommendation 19:*** *The Reviewer should consider whether section 53(2) of the AFRA be amended to require the Foreign Minister to report on the number of injunctions sought and granted under the AFRA, including the names of parties to the injunctions.*

Further, if some of the recommendations with respect to compliance and enforcement activities by DFAT (or other appropriate regulator) made in this submission are accepted, it would be appropriate for the Minister to also be required by section 53A of the AFRA to report on the outcomes of those compliance activities. Such public visibility of compliance activities would foster a culture of wider and more mature compliance with the AFRA's provisions, and discourage entities from failing to disclose relevant core and non-core foreign arrangements relevant to the Scheme.

> ***Recommendation 20:*** *If the AFRA is amended to incorporate compliance and enforcement provisions, section 53A of the AFRA should require the Foreign Minister to report on the number and types of compliance activities undertaken and a brief description of the outcomes (where possible), including the names of parties to the injunctions.*

Other issues – Utility to researchers

Lastly, I wish to raise issues with the utility of data available in the Public Register. This point is of particular relevance and interest to academic and public interest researchers, who rely on the Public Register for a government-endorsed data source relating to arrangements between

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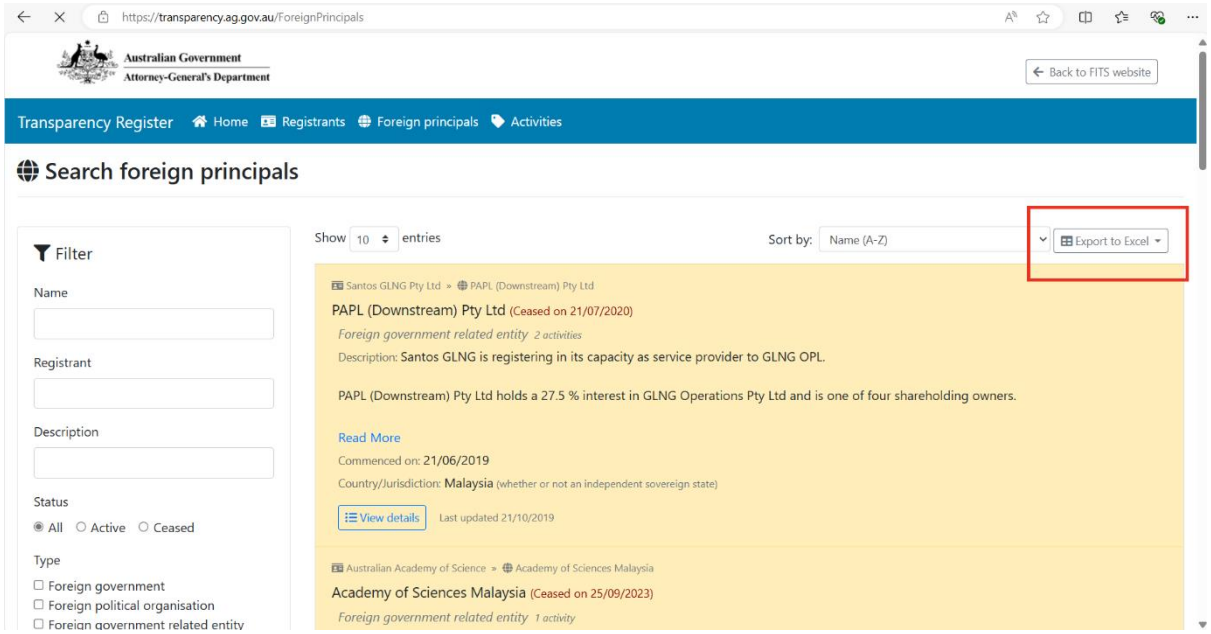
[76] Being information 'obtained by a scheme official in the course of performing functions or exercising powers under the scheme' or 'information to which paragraph (a) applied and is obtained by a person by way of a communication authorised under this Division': FITSA, s 50 and Pt 4, Div 4.
[77] FITSA, s 53(1).

Australian and foreign entities. The issue relates to the "exportability" of raw information from the Public Register, in that it is not possible to request DFAT provide a copy of the database, data cube, or other data export of the content of the Public Register information.

In January 2024, I had the pleasure of meeting with staff from DFAT's Strategy and Systems Management Section, Research and Policy Assessment team CFI & Stakeholder Engagement team to discuss this issue, who were extremely helpful. I was broadly informed that it is a "IT systems issue" that prevents such data exportability from being completed; however, a solution was still being explored at the time. Unfortunately, the issue has still yet to be resolved.

An examination of the Public Register maintained by the Attorney-General's Department under the FITSA shows that the results from that Register are easily exportable to Excel. Perhaps the Reviewer must consider a similar functionality being invested in by DFAT.



> ***Recommendation 21:*** *The Reviewer should consider whether DFAT migrate the Public Register to a new system, or system similar to that maintained by the Attorney-General's Department under the FITSA, to better provide data exportability for members of the public.*

Conclusion

This submission has made only brief proposals in relation to specific areas of interest. Therefore, I would be happy to provide further details, or attend further consultation, as determined by the Reviewer on any other issues that may arise during this process.

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