

Review of the Foreign Arrangements Scheme

Introduction

The objective of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) is to ensure that the Commonwealth is able to protect and manage Australia's foreign relations. The Foreign Arrangement Scheme (FAS) was created to ensure that arrangements between State or Territory governments and foreign government entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

The University of Adelaide understands the importance to protect Australia's foreign interests and maintain security at home and is pleased to contribute to this review. It is committed to ensuring compliance with the Australian Government's reporting requirements relating to foreign interference, defence and security whether through the Act or various other legislative and regulatory mechanisms.

Through the below consultation, the University highlights its experience in reporting through FAS over the first four years. It emphasises the need to reassess the inclusion of public universities under the Act for alternative existing reporting mechanisms. It addresses the value in reducing administrative burden without compromising security risks by centralising government responsibilities for foreign interference reporting, simplifying compliance processes for the higher education sector, and improving uniform guidance and criteria for reporting under FAS.

Impact of the Foreign Arrangements Scheme reporting

Up to 30 June 2024, the University of Adelaide has completed notifications through the FAS on 552 activities, none of which have received a declaration from the Minister.

While the provision of information to the Department of Foreign Affairs and Trade (DFAT) under FAS has improved visibility of international engagement by states and territories and universities, the administrative load to notify arrangements under current guidelines is onerous, and given the above results of the University's reporting, it appears to be disproportionate.

While the implementation of FAS has also provided universities the opportunity to strengthen their due diligence reviews, this was already being addressed through the implementation of the higher education sector-specific Guidelines to Counter Foreign Interference in the Australian University Sector through the University Foreign Interference Taskforce (UFIT).

The currently decentralised legal and regulatory reporting requirements around foreign interference, defence and security extends beyond the two reporting mechanisms above, further adding to administrative burden, including through:

- [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020](#) (Commonwealth)
- [Foreign Influence Transparency Scheme Act 2018](#) (Commonwealth)
- [Security of Critical Infrastructure Act 2018](#) (Commonwealth)
- [Defence Trade Controls Act 2012](#) (Commonwealth)

As a result, the University is required to report to several departments including DFAT, the Attorney-General's Department, the Department of Defence, and the Department of Education, Skills and Employment including UFIT. To manage these reporting requirements, the University has had to adapt complex internal processes and systems to manage and coordinate the multiple reporting channels, and in several cases has had to appoint additional staff to overcome the increased administration burden.

To improve effectiveness, efficiency and the relevance of targeted reporting on foreign interference and security matters, the University of Adelaide recommends:

Review of the Foreign Arrangements Scheme

- The inclusion of public universities under the Act is reassessed, and that a single point of regulatory guidelines and reporting is established for the higher education sector.
- That UFIT and the Department of Education, Skills and Employment, through their Guidelines to Counter Foreign Interference in the Australian University Sector, act as the fundamental framework for higher education. Allowing the Act and how it relates to other legal/regulatory requirements to serve as the basis for standard approaches and assessments across sectors.
- Consideration be given to the role the to-be-established Australian Tertiary Education Commission (ATEC), could have in simplifying and centralising these regulatory processes for the sector once it is properly resourced.

Increasing efficiency through improved, targeted reporting requirements

Beyond adopting a centralised, better coordinated approach for the higher education sector through the above recommendations, there are several measures that should be considered to reduce burden and improve the efficiency of targeted reporting requirements under the existing approach. For example:

1. It is advisable that the multiple notification requirements for non-core entities be removed to reduce double-up of reporting. Currently, non-core entities do not require approval to enter into agreements, however they are required to send two notifications per agreement – one when the University has decided to enter into an arrangement, and another when an agreement has been signed.
2. Universities should be provided improved guidance regarding which foreign entities (see i) and what types of agreements (see ii) need to be reported on. The University is experiencing an increasing number of notifications being returned as “out of scope”, which creates inefficiency on top of the existing administrative burden:
 - i. Government processes for determining if foreign entities fall under FAS need to be centralised and consistent – the University currently undertakes lengthy endeavours to access foreign partner’s governance papers which are not always available, and are often not in English, only for notifications to frequently be returned as outside of scope.
 - ii. The types of agreements that fall under FAS reporting requirements should be reassessed as, in the context of the higher education sector, they currently include agreements that pose very low risk levels, such as for relationship building (MOUs, student mobility etc.) that include very limited legal obligations (confidentiality and logo use), or no risk such as agreements relating to the recognition of credits at course work level.
3. Further measures for more effective assessment and reporting should be considered, including:
 - i. Removing the need to notify of foreign arrangements with entities from the Five Eyes countries.
 - ii. Removing the need to notify of simple variations to previously notified arrangements (i.e. changes to duration of funding, change of personnel, etc.)
 - iii. Considering the need for subsidiary agreements to be notified, particularly when those entered into after the primary arrangement are not notified.
4. It is advisable that, unless there is a clear benefit to DFAT or the Commonwealth, the Public Register – which makes research and non-research agreements publicly available – be removed. From the perspective of the University, it serves only to provide valuable information to competitors.

Further, it is worth highlighting that the current reporting requirements through FAS create an unequal burden between public universities subjected to obligations and private universities that are not. Whether or not the establishment of a centralised reporting channel for the higher education sector lends to reassessing if obligations should be extended to all universities, reducing administrative strain should remain a priority.

Review of the Foreign Arrangements Scheme

Summary

The University of Adelaide recognises the ongoing and increasing importance for the Australian Government to safeguard the country's security amid growing global tensions. It is committed to ensuring it complies with the various legislative and regulatory requirements including through the Act and FAS. However, the University sees significant opportunity to improve the current approach to ensure the sector is not overburdened and resources are not disproportionately directed to low and no-risk foreign arrangements.

Through this consultation, a centralised approach to foreign interference reporting for the higher education sector is proposed, ideally through UFIT and its guidelines specific to the sector. The University also proposes a suite of amendments to reporting requirements that, should the proposed approach not be adopted, could offer improved efficiency and effectiveness of targeted reporting. This proposal aims to simplify compliance for public universities while ensuring government agencies remain well-informed on arrangements that pose potential risk to the country's security.

Contact

For more information, please contact:

Professor Jessica Gallagher
Deputy Vice-Chancellor and Vice President (External Engagement)
The University of Adelaide

E: dvcee@adelaide.edu.au