

19 October 2020

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Committee Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
By email: FADT.SEN@aph.gov.au

Go8 responses as required by Committee

Below please find a series of responses which the Go8 has ascertained The Committee wishes to receive from us following my appearance before The Committee on Tuesday 13 October 2020.

The Go8 is committed to working with the Parliament on this Bill and has therefore done everything possible to ensure what you require is provided. However, it is important for me as Go8 Chief Executive to state that we have been hampered by a process which has been somewhat unique in that we have not actually been provided with a list of questions by the Committee.

Rather, we were provided with a date (19 October 2020) by which we must “*read through your section of the transcript thoroughly to ensure you respond to all matters taken on notice*” - which left us to discern from a less than specific preamble.

The Go8 has worked to decipher what is required and to address that accordingly but the preamble’s construct could too easily lead to misinterpretation or anomalies and therefore should you require anything further please do not hesitate to contact me.

Responses:

Question on Notice by Senator Kitching:

Also, I would like to know whether you and all of your member institutions—and the University of Queensland in this example—think the Defence Trade Controls Act is really all we need. That’s the piece of legislation you have cited there. If a PLA scientists can come to Australia and learn technologies and then take them back to China but, under the defence trade controls act, those are technologies we cannot export to them, is there a gap? That is the question around why the moral responsibility is so important. That is what is going to govern this—not being caught out on individual cases but, rather, a fuller understanding of what we actually stand for. I would put to you that helping an authoritarian regime to surveilling a majority in their country is something we do not stand for—quite the opposite, I would think. So you’ll take all of that on notice?

Go8 response

The Go8 does not believe there is a gap such as that outlined by Senator Kitching. The Defence Trade Controls Act 2012 (DTC Act) is one of several Acts universities are subject to, and which relate to dealings with foreign parties, as listed in the Go8’s submission. As we also note in our submission, it is important to consider not just how each of these Acts work in isolation, but how they form a coherent suite of measures. The DTC Act governs the transfer of defence and strategic goods technologies and includes specific and stringent research requirements. That is the

most pertinent aspect of the Act to Go8 universities. Given the varied and extensive research that Go8 universities conduct, the implementation of the Act can be complex as we identify if proposed research is subject to the Act's provisions; especially in terms of dual-use technologies.

Go8 universities regularly report to and seek advice from the Department of Defence regarding compliance. Within a Go8 university, General Counsels, Research Integrity Offices and Deputy Vice Chancellors Research are involved. Go8 universities have established a good and long-term working relationship with the Defence Export Control Branch (DEC) - the relevant area within the Department of Defence.

It is a two-way exchange. DEC advises universities on numerous specific cases (such as applications for research funding) which we have identified as requiring DEC expertise while the Department also seeks universities' input on areas of emerging or sensitive technologies.

In 2020, for example, the Go8 worked with the Department to identify key emerging technological areas of interest. This has informed the Department's forward DEC outreach program for 2020-21.

The Go8 remains committed to the Act's effective implementation and has worked consistently since its inception with Government to ensure this. More recently this has included contributing to a 2018 Review of the Act and working with Government to resolve issues and 'gaps' identified in the Review.

Importantly, Go8 Chief Executive Vicki Thomson is a member of the *Implementation of the DTC Act Review Working Group*, established by the Department of Defence in 2020. Issues include treatment of emerging or sensitive technologies, and the extended application of the Act to transfer of goods within Australia.

A Go8 reference group has been established to support the Go8's contribution to the Review process. This also discusses practical ways to enhance universities' ongoing implementation of the Act.

Various questions re Confucius Institutes

Question from Senator AYRES: *I have listened to the questions over the course of the morning and I appreciate the difficulty of being a peak council and having member organisations and relationships. It seemed to me, coming out of the discussion about the Confucius institutes at least, that there are two propositions you could adopt. **One is that if you start from the premise that the Confucius Institute should be captured by the UFIT guidelines or by the foreign interference guidelines, that either the universities are wilfully defying the letter and spirit of the legislative framework of the self-imposed UFIT framework or, if you believe that they should be included in the framework, that the legislation doesn't do the work that its proponents want it to do.** I wonder if you might be able to provide some commentary on that question, on notice, appreciating that it doesn't go to the individual relationships between individual universities and individual institutes or whatever they are. It would just be some commentary on that position, because I think there really are only two possible propositions and I'd like to understand what the—*

Senator KITCHING: *I want to put to you, Mr Sheehy, that, when you go onto the register under the FITS scheme, the United States Studies Centre from the University of Sydney is on there but none of the Confucius Institutes are on there. It seems to me that, if you do run through the list of registrants, they're all associated with countries with what we would recognise as a rule of law. It occurs to me that people or entities who do respect the law put themselves on that FITS scheme, and those who don't do not. What I want to know from all of you is: **Did you encourage those institutes with campuses with Confucius institutes to register on the FITS or was there never a discussion held with those entities? What were the internal processes that the universities, which you are all saying are so responsive to various pieces of legislation and very proactive, what did you do to encourage Confucius institutes to recognise the rule of law in this country and register themselves on the FITS?***

...

Senator KITCHING: *If there are any minutes from your member organisations—this is for all three witnesses—any discussions, any written contemporaneous pieces of correspondence, I would like you to forward that to the committee.*

Go8 Response

The Go8 appreciates the complexities that have arisen in recent years from a fast-changing geopolitical situation. This is creating many challenges for Government and for universities to negotiate and manage.

The Go8 response to the various questions on Confucius Institutes is intended to demonstrate to The Committee that the Go8 is working determinedly with relevant government departments and security agencies to manage any issues in agreement in the best way possible.

It is important for the Go8 to stress that we have this on-going communication with Government. The Go8 has not sought to ignore, avoid, nor hinder any response sought of us by Government or its security agencies. As Chief Executive I would, in fact, describe the communications as harmonious, positive and effective.

We also wish to clarify for The Committee that the Go8 is the peak body for the eight Go8 universities. The Go8's role is to both seek detail of issues that apply to them as a group, and to provide advice back.

However, the Go8 has **NO** remit over individual university decisions. Should The Committee wish details of individual contracts or actions, The Committee should seek such advice directly from the university in question.

As noted in the Go8 submission, one area that is important to consider – if the suite of measures put in place to address issues of foreign interference are to be effective – is how they can work in concert to form an effective safety net.

With respect to Confucius Institutes: while it may have been that an original intention of the FITS legislation was that they would be captured, it is the Go8's advice that all six of our members who host these Institutes did receive independent legal advice that this is not the case under the legislation as it currently exists.

As I noted in evidence to the Committee, this is consistent with the advice I received from Home Affairs.

The Go8 attaches for your advice correspondence from Attorney General Hon Christian Porter MP to me dated 2 April 2018. He specifically notes that the status of Confucius Institutes under the scheme *"will depend on all of the facts and circumstances"* and that *"My department, which will administer the scheme, will be happy to assist potential registrants to determine whether registration is required"*.

This makes it clear that it was the view of the Attorney General, at least at that time, that Confucius Institutes would not be automatically captured.

The Go8 sought to clarify this understanding more recently with Home Affairs on the 25 February 2020. On that date it was verbally confirmed that the Confucius Institutes hosted by Go8 universities were not causing concerns amongst security agencies.

If the Committee wishes more detailed information of the operations of Confucius Institutes hosted by Go8 universities, we recommend it approaches the universities directly.

Senator Kitching also raised the example of the US Studies Centre (USSC) choosing to register under the FITS Bill. The USSC, though hosted at the University of Sydney, is an autonomous body and as such made its own determination to be on the register. This was due to the Centre receiving a grant from the US Government for a specific purpose, which has now been completed, i.e., registration was not related to the Centre's regular activities. Consequently, the USSC's registerable activities under this Bill ceased earlier this year, and the register has now been updated to reflect this (it shows that the registration ceased as of the 6 March 2020).¹

Whether the above information means that the FITS Bill should be reviewed is a matter for Government – however, the Go8 would stress, as we do in our submission – that this question should not be considered in isolation, but in the context of how the FITS Bill works in concert with other regulatory and legislative measures.

This is not only to avoid duplication and wastage, although these issues are important. It is actually critical to how the measures work together in practice.

In terms of the UFIT *Guidelines*, we would argue that Confucius Institutes *are* captured by these measures. The section on Due Diligence makes it clear that:

¹ <https://transparency.ag.gov.au/ForeignPrincipals/Details/9255ebe1-a63f-e911-8120-0050569d2348>

The nature and purpose of collaboration with international entities is transparent, undertaken with full knowledge and consent, and in a manner that avoids harm to Australia's interests. Agreements with international partners comply with Australian law and address potential threats to the integrity of the research and reputation of the university and identify emerging or potential risks, including any foreign interference and security risks.²

It also recommends that:

*Due diligence, **proportionate to the risk and subject to information sources**, is completed to establish who the partner is before entering into a formal partnership agreement³*

As the Go8 noted during the hearing, advice provided to the Go8 by Home Affairs was that the only Confucius Institute of concern – which was later shut down – was the one hosted by the NSW Department of Education.

As noted in the quote above, the *Guidelines* – which were developed in concert with Government security agencies – emphasise the importance of proportionality subject to available information sources.

While there are many measures universities can take as part of their due diligence activities, there are also many areas where Go8 universities must rely on advice from security agencies and Government departments such as Home Affairs. They have access to much more rigorous and classified information than the Go8 does, and we have no choice but to be guided by their advice.

Finally, in the hope it is useful to The Committee, the Go8 has included below a list of the Confucius Institutes hosted by Go8 members. Also included are examples of similar entities also hosted by our universities to demonstrate that it is not unusual for research-intensive universities to enter into such arrangements.

Confucius Institutes at Go8 Universities

The University of Sydney ⁴

Partner: Fudan University

Established: 2008

Purpose: Established to cultivate a better understanding of Chinese culture in Australia. The focus is on promoting Chinese language teaching and community outreach programs including public lectures and cultural events that engage with China's long history and cultural diversity from a variety of standpoints. Courses currently listed include Introduction to Chinese Art, World Fitness (Tai Ji and Flamenco), Kung Fu and self-defence, Tai Ji for health and school workshops.

The University of Sydney has advised that they maintain a strict governance model for their Confucius Institute and have looked very carefully at whether they need to register. They have advised that the Institute does no teaching for award courses, differentiating it from what has happened historically in some Confucius Institutes in the US and UK.

² https://docs.education.gov.au/system/files/doc/other/ed19-0222_-_int_-_ufit_guidelines_acc.pdf

³ Ibid, emphasis added.

⁴ <https://www.sydney.edu.au/confucius-institute/about-us.html>

University of Queensland⁵

Partner: Tianjin University

Established: 2009

Purpose: Advancing the learning of Chinese language and culture; as well as building and deepening links and collaborative opportunities with China especially in the fields of science, engineering and technology.

University of Western Australia⁶

Partner: Zhejiang University

Established: 2005

Purpose: The Confucius Institute at UWA connects Western Australians with Chinese language, Chinese culture and Chinese people. We offer language and cultural awareness tuition all year round and present a wide range of workshops and cultural events. Our Chinese teachers and volunteers provide classroom support for more than 30 primary and secondary schools in Perth and Bunbury. Other services include providing WA business, industry and government with tailored cultural awareness training on Chinese customs and etiquette, as well as providing translation and interpreting services. We service the academic community by facilitating a transcultural platform of intellectual engagement for China-related activities at UWA. We convene conferences, seminars and forums on issues relating to China, often featuring international guest speakers.

UNSW Sydney⁷

Partner: Shanghai Jiao Tong University

Established: 2009

Purpose: The Confucius Institute at UNSW is Australia's leading organisation for promoting Chinese language and training senior executives to compete and succeed in China. While our foundations are in teaching Chinese language and promoting China's culture to undergraduate students and members of the wider Sydney community, we also specialise in executive education to senior managers from leading Australian and multinational corporations focused on trade and investment with China.

University of Melbourne⁸

Partner: Nanjing University

Established: 2005

Purpose: Confucius Institute at the University of Melbourne has a focus on corporate sector engagement and seeks to equip Victorians with the language and cultural skills necessary for building lasting relationships with

⁵ <https://confucius-institute.centre.uq.edu.au/about-uq-confucius-institute>

⁶ <https://www.confuciusinstitute.uwa.edu.au/>

⁷ <https://www.confuciusinstitute.unsw.edu.au/>

⁸ <http://www.confuciusinstitute.unimelb.edu.au/>

Chinese stakeholders. Since the establishment, the Confucius Institute has provided services and training to a range of organisations, corporations and professionals.

University of Adelaide⁹

Partner: Shandong University

Established: 2007

Purpose: The Confucius Institute at the University of Adelaide aims to assist the learning of Chinese language and culture, and create broader and more informed understanding of China across South Australia.

Examples of Other Institutes at Go8 Universities

United States Studies Centre (University of Sydney)¹⁰

The United States Studies Centre at the University of Sydney is a university-based research centre, dedicated to the rigorous analysis of American foreign policy, economics, politics and culture. The Centre is a national resource, that builds Australia's awareness of the dynamics shaping America — and critically — their implications for Australia.

Ramsay Centre at the University of Queensland¹¹

In 2019, the University signed a memorandum of understanding with the Ramsay Centre to offer courses in Western Civilisation. Under the arrangement, the Ramsay Centre would fund 10 full-time equivalent academic staff to deliver the program including a Director, supported by two new professional staff, and 150 scholarships for high-achieving students with a keen interest in the liberal arts.

ANU Centre for Arab & Islamic Studies¹²

The Centre for Arab & Islamic Studies (Middle East & Central Asia) forms part of the ANU College of Arts & Social Sciences at The Australian National University. CAIS is Australia's premier location for studies in this field, with a high international standing and links with major counterparts in the Arab & Muslim world, as well as in North America and Europe.

⁹ <https://confucius.adelaide.edu.au/>

¹⁰ <https://www.usc.edu.au/>

¹¹ <https://www.uq.edu.au/news/article/2019/08/ramsay-centre-funded-western-civilisation-program-start-uq-2020/>
<https://future-students.uq.edu.au/study/programs/bachelor-advanced-humanities-honours-2414/western-civilisation-wscivy2414>

¹² <https://cais.cass.anu.edu.au/>

Wall Street Journal Article and Related Questions

Senator KITCHING: *So I would like you to take this question on notice. I note, Ms Thomson, you've said that there are other pieces of legislation. I am going to send to the secretariat for you, Ms Jackson and Mr Sheehy, a Wall Street Journal article. It examines the US university system and contains a paragraph that I would like you to comment on: When officials at the Texas A&M University System sought to determine how much Chinese government funding its faculty members were receiving, they were astounded at the results—more than 100 were involved with a Chinese talent recruitment program, even though only five had disclosed their participation. That article sort of points to what my question is about. **Would the UFIT guidelines be better if they also incorporated law enforcement action, as other countries have in their version of the UFIT guidelines, so that there were actual consequences if you breached those guidelines? My understanding is that there have been dozens of arrests and hundreds of investigations. So I am interested in what the peak bodies think about whether the UFIT guidelines could be strengthened by having law enforcement included in those guidelines?** I am happy to have that on notice. I will send this Wall Street Journal article to the secretariat to distribute to the witnesses.*

Go8 response

Firstly, the Go8 thanks the Senator for providing a copy of the *Wall Street Journal* (WSJ) article.

The article does contain concerning allegations, although the Go8 notes that most of the cases mentioned have not yet gone to court and therefore remain as allegations. The Go8's understanding is that the "dozens of arrests and hundreds of investigations" referred to by the Senator occurred in the United States.

The Go8 has no knowledge of such numbers in Australia's higher education sector. It is important to recognise that overseas incidents, although they may provide us with a warning to be alert to what could occur, do not automatically mean that they do occur here.

This article points to the fact that Australia is not the only country grappling with such complex issues and how best to address them. While each country's higher education and research systems may differ, the crux of the issues facing us all do remain the same.

The Go8 is in regular contact with our counterpart organisation in the United States, the American Association of Universities (AAU), as we are with the Russell Group in the UK and the Universities 15 in Canada, and we all share copious relevant information to determine best practice approaches.

In fact, while in Washington earlier this year, prior to travel restrictions being imposed, the Go8 met with the US State Department and the Department of Justice to discuss the UFIT approach and *Guidelines*.

The US State Department in particular noted that the aim of their counter-foreign interference measures is not to prevent international collaboration in research – rather it is to protect it, so this important work can continue to the benefit of science and the American people.

This was also noted in a Washington briefing by Christopher Wray, head of the FBI, on the 6 February 2020 which the Go8 attended. Mr Wray noted that:

In this country we value academic freedom, including international collaboration and the benefits we gain from having talented students from abroad – including China – come here to study. We're not going to change the way we are or who we are, but at the same time we've got to be clear-eyed and thoughtful about the threat from China and do everything possible to ensure a level playing field between our two countries.

A transcript of this briefing is publicly available, and we provide a copy of it for The Committee with this response.

The key question we are all grappling with – the US, the UK, Canada and Australia – is how do we ensure the correct balance between having protections in place and still enable the vital International collaborations that are essential to underpin success in a 21st century knowledge-based economy?

The Go8 does not assert that any country has yet identified the perfect answer to this question.

However, feedback received from our international partners, and which Home Affairs has reported to the Go8 it has also received from its overseas counterparts on numerous occasions, is that Australia's approach through the UFIT process and *Guidelines* is well ahead of our partners and genuinely world-leading and revered.

In fact, the US Department of Justice noted to us when the Go8 met with it in February that it was a pleasure to see Australia "at the cutting edge" of such issues.

As the Go8 understands it, Australia's UFIT process has been unique in that it represents a genuinely collaborative partnership between Government departments, security agencies and the higher education sector.

It is this collaborative approach that has enabled the sector to move so quickly on developing the *Guidelines* – completed in just four months – and then progress through implementation, even during a disrupted pandemic year.

The decision as to whether or not the *Guidelines* should incorporate an enforcement component is a matter for Government – however, to do so risks destroying the unique, robust and most of all *trusted* relationship between the sector and Australia's security agencies which is so admired by other Five Eyes nations.

We would risk moving from a proactive, engaged, alert and cooperative sector to one that has enforcement imposed upon it.

As noted in the *Guidelines* themselves, they were designed to "support an environment of trust and confidence across the university sector to guide decision-making based on proportionality of risks and an environment of continuous improvement".

To move from such a collaborative environment to an enforcement one is to put that trust and that collaboration at risk. The Go8 therefore questions whether this would really be the most appropriate response in the national interest?

The Go8 agrees that some of the allegations out of the United States are concerning. However, they are allegations at this point, and Australia is very different to the United States. A good example is the Thousand Talents program raised in the *WSJ* article.

The Go8 has sought the advice of Home Affairs regarding this program – and, as noted in evidence to the Committee – the Go8 has been informed that the program itself is not the issue - what matters is the level of

transparency. The Go8 also set out that Go8 universities have put in place measures to identify anything that could lead to issues and ensure they cannot occur.

We provide two examples:

University of Queensland

The University of Queensland has established four disclosure registers that staff will be required to complete annually: Conflict of Interest; Secondary Employment; Sensitive Research; and Foreign Influence (in planning phase). These registers will ensure, in a proactive manner, that staff are made aware of their obligations, and provide online workflows to senior managers where approvals are required. University-wide reporting of all activities will be available to senior managers. The registers improve visibility and compliance regarding UQ work activities in accordance with UQ policies, community expectations and state and Commonwealth legislation. All academic staff and some very senior professional staff will be required to make a disclosure. UQ consulted with the Commonwealth in the development of this register to confirm the suitability of the approach and confirm the scope of registerable activities.

University of Adelaide

The University of Adelaide has conducted a thorough review of its policies and procedures and is now working on aligning these with the *Guidelines*. The university intends to mandate an annual Foreign Engagement Declaration (FED) by staff of personally arranged foreign engagements through modifications to conflict of interest and professional development review policies/procedures. All newly proposed or to be renewed university-arranged foreign engagements (now including educational offerings) must undergo a Foreign Engagement Compliance Review (FECR) before they are allowed to proceed. Both FED & FECR are managed using online forms and continually updated registries.

The Go8 has also established its own measures. Following the UFIT process and *Guidelines*, the Go8 established a “Go8 Information Management Committee” comprised of the most senior executive from each of our universities who has responsibility for security related matters (such as the Chief Information Officer, or Chief Information and Security Officer, or equivalent).

This new committee exists to provide strategic advice and input to the Go8 Board on matters related to cyber security, interference and influence issues on campus and in our operations. It is also a mechanism to share information and best practice approaches and engage with relevant government departments and agencies as the need arises.

The Go8 will continue to review the structure and actions of this committee to ensure it remains effective at these tasks. We will also continue to engage with our Five Eyes research partners to continually refine our approach.

Question re Research Approval Processes

Senator Kitching : I'm wondering if we could ask the previous panel—that is, Ms Jackson, Ms Thomson and Mr Sheehy—and this panel to give us a flow chart of how they interact if a problem arises or something is brought to their attention. How do they interact? With whom do they interact—not the actual name of the officer, but rather the section in the department? It's just so we can have an understanding of the processes that are currently used, or perhaps not used, in terms of trying to solve any issues that may arise in terms of these agreements or in terms of foreign interference and foreign influence.

As outlined previously, Go8 universities regularly report to and seek advice from a number of Government Agencies and departments. These include the Department of Education, Skills and Employment, Australian Security Intelligence Organisation, Australian Signals Directorate, Attorney-General's Department, Department of Defence, Department of Industry, Science, Energy and Resources through provision of advisory and technical support and the Department of Home Affairs' National Counter Foreign Interference Coordinator.

These relationships are in addition to the internal processes that each of our universities have in place.

Attached for The Committee's benefit, and as requested, is a flow chart which outlines the procedures and various 'check points' that are in place across our member universities.

If there is any other information that we can provide to The Committee, please make contact with us.

As stated in our submission and directly to The Committee, it remains the Go8's strong position that Universities should not be included in this Bill and we again emphasise that it was developed without any consultation with the Group of Eight. It is currently unworkable in its present form.

Yours sincerely,

VICKI THOMSON
CHIEF EXECUTIVE



The Hon Christian Porter MP
Attorney-General

MC18-002653

02 APR 2018

Ms Vicki Thomson
Chief Executive
Group of Eight Australia
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O'CONNOR ACT 2602

Dear Ms Thomson

Thank you for your correspondence of 19 March 2018 regarding your ongoing concerns with the proposed application of the Foreign Influence Transparency Scheme Bill 2017 (FITS Bill) to the Australian university and international education sector. I appreciate the time that you have taken to bring these matters to my attention.

Your letter notes concerns held by members of the Group of Eight Australia that there are a number of unintended consequences for the university sector as a result of the FITS Bill, and that you are disappointed that the issues you have raised previously have not been taken into consideration.

As I understand you discussed with my office, my department's supplementary submissions (submissions 5.1 and 5.2) were provided to the Parliamentary Joint Committee on Security and Intelligence (PJCIS) before these consultation sessions were conducted, on 14 and 23 February 2018, respectively.

I have publicly stated that the Government is open to considering sensible amendments to the FITS Bill. Consideration will be given to all proposed amendments once the PJCIS has concluded its inquiry and released its report and recommendations, which is currently due in April 2018.

I am aware that representatives of the Group of Eight have attended two consultation sessions with representatives from my office and department. These sessions were extremely valuable and brought a number of key concerns to my attention, and I can assure you that the Government is open to considering amendments to refine the application of the Scheme in relation to the higher education sector.

It appears that a significant number, albeit not all, of the concerns held by the Group of Eight about the application of the FITS Bill arise from the inclusion of the paragraph 11(1)(f), which provides that a person undertakes an activity 'on behalf of' a foreign principal if the person undertakes the activity 'in collaboration with' the foreign principal. As my department has indicated in consultations, and in evidence to the PJCIS on 16 March 2018, the structure of this paragraph may require further consideration.

In relation to the substance of the concerns raised in the summary you provided to my office, I have sought to address these below.

Confucius Institutes

Your letter raises concern about how Confucius Institutes will be characterised for the purposes of the scheme and that it may be difficult for universities to determine whether the Institutes are operating for the purpose of exerting political or governmental influence. You have also questioned how the scheme will identify and prevent ‘nefarious’ intents if the activities captured are legitimate.

The purpose of the scheme is to provide the Australian government and public with visibility over the forms and sources of foreign influence in Australia’s political and governmental systems and processes. It is important to emphasise that foreign governments can seek to exert covert influence for purposes that are contrary to our national interest—‘nefarious’ purposes—without breaking Australian law at present. As the Director-General of Security stated in evidence to the PJCIS on 16 March 2018, foreign governments closely examine our legislative frameworks and actively seek to structure their espionage, foreign interference and covert influence activities to exploit gaps in our legislative framework. The FITS Bill, containing the registration scheme coupled with investigative powers for the Secretary of my department and enforcement mechanisms, forms part of a multi-faceted response to this challenge.

In the case of Confucius Institutes, the question of how their purpose is characterised and whether that purpose will translate to a registration requirement under the scheme will ultimately be a question of fact; it will depend upon the nature of the activities the Institute undertakes, whether the Institute undertakes those activities on behalf of a foreign principal—and, if so, the identity of the foreign principal—and the purpose for which the activities are undertaken. This will depend on all of the facts and circumstances. My department, which will administer the scheme, will be happy to assist potential registrants to determine whether registration is required in a particular case.

Proposal to delay introduction of legislation pending consultation

The Government has referred the Bill to the PJCIS for public inquiry and report, consistent with this Government’s practice for the previous nine tranches of national security legislation. I look forward to receiving the PJCIS’s report, which I anticipate will contain recommendations informed by the submissions and evidence that the PJCIS has received—including from the Group of Eight. As I have indicated above, the Government will consider any and all amendments recommended by the PJCIS.

Exemption for academic activities

In their submissions to the PJCIS, both the Group of Eight and Universities Australia recommended an exemption for academic activities, with Universities Australia specifically referring to the FARA exemption.

While I understand that, in discussions with my office, you have indicated that you may no longer be seeking an exemption of this kind, as I have stated publicly, the Government does not propose to introduce exemptions for entire sectors, industries or professions into the Bill. To do so would be to undermine the fundamental purpose and objective of the scheme. The Director-General of Security, Duncan Lewis AO DSC CSC, emphasised the risks of broad exemptions in his evidence to the PJCIS on Friday, 16 March 2018, in particular in relation to activities at the most harmful end of the spectrum where foreign intelligence services seek to exploit gaps in our legislative framework to

undertake influence operations. ASIO is actively concerned that tertiary institutions are targets of espionage and foreign interference, and a vector through which foreign influence can be exerted.

More broadly, as my department stated in their supplementary submission, registration by academics (where they are engaged in lobbying, communications or donor activities on behalf of a foreign principal and for the purpose of political or governmental influence) is useful information for decision-makers and the public. It provides transparency about the influences behind the positions being advanced by the academic in relation to a particular decision or process.

However, I am open to sensible refinements to the Bill, to ensure that the registration obligations are appropriately targeted, and are proportionate to the transparency objective of the scheme.

Removal of 'in collaboration with' from section 11

As noted above, my department has acknowledged that further consideration needs to be given to the definition of 'in collaboration with' in section 11. The Government will consider amendments in the context of responding to the PJCIS's recommendations.

Regulatory and financial burden of registering under the scheme

You have raised concerns about the potential regulatory burden of the scheme on the sector, in particular if Group of Eight universities were required to pay a registration fee for every incidence of international collaboration on research.

In its supplementary submission and also in evidence given to the PJCIS, the department has stated that it does not expect that the universities will be required to register every instance of research collaboration, as it is unlikely that the research activities would be for the purpose of political or governmental influence, as defined at section 12 of the FITS Bill.

The Government is open to sensible amendments to ensure that the regulatory burden arising from registration obligations under the scheme is proportionate.

Proposal for an expanded exemption for legitimate business dealings and development to be included in the Bill to cover the operations of non-profits such as universities

You have proposed that the exemption provided for in section 29 of the FITS Bill should be extended to cover the operations of not-for-profit organisations, such as universities.

As a preliminary point, the exemption in section 29 would be available to universities in the same terms that it would be available to other entities. More substantively, as noted above, the scheme will only apply to a person who has a registrable arrangement with, or undertakes registrable activities on behalf of a foreign principal. My department advises that many of the examples provided in the Group of Eight and Universities Australia submission are not expected to meet the threshold for registration under the scheme as they are not registrable activities, are not undertaken on behalf of a foreign principal, or are not activities that are undertaken for the purpose of political or governmental influence. My department would be happy to discuss specific examples with you further, with a view to providing me with advice about whether there are specific activities of universities that may require further consideration in this context, and the extent which

the removal of ‘in collaboration with’ in paragraph 11(1)(f), as mentioned above, would mitigate this issue. My department would also be available to assist potential registrants to determine whether registration is required in particular cases, following the commencement of the scheme.

Proposal that legitimate advocacy on behalf of international students and other vulnerable groups be exempted

Your letter raises the question of whether the scheme should apply an exemption for legitimate advocacy on behalf of international students and other vulnerable groups. The Universities Australia submission to the PJCIS raised this issue, noting that the scheme may inadvertently capture international students as foreign principals.

Both of the department’s supplementary submissions note that the intention of the scheme is not to capture representations made in relation to an individual and that it may be desirable for a further, targeted exemption to be included in the FITS Bill to cover these types of situations.

Registration and reporting requirements under the scheme

Your letter points to the registration and reporting requirements under the scheme, in particular that the fee regime is unclear and that record-keeping obligations will have an effect on registrants and points to a section in the department’s supplementary submission that discusses the issue of fees.

The department’s supplementary submission states that a ‘small fee will apply to the reporting requirement, anticipated to be less than that charged for registration under the US FARA’. This sentence contains an error. The small fee will be attached to the registration requirement and not to the reporting requirement, as stated in the submission. My department apologises for this error and I regret any confusion it has caused.

The actual amount that will be charged for registration and annual registration renewal has not yet been set. However it is anticipated that to be less than that charged for registration under FARA (which is currently US\$305 per application and for each mandatory six month supplemental statement). All charges that will apply under the scheme will be set in accordance with the Australian Government Cost Recovery Guidelines and will be reviewed annually.

As you note in your letter, the scheme will impose record keeping obligations on registrants. To achieve the transparency objectives of the scheme, certain information relating to a person’s registration must be collected and a person will be required to keep records relating to registrable activities for a certain period.

I note the concerns that you have raised and will consider them in the context of the PJCIS report.

The scope of the term ‘on behalf of’

You have asked how the scope of the term ‘on behalf of’ will apply to certain university activities. In particular, you have queried how the Group of Eight would be able to demonstrate that certain lobbying activities were coincidentally aligned with the interests of a foreign principal, rather than falling within the definition of being on behalf of that

foreign principal. The example used is where the Group of Eight may lobby the government for a fast track of a visa for a visiting scholar to facilitate an academic exchange.

For section 11 to apply to an activity, there needs to be a connection between the activity being undertaken by the person, and the foreign principal. Specifically, the activity must be being undertaken either under an arrangement with the foreign principal, in the service of the foreign principal, on the order or at the request of a foreign principal, under control or direction of the foreign principal, with the funding or supervision of the foreign principal or in collaboration with the foreign principal.

As noted in the department's supplementary submission, where an activity is undertaken that may benefit the foreign principal, but where that principal has not actively sought or overseen the activities, then registration may not be required. The department would be available to assist potential registrants to determine whether registration is required in particular cases.

In the unlikely event that it was alleged that a university had failed to register in such a circumstance, and that enforcement action were taken, it would be a matter for the prosecution to prove beyond reasonable doubt that the university:

- knew that it was required to apply for registration under the scheme in relation to the foreign principal; and
- intentionally or recklessly failed to do so.

As noted above, the department has also indicated that the intention of the scheme is not to capture representations made in relation to an individual and that it may be desirable for an exemption to be included in the FITS Bill, which may assist in such situations.

Application of the scheme to universities and academics

You have stated that the department's response to questions about the application of the scheme to universities and academics does not provide sufficient clarity as to whether lobbying efforts using the results of research would be registrable activities.

As my department has stated, registration would be required, if the funding provided to a university or research institute by a foreign principal, and that funding was conditional on the university or research institute 'produc[ing] research to be used to lobby the government on a particular topic'. That is to say, registration would be required if the funding was conditional on lobbying being undertaken. I accept that this situation may rarely arise in relation to academics who comply with the *Australian Code for the Responsible Conduct of Research*, compliance with which is, amongst other things, a condition of funding by the Australian Research Council and National Health and Medical Research Council). Accordingly, I expect that academics would rarely be required to register on this basis.

Comparatively, registration would not be required where funding is provided for general operating expenses (including the costs of undertaking research) and a decision is subsequently taken by the university, research institute or individual academic to lobby the government in relation to the outcomes of that research.

Thank you again for bringing your concerns to my attention. I look forward to continuing to work constructively with you as this process continues.

Yours sincerely

The Hon Christian Porter MP
Attorney-General

TRANSCRIPT

SHARE

FBI Director Christopher Wray's Opening Remarks: China Initiative Conference

February 6, 2020

Christopher Wray: Well, thanks, John. And I want to add my thanks to those of others to CSIS for hosting this event and for all you to do educate policymakers and the public.

You've just heard a pretty sobering presentation from Bill about some of the costs and the impact of this threat. I will tell you from my lens, having been FBI Director for over two years now and having had to confront what I would argue is a wider than ever array of challenging threats, this one to me really stands out as the greatest long-term threat to our nation's information and intellectual property, and to our economic vitality.

And this is a threat, as I think you heard from Bill, not just to our economic security, but by extension to our national security. And I believe that to respond to the China threat more effectively we need to better understand several key aspects of it. So, what

I thought I'd try to do is help further set the table for today's presentations and give you a little bit of a window into how the FBI sees the threat and how we're dealing with it.

The first thing I think we need to understand about the threat from China is just how diverse and multilayered it is. And I say that in terms of its techniques, its actors, and in its targets. China is using a wide range of methods and techniques. And I'm talking about everything from cyber intrusions to corrupting trusted insiders. They've even engaged in outright physical theft. And they've pioneered an expansive approach to stealing innovation through a wide range of actors, including not just Chinese intelligence services but state-owned enterprises, ostensibly private companies, certain kinds of graduate students and researchers, and a whole variety of other actors all working on their behalf.

But it's also a diverse threat when it comes to the sectors and sizes of China's targets here in the U.S. We're talking about everything from Fortune 100 companies to Silicon Valley startups, from government and academia to high tech, and even agriculture. Even as I stand here talking with you today, the FBI has about a thousand investigations involving China's attempted theft of U.S.-based technology in all 56 of our field offices and spanning just about every industry and sector.

They're not just targeting defense-sector companies. The Chinese have targeted companies producing everything from proprietary rice and corn seeds to software for wind turbines to high-end medical devices. And they're not just targeting innovation and R&D. They're going after cost and pricing data, internal strategy documents, bulk PII; really just about anything that can give them a competitive advantage.

They're also targeting cutting-edge research at our universities. Just last week, for example, we announced charges against the chairman of Harvard's chemistry department for false statements related to a Chinese talent plan and a PLA officer at Boston University for concealing her military ties. In December, we arrested a Chinese researcher for smuggling vials of stolen biological research.

Now, all three of those cases were just investigated by one of our field offices, one of our 56 field offices, the Boston field office, in about a month. So, it gives you a taste of what we're dealing with. And you'll hear more about some of these cases later this morning. But in sum, the Chinese government is taking an all-tools and all-sectors approach, and that depends on our end our own all-tools and all-sectors approach in response.

The second thing I think we really need to understand about this threat is the scope of China's ambitions, which are no secret. You heard a little bit about that from Bill already. To be clear, this is not about the Chinese people as a whole, and it sure as heck is not about Chinese Americans as a group. But it is about the Chinese government and the Chinese Communist Party.

The Chinese government is fighting a generational fight to surpass our country in economic and technological leadership, but not through legitimate innovation, not through fair, lawful competition, and not by giving their citizens the freedom of thought and speech and creativity that we treasure here in the United States. Instead they've shown that they're willing to steal their way up the economic ladder at our expense.

In recent decades, China has grown its economy rapidly by combining low-cost Chinese labor with Western capital and technology. But China's leaders know they can't rely on that model forever. To surpass America, they need to make leaps in cutting-edge technologies.

Last March, at a Communist Party gathering, Chinese Premier Li made that understanding pretty clear. He said, and I quote, our capacity for innovation is not strong and our weakness in terms of core technologies for key fields remains a salient problem.

To accomplish the breakthroughs they seek, China is acquiring intellectual property from America and innovation by any means necessary. We see Chinese companies stealing American intellectual property to avoid the hard slog of innovation and then using it to compete against the very American companies they victimize; in effect, cheating twice over.

Part of what makes this threat so challenging is that the Chinese are using an expanding set of nontraditional methods, both lawful and unlawful – so blending things, on the one hand, like foreign investments and corporate acquisitions with, on the other hand, things like cyber intrusions and espionage by corporate insiders. Their intelligence services also increasingly hire hacking contractors who do the government's bidding to try to obfuscate the connection between the Chinese government and the theft of our data.

The Chinese government is clearly taking the long view here, and in many ways, that's an understatement. I would argue they've made the long view an art form. They are calculating, they are persistent, they are patient.

The third thing we need to remember about this threat is that China has a fundamentally different system than ours, and they are doing all they can to exploit the openness of ours. Many of the distinctions that we hold dear and that are so ingrained in the way we operate in this country are blurred – if they exist at all – in China. I'm talking about distinctions between the Chinese government and the Chinese Communist Party, distinctions between civilian and military sectors or uses, distinctions between the state and their business sector. For one thing, many large Chinese businesses are state-owned enterprises – literally owned by the government and thus the party. And even where not formally owned, they are legally and practically beholden to the government in a very tangible way, and you've heard a little bit about that from Bill just a few minutes ago.

And you don't have to take my word for it; you can take theirs. China, as you heard, has national security laws that compel Chinese companies to provide their government with information and access at their government's request. And virtually all Chinese companies of any size are required to have Communist Party cells inside them to make sure that those companies stay in line with the party's principles and policies. Try to wrap your brain around something like that happening in our system. You can't.

Unfortunately, it's a similar story in the academic sphere. The Chinese government doesn't play by the same rules of academic integrity and freedom that the U.S. does. We know they use some Chinese students in the U.S. as nontraditional collectors of our intellectual property. We know that through their Thousand Talents Plans and similar programs, they try to entice scientists at our universities to bring their knowledge back to China, even if that means – even if that means stealing proprietary information or violating export controls or conflict-of-interest policies to do so. And we know they support the establishment of institutes on our campuses that are more concerned with promoting Communist Party ideology than independent scholarship. We also know that they pressure Chinese students to self-censor their views while studying here and that they use campus proxies to monitor both U.S. and foreign students and staff. And last, we know that they use financial donations as leverage to discourage American universities from hosting speakers with views the Chinese government doesn't like.

So, whether we're talking about the business world or the academic world, it is crucial that we acknowledge and understand these differences between our two systems because China is doing everything, they can to turn those differences to their advantage. Obviously, they're exploiting our open academic environment for research

and development. They are exploiting American companies' openness for foreign investment and partnership, and they are acquiring U.S. firms to gain ownership of what those firms have created.

Meanwhile, they take advantage of their own system being closed. They often require our businesses to put their trade secrets and their customers' personal data at risk as the cost of gaining access to China's huge market. And they make American joint ventures operating in China establish those Communist Party cells within their companies.

This government control over our joint ventures has become so common that a lot of American companies don't even really stop to think about it. But if these companies want to protect their information, they sure better be thinking about it. They should also be thinking about what it means to operate in an environment where a major IT provider like Huawei with broad access into so much that U.S. companies do in China has been charged with fraud, obstruction of justice, and theft of trade secrets. There's no reason for any U.S. company working in China to think that it's safely off-limits. So, understanding the Chinese counterintelligence threat better will help us respond to it more effectively.

As I described, China is taking a multifaceted response, so we've got to have a multifaceted response on our end. Our folks at the FBI and DOJ are working their tails off every day to protect our nation's companies, our universities, our computer networks, and our ideas and innovation. To do that we're using a broad set of techniques, from our traditional law enforcement authorities to our intelligence capabilities. And you'll hear more about that in the panels later this morning, but I'll briefly note that we're having real success and real impact.

With the help of so many of our foreign partners, we've arrested targets all over the globe. Our investigations and prosecutions have exposed the tradecraft and techniques the Chinese are using, raising awareness of the threat and our industries' defenses. They also show our resolve and our ability to attribute these crimes to those responsible. We've seen how our criminal indictments have rallied other nations to our cause, which is crucial to persuading the Chinese government to change its behavior.

We're also working more closely than ever with partner agencies here in the U.S. and with our partners abroad. We've got a whole host of tools we can use, from criminal charges and civil injunctions to things like economic sanctions, entity listings, visa

revocations. We're also working with CFIUS – the Committee on Foreign Investment in the United States – in its review of foreign investments in American companies that produce critical technologies or collect sensitive personal data of U.S. citizens.

But we can't do it on our own. We need a whole-of-society response with government and the private sector and the academic sector all working together. That's why we in the intelligence and law enforcement communities are working harder than ever to give companies and universities the information they need to make informed decisions on their own to protect their most valuable assets.

Through our Office of Private Sector, the FBI has stepped up our national outreach to spread awareness of this threat. For example, we're holding conferences for members of our DSAC – our Domestic Security Alliance Council – where we share information with Fortune 1000 companies about China's continued efforts to steal intellectual property. We also now have private-sector coordinators in each of the FBI's 56 field offices who lead our engagement with local businesses and universities. We're meeting with these partners frequently, providing threat awareness briefings, and helping connect them to the right people in the FBI on any concern.

Our Office of the Private Sector also engages with a variety of academic associations on the China threat, including the American Council on Education, the Association of American Universities, and the Association of Public and Land Grant Universities. Just last October at FBI Headquarters we hosted an academia summit where more than 100 attendees discussed how the academic community can continue to work with the FBI and other federal agencies to tackle national security threats on our campuses.

All of this outreach is geared towards helping our partners take the long view and preventing our openness from being exploited. In this country we value our open free-market system, including the way it attracts international investment and talent to our country. In this country we value academic freedom, including international collaboration and the benefits we gain from having talented students from abroad – including China – come here to study. We're not going to change the way we are or who we are, but at the same time we've got to be clear-eyed and thoughtful about the threat from China and do everything possible to ensure a level playing field between our two countries.

So the FBI is encouraging our business and academic partners to keep that long view in mind when engaging with China. We're asking executives and boards of directors to carefully consider who they choose to do business with and who they make part of their supply chains. A decision to enter into a joint venture or contract with a

particular vendor might look good to them in the near term, might make a lot of money today, might sound great on the next earnings call, but it might not look so hot a few years down the road when they find themselves bleeding intellectual property or hemorrhaging some of their most sensitive data.

We're also encouraging universities to take steps to protect their students from intimidation or control by foreign governments and to give them ways to report such incidents. We're urging universities to seek transparency and reciprocity in their agreements with foreign institutions, and to do their due diligence on the foreign nationals they allow to work and study on their campuses.


Finally, we're asking our private sector and academic partners to reach out to us if they see something that concerns them. And we're going to keep working to build trusted relationships with them so that they know with confidence that we're here to help.

Let me close by making one thing clear: confronting this threat effectively does not mean we shouldn't do business with the Chinese, does not mean we shouldn't host Chinese visitors, does not mean we shouldn't welcome Chinese students or coexist with China on the world stage. But what it does mean is that when China violates our criminal laws and well-established international norms, we are not going to tolerate it, much less enable it. The Department of Justice and the FBI are going to hold people accountable for that and protect our nation's innovation and ideas.

Thanks for having me here today. (Applause.)

(END)

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Relationships with Government agencies and departments

A range of **Australian Government agencies support the university sector**, including: Department of Home Affairs' National Counter Foreign Interference Coordinator, Department of Education, Australian Security Intelligence Organisation, Australian Signals Directorate, Attorney-General's Department, Department of Defence, Department of Industry, Science, Energy and Resources through provision of advisory and technical support. This work occurs **at the level of institution and across the sector** through guidelines and the University Foreign Interference Taskforce.

Academic freedom and researcher ethics

Universities are **committed under legislation** to undertake research (pure and applied) to benefit local, national and international communities, and promote culture of free inquiry.

Individual researchers determine **the scope and area of research interest**.

All researchers and research activities are conducted in accordance with the highest ethical standards, including complying with the **Australian Code for the Responsible Conduct of Research and HESA standards**.

All researchers and research activities must comply with **universities' research policies** (i.e. Responsible Conduct of Research Policy, Ethical Research and Approval Policy, Intellectual Property Policy etc).

Research and education arrangements

Standard domestic research and education agreements are reviewed and endorsed by **universities' research offices / contract management offices** or equivalent.

Non-standard research and education agreements additionally reviewed by universities' **Office of General Counsel and referred to other compliance checks where necessary**.

International research contracts are assessed for **foreign exchange risk and international tax withholding**, and additionally reviewed by international offices or equivalent.

Comprehensive **delegations framework** in place to approve research, education or consultancy agreements. This is usually done through contracting/legal and financial delegations, which vary institution to institution.

Significant, major, research, education or consultancy agreements, that exceed management delegations, may be additionally **referred to universities' governing bodies**.

Foreign relations, Defence Trade Controls and security Checks

When a research technology agreement is sent to the university's research offices, it will be checked against the **Defence Strategic Goods List online search and Export Controls Activity questionnaire**.

When research technology subject to controls, University applies for **permit from Defence Expert Controls** OR if research technology not subject to controls, researcher pursues activity. Only **University Research Office registered to apply for permits**.

University research offices or equivalent **brief researchers** under the Act and obligations.

University research offices **also undertake weekly reviews** of sanctioned countries as proactive practice.

Other international agreements (including MoUs, student mobility programs, scholarships)

Preliminary discussion between faculty / area with support of university's international offices to **develop proposal**.

Preliminary review of proposal with Associate Dean (International) in faculty and/or with university's international offices depending on scope of proposal.

Conduct **due diligence risk assessment** including legal, financial, quality, TEQSA/compliance, strategy.

University international office coordinates the **development of draft agreement** with faculty / area with support of Office of General Counsel as required, and executes.

Formal agreements **recorded on international agreements database** and reviewed periodically by university international offices.

All research activities, collaborations and agreements underpinned by **Guidelines to counter foreign interference in the Australian university sector** and complies with **Foreign Influence Transparency Scheme Act**