UNIVERSITY OF CANBERRA

Submission on behalf of the University of Canberra

Background to the University of Canberra

The University of Canberra (**UC**) is a small, young University anchored in the national capital and works with government, business, and industry to serve our communities and nation. UC challenges the status quo; always pursuing better ways to teach, learn, research, and add value – locally and internationally.

UC has been participating in *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (**the Scheme**) since its inception and appreciates the value the Scheme provides to Australia's foreign engagement and to the security of Australia's foreign policy.

However, the implementation of the Scheme at UC has not been without ongoing challenges that stem from the lack of clarity provided by the Scheme on the nature and type of risks the government wishes for the Scheme to cover, and from the administrative burden created by the Scheme.

We set out our detailed submissions on these aspects below.

Challenges

Clarity of the nature and type of risks that are notifiable under the Scheme

In our view, it is important for legislation to strike a balance between protecting national interests and enabling universities to carry out their work. Overly burdensome or unclear requirements can hinder the ability of universities like UC to engage in valuable international collaborations and exchanges.

In our experience working with the Scheme so far, we have identified that there is a lack of clarity around the types of risks and arrangements that are notifiable under the Scheme, which makes it difficult for us to determine which of our arrangements with foreign parties fall within the scope of the Act. We have identified the following as being contributing factors to the lack of clarity:

1. the Scheme does not provide clear definitions or examples of the types of arrangements that are notifiable, including the types of risks that make an arrangement notifiable under the Scheme;
2. it is unclear at what point the initial notification must be completed, particularly for research collaborations that often start with informal conversations and do not progress to the formal intent stage until much later;
3. the language used in the Scheme is broad and open to interpretation. We imagine that this leads to confusion and inconsistency in how the Act is applied across different institutions, which is unlikely to meet the key objective of the Act of promoting a greater understanding of Australia's foreign policy;
4. a lack of examples of risks that indicate a notifiable arrangement in scope of the Scheme to help Universities better understand their obligations. We would expect that DFAT would provide examples that are updated regularly to reflect evolving risks and factors contributing to an arrangement that is notifiable, which would work to achieve the key objective of the Act in calibrating itself to address changing foreign risks and foreign policy settings;

5. a lack of guidance on minimum risk assessment and due diligence requirements. It would be useful to have a resource that includes detailed factors to consider, methods for assessing risk and how to document and report findings;
6. lack of consultation with Universities on the types of risks they face and the challenges in managing these risks.

Steps to address the lack of clarity

In our view, the government could consider taking the following steps to improve the clarity of the Scheme:

1. review of the definitions section of the Act to ensure that the key terms in the Act that relate to the requirement to notify certain arrangements are appropriately and clearly defined. This would help ensure that all universities have a common understanding of these terms. The government could consult with universities to gain an understanding of which terms require further clarity;
2. the Act (or the portal) could provide detailed examples of what constitutes a notifiable arrangement, including detailed examples of the risks that contribute to or that indicate that an arrangement is notifiable. These examples should cover a range of scenarios and be regularly updated to reflect evolving risks;
3. provide detailed guidance for research collaborations, including information on when (in the view of DFAT) discussions or negotiations between research collaborators indicate the required 'intent' to enter into an arrangement to ensure that Universities are notifying research collaborations at the correct time;
4. the government could issue guidance documents that provide more detailed explanations of the Act's requirements. These documents could include FAQs, case studies, and best practice guides;
5. the government could establish a formal consultation process where universities can seek clarification on specific aspects of the Act. This could be done through regular meetings, an online forum, or a dedicated helpline; and
6. the government could provide a standardised risk assessment framework to help universities identify and assess notifiable risks. This framework could include a step-by-step guide, a checklist of risk factors, and a template for documenting the risk assessment process.

These practical fixes could help improve the clarity of the Act and make it easier for universities to understand and comply with its requirements. This would assist in ensuring that the Act properly achieves its objectives.

Administrative burden

The Act places a significant administrative burden on universities like UC, being smaller institutions with limited resources. To appropriately comply with the Scheme and assess whether an arrangement falls within the scope of the Scheme, the due diligence requirements are onerous and time consuming, and many staff struggle to understand why they are required, and, equally, struggle to find the time to undertake them. The University felt obligated to create a robust due diligence framework for all arrangements in the absence of guidance from DFAT about proportionality of risk across different types of arrangements with different partners, and this creates an enormous volume of work for staff across the University which may not be strictly necessary if DFAT were to provide further guidance as outlined above and below.

In our experience, the resourcing burden often leads to substandard due diligence, or a situation where the administrative staff responsible for the University's compliance with the Scheme are required to do the due diligence on the arrangement, which may not encapsulate the full scale of the risk posed by the arrangement. Generally, this results in administrative staff notifying arrangements out of an abundance of caution, notwithstanding that the arrangement may not be within scope of the Scheme.

In our view, this type of approach does not provide the Minister with an accurate view of the types of arrangements that may cause risk within the University environment, and, ultimately, is unlikely to be consistent with the objectives of the Scheme.

Based on our experience with the Scheme, the objectives of the Scheme can be met in a more efficient manner without the administrative burden currently placed on universities in complying with the scheme.

Steps to address the administrative burden

In our view, the below are steps the Government could consider taking to reduce the administrative burden incumbent on small universities like UC, while still achieving the objectives of the Scheme. Such steps could include:

1. Providing clearer, more detailed guidelines on the level of due diligence that is required to achieve compliance. Such guidelines might include:
    a. detailed compliance checklists that provide step by step instructions on what Universities need to do to comply with each aspect of the Act and to properly assess an arrangement for risk. This would break down complex legal requirements into manageable tasks, making it easier for University staff to understand what they need to do without having to receive legal advice for each arrangement;
    b. providing real-world examples or hypothetical case studies of how the Act applies in different situations to help staff understand the practical implications of the Act. This could include examples of both compliant and non-compliant behaviour;
2. the register could be revamped to improve functionality to allow searching by organisation, and to allow downloadable reports (for example, including details such as who has notified the arrangement, when, whether it was assessed by DFAT as being in scope or out of scope etc);
3. create a FAQ document that addresses common questions or areas of confusion about the Act to act as a quick reference guide for staff who need answers to specific questions; and
4. create interactive training materials such as webinars, online courses, or workshops that help staff understand the Act and will aid in situations where there is staff turnover and historical knowledge is lost;
5. introduction of a tiered or proportional system where the requirements for reporting (and accordingly, due diligence) are adjusted based on the size and resources of the institution, which would ensure that smaller universities are not disproportionately affected. In our view, this could be achieved in two ways:
    a. Risk based tiers: universities with lower-risk arrangements (e.g. those involving less sensitive areas of research or countries with strong diplomatic relations with Australia) might face fewer or less stringent requirements; and
    b. Activity based tiers: the Act could consider the volume or nature of the university's international activities. Universities with fewer international collaborations or those that are less involved in sensitive research areas might have fewer compliance requirements.
6. Introduction of an 'automatic notification system' whereby organisations, including universities, are advised by the Australian Government on a periodic basis that, if they are negotiating or entering an arrangement with a particular foreign country or organisation, the arrangement must be notified under the Scheme. This would eliminate the need for Universities to conduct due diligence on these arrangements and would work towards more accurately achieving the objectives of the Act, including to provide transparency and a greater understanding on Australia's foreign policy.

Conclusion

In conclusion, while UC values the importance of the Scheme in bolstering Australia's foreign policy and security, the challenges posed by the Scheme's lack of clarity and significant administrative burden cannot be overlooked. Addressing these issues is essential for the Act to effectively balance national security with the operational needs of universities.

To enhance the clarity of the Scheme, we recommend the government revise key definitions, provide detailed and regularly updated examples of notifiable risks, and issue comprehensive guidance documents. Establishing a formal consultation

process and a standardised risk assessment framework will further aid universities in understanding and complying with the Act.

To alleviate the administrative burden, we propose the creation of clear compliance guidelines, the implementation of a tiered reporting system based on risk and/or activity levels, and the introduction of an automatic notification system. These steps will ensure that smaller institutions like UC can meet the Scheme's objectives without being disproportionately affected.

By implementing these recommendations, the government can foster a more transparent, efficient, and manageable framework that supports universities in their vital role of engaging in international collaborations while safeguarding national interests.