



Submission on the Foreign Influence Transparency Scheme Act 2018

November 2021

Introduction

UNSW Sydney welcomes the opportunity to contribute to the review of the *Foreign Influence Transparency Scheme Act 2018* (FITS). This submission provides UNSW's feedback on the implementation and effectiveness of the FITS, offered in support of UNSW's commitment to protecting Australia's national interests and economic advantage through higher education and research outcomes.

UNSW acknowledges the value of a transparency scheme to register certain activities taken on behalf of a foreign principal. By its nature, foreign influence should be transparent and open to public understanding and scrutiny, or it risks the kind of opacity which is more characteristic of inappropriate foreign interference. This is particularly important to the function of advocacy for political or economic outcomes, and related communications and disbursement activity as described by the Act, when conducted on behalf of a foreign principal.

UNSW supports the goals of the FITS, but believes greater clarity is required. International collaboration is central to many of Australia's most promising research undertakings, and partners are often foreign government-related entities. UNSW recognises the importance of countering foreign interference at universities, and as such, supports the proper deployment of regulations such as the Foreign Arrangements Scheme (FAS) and the recently refreshed University Foreign Interference Taskforce (UFIT) Guidelines, both of which are being implemented into the core functions of UNSW operations. However, the application of the FITS to the university sector does not provide any additional valuable information about a university's foreign arrangements or activities which would not be captured by other compliance mechanisms, and diverts resources away from educating students and undertaking research in favour of regulatory compliance activities.

UNSW encourages further work to be undertaken between government and the university sector, within the remit of the UFIT, to develop an understanding of exactly how the FITS may apply to the university sector, and how it can complement rather than duplicate, burden or obstruct other foreign interference regulatory efforts.

Implementation

UNSW has had one substantive interaction with the FITS framework. In January 2021, UNSW received a notice to produce from the Attorney-General's Department, issued under subsection 46(2) of the Act

requiring information about the Confucius Institute at UNSW. The request was focused on documents surrounding the founding agreement and the operation of the Confucius Institute and associated entities. A letter containing these details was provided in response in March 2021, with no further correspondence on the matter. This has been UNSW's only substantive interaction with the Act, and it is our understanding that for many universities, it has been the only interaction they have had with the FITS.

The obligations of UNSW under the Act are not sufficiently clear to allow the implementation or operationalisation of the FITS in a meaningful or sustainable manner. Greater clarity is needed for some of the legislation's core concepts, including:

- The categories of 'communications' and 'disbursement' activities as defined by the Act; and,
- The conceptualisation of 'purpose' underpinning activities.

Clarification of these concepts is important for universities to understand the circumstances where it may need to register as an agent of a foreign principle, for example in making applications for government funding of projects where international collaboration is involved; or in making applications for foreign student visas.

Effectiveness

Given the difficulties in implementation, it is no surprise that in the view of UNSW, the effectiveness of the FITS is limited. Overall, the applicability of the FITS is uncertain.

Since it came into force, there have been significant developments addressing the issue of foreign interference in universities— namely the FAS and the UFIT Guidelines, each of which were developed following lengthy collaboration between universities and government specifically to address foreign interference risks with actions appropriate to those particular risks. These subsequent policies are more suited to the kinds of foreign interference scenarios which government has described as applying to the higher education sector. For situations where the government has concerns about arrangements with foreign entities, arrangements are captured and reported to government in the FAS compliance process. This was the case with the example cited earlier, of the Confucius Institute, where the Foreign Minister has significant powers to cancel the underpinning agreements if they determine the arrangement conflicts with Australia's national interests.

Recommendations

Recommendation 1: *The Act should be amended to clarify the categories of 'communications' and 'disbursement' activity, and how 'purpose' relates to regular university activities, such as applying for government grants and foreign student visas explicit, and which clarifies the applicability of the Act to the university sector.*

Recommendation 2: *UFIT should convene a joint working group of government and university representatives to explore how the FITS applies to the higher education environment, and how it can be made to complement rather than duplicate, burden or obstruct other foreign interference frameworks.*

Conclusion

In its current form, the application of FITS to the university sector is unclear, and the improvements it seeks to make to university transparency are already better addressed via the reporting of foreign arrangements which universities are a party to, via the Foreign Arrangements Scheme and the enhanced due diligence processes described in the UFIT Guidelines.

UNSW is an active participant in the UFIT process, and has contributed significantly to its development, including providing leadership of one of the working groups on enhanced due diligence. UNSW is currently working to implement the recently released version of the UFIT Guidelines, and believes the collaborative process by which these Guidelines were developed has the greatest chance of success in strengthening the Australian university sector's counter foreign interference framework. UNSW has also taken extra steps to appoint a dedicated Special Advisor on foreign interference, and a committee of senior university stakeholders to oversee foreign interference matters. We continue to work closely with federal government agencies to ensure our operations are always in line with the national interest, and to ensure our students, staff and research are protected.

Thank you once again for the opportunity to provide this submission. Should you wish to discuss any issue raised in this submission further, please feel free to contact the UNSW Special Advisor (International Engagement & Compliance), [REDACTED]

