

Australia's Foreign Relations Bill 2020 Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee

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About the authors

The authors both have extensive experience working across government, academia and think tank sectors on China issues, including Chinese politics, Australia-China relations, foreign interference, and the Chinese diaspora.

China Policy Centre is an independent, non-profit research organisation based in Canberra. It aims to inform and promote public discussion and policy debate on China issues.

Comments on the Bills

We broadly agree that the Commonwealth Government, as well as the general public, should have visibility over the agreements that State and Territory governments and public entities (such as universities) enter into with foreign governments. We welcome efforts to increase transparency by establishing a public register of these agreement. In fact, we would like to see increased transparency on agreements entered into by all levels of government and public entities.

However, the requirement for the Minister's approval on all agreements with foreign governments is highly problematic, for the following reasons:

1. It may restrict or otherwise interfere with certain domestic policy-

making powers of State and Territory governments.

2. Having only one foreign policy voice may be detrimental to Australia's national interest in an age of high interconnection.
3. Agreements can be invalidated at any time by the Commonwealth, even if it was previously approved. This can raise uncertainty for all contracting parties.
4. It may create an impression that the Commonwealth Government endorses all agreements in force.

First, the Bill defines Australia's foreign policy broadly and inclusively. Such policy need not be written, publicly available, or even have been formulated. This means the Minister have substantial power to prohibit any agreement the State or Territory government makes with foreign governments. For example, if the Commonwealth Government's position was to commit to zero carbon emission and to support renewable energy export, then the Commonwealth can potentially prohibit any State or Territory government's agreement with foreign governments that may increase carbon emission or support coal and gas export.

Second, modern diplomacy has evolved from only have states as legitimate actors to having a diverse range of legitimate actors, including corporations, non-profit organisations, and international organisations. The Australian Government should recognise these different and legitimate voices, and not try to develop policy based on anachronistic ideas of diplomacy.

Moreover, there is no evidence that having diverse voices with different interests and priorities is detrimental to Australia's national interest. On the contrary, these actors play an important role in international diplomacy and often further Australia's interest by doing so. Instead of having only one voice on the international stage, Australia's national interest would be better served through broad engagement with the world involving a range of Australian actors.

Third, Australia's foreign policy and foreign relations evolve and change constantly, and under the proposed bill, Minister can reconsider the relevant agreements at any time, even if it was previously approved. This means all the agreements could be reconsidered any time there is a change in Australia's foreign policy (noting that the Minister is not required to identify a

particular written policy, and the policy need not be written or even have been formulated). Therefore, any agreement with a foreign government is at risk of being invalidated by the Commonwealth Government at any time. This creates significant uncertainties for State and Territory governments and public entities, and may affect their operations.

Fourth, since the Commonwealth has the opportunity to reconsider all the relevant agreements at any time, then any agreements that are in force can be taken as endorsed by the Commonwealth Government. This can create diplomatic problems where similar agreements with different countries are treated differently. In this instances, public explanations are likely expected by the foreign governments involved.

Overall, while we welcome the transparency measures, including a public register, we have serious reservations about the bill giving the Minister the power over agreements between State and Territory governments or public entities and foreign governments.

By policing these agreements, the Commonwealth Government may catch some contracts that are contrary to Australia's national interest, but arguably, the benefits are more than offset by the costs and risks discussed above.