

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

August 2024



Australia's university sector is a national asset, making a significant economic, cultural and social contribution to the nation. Australian universities have a long history of collaborating across borders to develop the knowledge, skills and research that we need to make Australia more connected, prosperous and secure.

Universities Australia understands and supports the intent of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act). However, the Act could be streamlined to reduce the administration associated with compliance.

It is in Australia's interest to continue to collaborate globally. Government regulation of international collaboration must be proportionate to risk, designed in collaboration with the sector and as minimally burdensome as possible.

In line with this goal, Universities Australia makes five recommendations;

Recommendation 1

Narrow the definitions in the Act to reduce the regulatory burden whilst still achieving the objects of the Act.

Recommendation 2

Ensure consistency and complementarity with existing legislation and regulation.

Recommendation 3

Consider the risks of continuing to publish arrangements on the Public Register.

Recommendation 4

Include a mechanism to obtain further information and appeal decisions if the Minister makes a declaration that amends or prohibits an arrangement.

Recommendation 5

Maintain a clause to review the Act every three years.

Universities Australia supports Government's intention to ensure international partnerships do not adversely affect Australia's foreign relations and are consistent with Australia's foreign policy. However, the Act captures thousands of university arrangements, of which, none have had any public action taken upon them through the Foreign Arrangements Scheme (the scheme). This requires significant resourcing to review and notify arrangements. It also risks eroding valuable international partnerships that benefit the nation.

The importance of international partners in supporting Australia's education and research endeavours cannot be understated. The last major Australian invention that did not involve international input took place in 1876¹.

In a more interconnected world where challenges are rarely isolated to just one country, it makes more sense than ever to solve common problems and questions together. Australian universities are willing partners of Government to grow and strengthen this sector that makes our nation stronger and more successful. Universities Australia urges the Government to enact amendments to the Act that are proportionate to the risk that has been identified over the scheme's operation.

¹ <https://www.science.org.au/news-and-events/news-and-media-releases/international-research-collaborations-now-at-stake>



Recommendations

1 **Narrow the definitions in the Act to reduce the regulatory burden whilst still achieving the objects of the Act.**

The definitions in the Act of arrangement, foreign entity and institutional autonomy are broad and capture a significant number of university arrangements and partners. Universities have notified more than 8000 in-scope arrangements through the scheme's online portal since its commencement in 2020. No university arrangement has had any public action taken upon it through the scheme.

The over 8000 university arrangements on the Public Register underrepresents the onerous and significant administrative workload that the scheme places upon universities. Universities can examine as many as five times the number of arrangements that are notified to determine what is in scope. This workload is exacerbated by the two-step notification process which is required for university arrangements.

The nature of the university sector, founded upon global collaboration, as well as the broad definitions in the Act have led to a significant number of university arrangements being captured by the scheme. University arrangements make up more than 80% of arrangements on the Public Register. Narrower, clearer language in the Act's key definitions would assist universities in better identifying arrangements in scope and support a reduction in regulatory burden.

2 **Consistency and complementarity with existing legislation and regulation.**

Australia has one of the most regulated higher education systems in the world, underpinned by an extensive framework of legislation and regulation. University arrangements are examined by a plethora of regulation across both state and federal governments. These include the Foreign Investment Compliance Framework, the *Defence Trade Controls Act 2012*, *Autonomous Sanctions Act 2011* and *Foreign Influence Transparency Scheme Act 2018*.

Universities are committed to working with Government and delivering the objectives of the Act. However, it is important to note that increasing requirements and scrutiny of partner institutions may lead to global collaborators moving to collaborate with other countries. Consistency, complementarity and a reduction in overlapping scope and reporting responsibilities is necessary. This will ensure that Australian universities continue to be world leading education providers and preferred partners to nations around the world.

3 **Consideration of the risks of continuing to publish arrangements on the Public Register.**

As the scheme matures, the arrangements listed on the Public Register increase public intelligence available to competitors and adversaries on university arrangements with global partners that do not have institutional autonomy. Partnerships between Australian universities and international partners have been built upon decades of trust. Ongoing public publishing of arrangements poses the risk of undermining these relationships.

4 **Include a mechanism to obtain further information and appeal decisions if the Minister makes a declaration that amends or prohibits an arrangement.**

The Act outlines that the Minister is not required to observe procedural fairness in exercising a power or performing a function under this Act. This gives the Minister, and subsequent Ministers, the power to make decisions without a review or appeal mechanism.

Greater transparency on Government decision making and considerations would be beneficial to increase universities' understanding of the scheme and improve sector knowledge and due diligence processes. This should include transparency of arrangements which have had an action taken upon them and arrangements considered out of scope.

Ongoing education and communication between the sector and Government will be key to ensuring universities' engagement with the Act is efficient, effective and targeted. This can be achieved through proactive briefings and collaborative forums such as the DFAT-University Forum.

5 **Maintain a clause to review the Act every three years.**

The Act is based on adherence to Australia's foreign relations and foreign policy, which are live factors and reflect the operating context of the time. On this basis, embedding a review mechanism is valuable to ensure that the scheme reflects the current geopolitical environment. This will ensure universities and Government are in lockstep in regard to Government's priorities.

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