

July 2024

Legislative Review of the  
Australian Foreign  
Relations (State and  
Territory Arrangements)  
Act 2020

**ENQUIRIES**

[REDACTED]

[REDACTED]

Office of Vice Chancellor

[REDACTED]

[REDACTED]

## A. INTRODUCTION

La Trobe University welcomes the opportunity to respond to the Legislative Review of Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the Act), which underpins the Foreign Arrangements Scheme.

The Foreign Arrangements Scheme requires certain entities, including universities, to notify the Department of Foreign Affairs and Trade (DFAT) via an online portal of all existing and prospective arrangements with foreign entities which fall within scope of the Act.

The following submission outlines La Trobe's implementation of the Foreign Arrangements Scheme since its introduction in 2020 and responds to the Legislative Review's consultation questions.

## B. IMPLEMENTATION OF THE FOREIGN ARRANGEMENTS SCHEME AT LA TROBE UNIVERSITY

In order to enable La Trobe University's compliance with the Act, an internal working group – the Foreign Arrangements Review Group (FARG) – was established to support the University's Responsible Officer for international relations. FARG consisted of senior executives who met monthly to review all historical and proposed foreign arrangements which fell within scope of the Scheme.

La Trobe considered the establishment of FARG was a necessary and sensible step given:

- the large volume of arrangements the University had to consider;
- the considerations necessary to comply with the Act required a reasonable degree of judgement; and
- the vast majority of the arrangements to be considered included confidentiality provisions/commercial sensitivities.

In 2022, La Trobe commissioned an external audit which concluded that the Act compliance framework developed and implemented by the University was consistent with a best practice approach within the sector.

Below, is a summary of Act compliance activities at the University between March 2021 and June 2024:

Foreign entities Assessed	Foreign arrangements notified to DFAT	Foreign arrangements listed
1500	295	191

## C. LA TROBE'S RESPONSE TO THE CONSULTATION QUESTIONS

### (1) Has the Foreign Relations Act been effective in delivering against its objectives, to ensure consistent adherence to Australia's foreign policy through foreign engagement?

- From the information available on the Public Register, it is apparent that university arrangements form a significant component of the notifications to DFAT. However, since the Scheme commenced, only four arrangements have been deemed "not in operation" and none of those arrangements involve a university.
- This suggests that DFAT considers university arrangements are adhering to Australia's foreign policy and may provide an opportunity to lessen university involvement in the Scheme resulting in administrative and financial cost benefits to the sector.
- In light of the outcomes to date, we recommend that the Government:

- **Reevaluates the key objective of the Act in light of the outcomes by shifting its focus to providing policymakers with visibility over the critical arrangements Australian state/territory entities have with foreign entities.**

**(2) How could the operation of the Foreign Relations Act be improved? Are there amendments to the Foreign Relations Act that would enhance its operation?**

- The Act provides a very broad definition of a “written arrangement.” Any written communication with a “foreign entity” as defined by the Act constitutes an “arrangement.” In the university environment, where researchers and academics are continuously looking for new collaboration opportunities (some of which may never result in a tangible outcome) by reaching out to colleagues from around the world via email/SMS/online meetings and so on, this broad definition potentially creates an unnecessary burden for administering the Scheme.
- The Act provides a very broad definition of a “foreign entity” and leaves it at the discretion of a state/territory entity to determine whether a particular foreign entity, is for example, a “government authority” or a “university which lacks institutional autonomy” and are, therefore, in scope of the Act.
- La Trobe recommends the following:
  - **Narrowing the definition of “arrangement” and providing more clarity around the definition of what constitutes a “foreign entity” by, for example, incorporating risk-based approach. For example:**
    - (i) **DFAT’s decision to declare universities from Brunei Darussalam, China, Iran, Laos and Vietnam as lacking institutional autonomy based on the analysis of their national higher education sector legislation provided the sector certainty when engaging with the Scheme.**
    - (ii) **Based on the logic set out in (i), the sector could be provided additional certainty by DFAT providing advice identifying foreign universities which are “out of scope” of the Scheme.**

**(3) Are there opportunities for the Foreign Relations Act to better support international cooperation in the national interest?**

La Trobe recommends the following:

- **Clearly articulating the purpose of the Act as related to state/territory entities’ activities rather than through the lense of the “international cooperation in the national interest”, which, being ambiguous/broad, is open to interpretation and misunderstanding;**
- **Considering a risk-based approach to determining what constitutes an “arrangement” or a “foreign entity”; and**
- **Using data collected to provide specific advice to universities on what to “look out for”.**

**(4) Could the Foreign Relations Act be better calibrated to address foreign policy risks and changing foreign policy settings?**

La Trobe does not have any specific feedback on whether changes are required to the Foreign Relations Act to address foreign policy risks and changing foreign policy settings. La Trobe would however encourage and

welcome DFAT advice and practical guidance about any changes to the foreign policy risk/settings and what it could mean for University business in practical terms.

**(5) Should the scope of the Foreign Relations Act be changed to apply to a broader or narrower range of international cooperation?**

Please see responses to Q2 and Q3.

**(6) Does the Foreign Relations Act strike the right balance between achieving its objectives and the administrative requirements it places on states, territories, local governments, and universities?**

Please see responses to Q1 and Q2.

**(7) Are there additional ways that the Foreign Relations Act can improve transparency and awareness of international engagement, including through the Public Register?**

La Trobe recommends the following:

- **DFAT should provide regular updates on changing foreign policy risks/settings.**
- **Based on the findings via notifications to the DFAT Portal, DFAT should provide regular advice regarding:**
  - **higher-risk areas**
  - **trends in terms of the foreign arrangements which are being notified to DFAT e.g. whether 'formal' or 'informal' agreements are more likely to be notified; and/or whether the high rate of notifications from the university sector (80%) is a result of states/territories under-reporting or whether universities are over-reporting**
  - **whether there are gaps in reporting**
- **DFAT should also provide Information about how it uses collected data.**

**(8) Are there opportunities to better support compliance with the Foreign Arrangements Scheme, including through publicly available information and outreach initiatives?**

La Trobe recommends the following:

- **Receiving a notification from DFAT when a new University arrangement is listed on the Public Register would be a welcome addition to better support compliance with the Scheme by providing a clear indication of arrangements in scope. Currently, dedicated staff are required to manually review the Register on a regular basis to identify newly listed University arrangements.**

## **D. ADDITIONAL COMMENTS**

La Trobe would like to make the following additional observations:

- The DFAT-developed resources on the DFAT Foreign Arrangements Scheme webpage were found to be extremely useful as the focal point for knowledge and information to ensure compliance with the Act.

- Recently, for the first time since the Scheme's inception, DFAT informed the University via an email that two of the recently notified University arrangements were "out of scope" of the Act. This is a welcome addition to DFAT communications.