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SUBMISSION FOR THE REVIEW OF THE *FOREIGN RELATIONS ACT* 2020

Introduction

Curtin University respectfully makes the following submission in support of the Australian Government's commitment to ensure that the Foreign Arrangements Scheme (the Scheme), underpinned by the *Foreign Relations Act (State and Territory Arrangements)* 2020, remains effective in meeting its objectives, being to ensure relevant arrangements:

1. do not adversely affect Australia's foreign relations; and
2. are not inconsistent with Australia's foreign policy.

When viewed in isolation, the Scheme presents as ineffective in having achieved these objectives for the University sector. The Scheme has provided limited to no guidance on what arrangements might 'adversely affect' Australia's foreign relations or which are 'inconsistent' with Australia's foreign policy. Attempts to get advice in relation to specific arrangements have been ineffective. Of the thousands of notifications made by the sector, none have been publicly cancelled or modified. The presumed implication of this is that none of the notified arrangements adversely affect Australia's foreign relations, and all are consistent with Australia's foreign policy.

To date, the most effective action to achieve the objectives of the Scheme appears to have been direct written communications from the Minister to the sector regarding arrangements with the Russian Federation and the Islamic Republic of Iran. While these communications referenced the Scheme, they did not require the Scheme to

clearly communicate the Australian government's foreign policy to the sector, or to request alignment. Whether the sector would have been responsive to re-align if the communications did not reference the Scheme is unclear.

However, while the Scheme does not appear to have been effective in meeting its stated objectives, as a public institution striving for the public good, Curtin has seen critical benefits to Australia's national interest from the Scheme.

Curtin's Implementation Experience

Curtin's approach to the Scheme is managed through 'foreign risk reviews' and coordinated through a centralised office. These reviews perform wider due diligence on arrangements to also consider sanctions and international trade restrictions, defence export controls, critical technology, geopolitical risk, adverse media, foreign influence, and foreign interference. This approach ensures risks and compliance obligations are identified in a holistic manner, and decisions are based on informed advice. Curtin has invested considerable resources to manage this process through a dedicated office, reducing duplication of effort, ensuring relevant subject matter expertise is consolidated (acting as a force multiplier within the team), improving record-keeping, and facilitating holistic risk assessment, advice, and mitigation.

While the operation of the Scheme does not appear to have effectively achieved the stated objectives, the benefits have been clear. The administrative burden of implementing the Scheme was significant but has subsequently been reduced significantly. Efficiencies have been achieved through:

- operational knowledge of arrangements which can be considered low risk and can be readily triaged as not notifiable;
- integration of due diligence requirements with complementary legislation; and
- the development of robust systems and processes.

Benefits Observed

1. Increased consideration and accountability

The critical requirement for the sector to be open and collaborative has historically made the sector particularly vulnerable to malign actors. The Scheme has been an

effective tool in highlighting to the sector the importance of due diligence and the principle of 'Know Your Partner' (KYP).

When the Scheme is considered in concert with complementary legislation and guidelines (including Sanctions, Defence Export Controls, the Foreign Influence Transparency Scheme, and the University Foreign Interference Taskforce (UFIT Guidelines), Curtin has found that it has facilitated an increased awareness of National Security responsibilities in the sector. Curtin has found that its obligations under the Scheme have integrated favourably with the implementation of the UFIT Guidelines, with respect to the principle of KYP. Noting that foreign arrangements can be one significant vector of foreign interference, the Scheme enables due diligence to be conducted from a foreign interference perspective when assessing foreign arrangements.

Stimulated by the Scheme, Curtin has elevated its ability for systemic due diligence and resilience against foreign interference, a practice that Curtin now continues regardless of the Scheme. Curtin contemplates the national interest as a consideration in the balancing of value against risks in foreign arrangements.

2. Improved transparency and awareness of international engagements

Curtin finds that the Scheme has improved its internal transparency and awareness of international engagements. By obligating universities to notify the Minister of foreign arrangements with non-autonomous entities, universities must, firstly, develop knowledge of the foreign arrangements that the university engages in and, secondly, build oversight of the arrangements the university wishes to pursue. Transparency through the public portal creates a 'public trust' relationship between the institutions and their communities, the extension of this transparency via the Scheme can be considered a significant university and community benefit.

3. Enables de-risking approach supported by the Australian government

Curtin recognises the Scheme's application to the sector is reflective of the fact that university arrangements can present risks to the national interest, misalign with Australia's foreign policy, and/or impact foreign relations. Curtin has found the Scheme has not prevented collaboration but has facilitated risk mitigation.

The Scheme has enabled high value scientific research outputs from a large multi-national agreement by facilitating a whole-of-government de-risking approach. This approach is crucial to balancing international scientific endeavours, international collaboration, and national security. While resource intensive, the whole-of-government approach is leading to a far more effective risk management plan than would have been possible independently. The Scheme's assistance to Curtin is a demonstrable and significant benefit, although one which appears to have been produced from the Scheme's operation rather than its objectives.

Recommendations

It is recommended that the objectives of the Scheme be reconsidered to accurately reflect its operational use and vital impact. Consideration could be given to the inclusion of an overarching objective which states that the Scheme ensures relevant arrangements “do not adversely affect Australia's national interest”.

For the Scheme to more effectively achieve its current objectives, Curtin recommends that the Australian government investigate how it might provide better guidance on what arrangements might misalign with Australia's foreign policy or adversely affect Australia's foreign relations. This could include:

- providing de-identified examples (through the Trusted Information Sharing Network (TISN)) of where arrangements have not been aligned.
- providing clear communication as to where the government sees 'guardrails' to ensure arrangements are not misaligned. Given these guardrails will not be binary, additional direction is required around the 'grey zone' where entities should be exercising caution and apply de-risking.

Additionally, the provision of material, such as an accessible list of non-autonomous institutions, preferably securely integrated into the submission portal, would be a valuable resource.