

SUBMISSION TO THE PJCIS REVIEW OF THE *FOREIGN INFLUENCE AND TRANSPARENCY SCHEME ACT 2018*

29 November 2021

Universities Australia (UA) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on the review of the *Foreign Influence and Transparency Scheme (FITS) Act 2018* (the Act) into its operation, effectiveness and implications.

UA is the peak body for Australia's 39 comprehensive universities. Our member universities are spread across Australia, in both regional and metropolitan areas. They educate more than a million students each year and undertake all of the university research in Australia and engage globally to add to this country's stock of knowledge, and to Australia's economic and social wellbeing.

RECOMMENDATIONS

Universities Australia recommends to the PJCIS that:

- the University Foreign Interference Taskforce (UFIT) be regarded as the primary mechanism, distinguished by its genuine partnership approach between Government and universities, to bolster the defences of Australian universities against foreign interference, and to manage foreign influence;
- the current mechanisms and legislative environment relating to the mitigation and management of foreign influence and foreign interference in universities should be taken into account when considering the application of FITS to the university sector;
- a coordinated, coherent and 'proportionate to risk' approach to foreign interference and foreign influence schemes and legislation is needed, that takes into account the importance of global connections for university outcomes benefitting Australia's economy and society; and
- it recommends to Government that UA be closely consulted to enact these recommendations.

DEVELOPMENT OF THE FITS LEGISLATION IN CONSULTATION WITH THE UNIVERSITY SECTOR

The university sector has a strong track record of working collaboratively with Government to design effective safeguards whilst supporting the crucial international links that enable Australian universities to contribute to the country's and global economic and social wellbeing. This includes the development and review of the Defence Exports Controls program and, since 2019, the collaborative work of the University Foreign Interference Taskforce.

Universities are actively working on the implementation of the UFIT Guidelines, which were updated in the second half of 2021 and cover foreign interference and risk identification and mitigation extensively.

Prior to the introduction of the Foreign Influence Transparency Scheme, there was productive and consultative engagement between the Government and the university sector in the development of the Act. Following the introduction of the FITS Bill at the end of 2017, significant concerns were raised regarding the scope of the legislation, including by the university sector. The Government took on board UA's suggestions to refine the scope of the collaborations captured by the Bill.

The Attorney General's Department and UA liaised and consulted on the objectives of the Scheme, and how they could be achieved whilst supporting normal university international activities. UA strongly supported the subsequent amendment of the Bill by Government, which refined the scope to exclude formal government review of types of international collaboration that were not intended to be captured by the Bill.

Given the past experience of the sector and Government working constructively together on the design and operation of the Scheme, and the demonstrated success of that approach in achieving the objectives of the Act, UA urges the Government to adopt a collaborative approach in considering any changes to the Act.

INTERNATIONAL RESEARCH COLLABORATIONS

In its submission to the PJCIS inquiry into national security risks affecting the Australian higher education and research sector, the Attorney General's Department provided an interpretation of the FITS Act which advised that international research collaborations might be registrable under certain circumstances, noting some technicalities through which universities or their researchers may be exempted from the Act's registration requirements.

Given this interpretation leads to challenges in complying with the legislation, UA would like to clarify this issue and ensure that research collaborations are not captured unnecessarily by the FITS Act, given the introduction of other mechanisms (such as the Foreign Arrangements Scheme) that provide transparency on international collaborations.

UA notes that international research collaborations are already considered by multiple Government departments and agencies and university guidelines, as outlined in the following section.

TRANSPARENCY MECHANISMS AND ACTIONS BY THE UNIVERSITY SECTOR SINCE THE INTRODUCTION OF FITS

The uncertainty surrounding the status of research collaborations raises a broader question as to the role of the Act in light of the introduction of a number of other measures by Government since 2017 to provide additional transparency on research collaborations.

In addition to the Act, the current mechanisms that provide transparency and impose reporting requirements on universities on research collaborations include:

- reporting obligations under *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (administered by the Department of Foreign Affairs and Trade);
- the *Defence Trade Controls Act 2012* (administered by the Department of Defence), which is currently being reviewed and can be expected to yield even greater visibility through an expansion of scope;
- the amendment of the *Security of Critical Infrastructure Act 2018* and the expansion of the Scheme to include the higher education and research sector (administered by the Department of Home Affairs);
- the establishment of the Critical Technologies Policy Coordination Office and the development of a list of critical technologies (administered by the Department of the Prime Minister and Cabinet); and

- the introduction and recent revision of the *Guidelines to Counter Foreign Interference in the Australian university sector*, developed by University Foreign Interference Taskforce (UFIT). UFIT is a joint collaborative effort between the university sector and Government including security agencies.

In particular, UA and its member universities would appreciate more clarity from the Attorney-General's Department about the circumstances when international research collaborations that are notified to the Department of Foreign Affairs and Trade under the *Australia's Foreign Relations (State and Territories Arrangement) Act 2020* must also be registered under the FITS Act and by whom – individual researchers or their universities.

In addition to research collaboration, universities also undertake a range of 'business as usual' university activities with an international dimension, including general academic, educational, exchange, cultural activities which are also central to their mission and are regulated by other mechanisms.

Given these developments, UA encourages the Committee to give careful consideration to what the gaps are, if any, and to remove any duplication in reporting requirements for universities. The Committee may wish to consider UFIT to assist in this process.

UA submits that the initiatives listed above provide the Government with sufficient visibility of university activity in relation to international collaborations, as well as policy levers.

COLLABORATION IS AN INTEGRAL PART OF UNIVERSITY RESEARCH

UA wishes to stress that global research collaboration is an integral and necessary part of realising the full potential of the Government's investment in R&D in universities, as well as the investments that universities make using their own funds.

Australia outperforms in research relative to its size. However, in research expenditure terms, it accounts for about 1 per cent of global R&D. The major R&D performers are the US (USD 551 billion or 28.5 per cent of global R&D expenditure); China (USD 463 billion or 24 per cent); and the EU (USD 428.5 billion or 22 per cent).¹

The implication of this is that Australia must engage with the 99 per cent of R&D performed in the rest of the world. Universities are highly cognisant of the risks of foreign interference and foreign influence and are working to structure their collaborations with this in mind.

CONCLUSION

UA encourages the Committee to examine the current legislative environment relating to foreign influence and foreign interference in regard to universities, as well as the current efforts by UFIT, and seek to streamline the regulatory framework and reporting mechanisms. Eliminating duplication and ensuring that the Foreign Influence Transparency Scheme connects thoughtfully with other existing mechanisms add to a targeted and effective security landscape.

UA would be pleased to work with the Government to provide constructive input into its deliberations, as it did on the current Act.

¹ 2018 figures, where R&D expenditure is measured in USD constant prices using a 2010 base year and Purchasing Power Parities (PPPs).