

SUPPLEMENTARY SUBMISSION TO PJCIS INQUIRY INTO THE FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

14 June 2018

Universities Australia welcomes the opportunity to provide a supplementary submission to the Parliamentary Joint Committee on Intelligence and Security's Inquiry into the *Foreign Influence Transparency Scheme Bill 2017* (the Bill). Universities Australia is the peak body representing Australia's 39 comprehensive universities in the national interest.

BACKGROUND

In our initial submission and evidence to the Committee on the Bill, Universities Australia outlined concerns that the scheme, as proposed, would have excessively broad capture. This could interfere with:

- university academics conducting research and publishing their results in collaboration with international partners;
- university staff assisting vulnerable groups, such as international students and temporary migrant workers, in their dealings with Government, and
- universities pursuing opportunities with international partners for joint schemes in research, teaching and knowledge transfer.

These concerns were centred around several elements of the Bill's threshold for registration under the scheme. Under the original scheme, an Australian entity was required to register if they undertook lobbying or communications activity on behalf of a foreign principal for the purpose of political or governmental influence. These elements gave rise to excessively broad capture, as:

- 1) the definition of a '*foreign principal*' included anyone who was not an Australian citizen or permanent resident, including those with no connection to foreign political interests;
- 2) the definition of '*acting on behalf of*' included 'in collaboration with' and 'with funding or supervision by' the foreign principal, and
- 3) *political or governmental influence* was a purpose of the lobbying or communications activity, which could cover a wide range of policy-relevant research activities that had little to do with influencing the course of politics.

Universities Australia had been concerned that such excessively broad capture would potentially force thousands of researchers and university staff members to curtail or register their legitimate international collaborations and other activities that had no relation to the influence of a foreign principal on the Australian polity.

This would have imposed a very serious regulatory burden, as well as damaged Australia's efforts (supported by Australian Government policy and programs) to enhance the international connectivity of Australia's research sector.

THE PROPOSED AMENDMENTS

The Government's proposed amendments make the following changes:

Foreign principals: The definition of foreign principal is amended such that individuals are not foreign principals unless they are under a substantial obligation or expectation to act in the interests of a foreign government. This would exclude international students and foreign workers going about their normal activities in Australia, meaning that representations or advocacy on their behalf would not be a registrable activity.

Purpose of activity: The proposed amendments would change section 12 to reflect that an activity is an '*activity for the purpose of political or government influence*' only if a sole, principal or substantial purpose is to influence decisions or processes of the Government or political processes or institutions. This means that in situations where the communication or dissemination of research conducted in partnership with an international collaborator, the academics involved would not be required to register where any policy-relevant commentary or dissemination of research findings (including to Government) was a secondary or incidental purpose of the activity.

'On behalf of': The proposed amendments remove 'collaboration' or 'with funding or supervision by' from the types of arrangement that might constitute 'on behalf of'. This should mean that ordinary collaborations between researchers should not give rise to a requirement to register, nor an arrangement of funding from a foreign principal, in the absence of an expectation that registrable activities would be undertaken on behalf of the foreign principal.

Universities Australia supports the Government's proposed amendments, which should better target the scheme. This will remove the need for many thousands of unnecessary registrations to be made by academics collaborating with international partners, which would have placed a large compliance burden on universities and diluted the usefulness of the scheme to the Government.

Recommendation 1:

Universities Australia recommends that the Committee supports the Government's proposed amendments to the Bill.

FURTHER CONSIDERATIONS

'Under arrangement with':

Universities Australia supports the comments of Professor Anne Twomey, who notes that 'under an arrangement with a foreign principal', where *arrangement* is defined to '*include... a contract, agreement, understanding or other arrangement of any kind, whether written or unwritten*' could still cover the types of collaboration or partnerships undertaken by universities with international universities or other parties.

Universities Australia notes that the practical effect of the amendments to section 12 (activity for political or governmental purpose) would be that these partnerships would not trigger the scheme unless the arrangements were for the principal, sole, or substantial purposes of influencing Australian government or political processes. However, it would still be useful to ensure that 'under an arrangement with' more closely reflects the intended targeting of the scheme – that is, where the foreign principal exercises some control or direction, through the arrangement, to lobby or conduct communications activities in its interest.

Universities Australia also notes that there may be some instances under which university representatives may speak with parliamentarians regarding a joint scheme or opportunity. This activity is registrable if undertaken 'on behalf of' a foreign principal, regardless of the purpose. Therefore, we would suggest that it

is important to distinguish those situations where an ‘arrangement’ exists with an intention on behalf of the foreign principal to have an Australian proxy act in the interests of the foreign principal, from those situations where an Australian entity acts in its own interests, albeit whilst having a partnership with a foreign entity. It seems that Professor Twomey’s suggestion would be a simple way of achieving this.

Recommendation 2:

Universities Australia recommends that the Committee supports Professor Twomey’s suggestion that ‘under an arrangement with’ be more closely defined to cover those situations where a foreign principal exercises some control or direction through the arrangement to conduct registrable activities.

Implementation of the scheme – learning from previous experience

Should the amended Bill pass the Parliament, we understand that there will be an implementation period of up to 12 months before the scheme becomes operational. Universities Australia has been encouraged by the constructive approach of the Attorney-General’s Department in their discussions about the scheme, and their intention to consult on the details of implementation of the scheme.

Universities Australia would encourage the Government to look to the experiences of the implementation of the *Defence Trade Controls Act 2012*, which is now operational. After a difficult beginning, the process of legislative improvement in 2015 has led to a workable scheme, with which universities are proactively complying.

In the current review of the scheme, the university sector has noted the effective role played by the regulator (the Defence Export Controls Office) in assisting universities to understand and comply with their obligations under the scheme. Members have noted the helpful and professional attitude of the regulator’s staff, who have made it significantly easier to comply with the scheme, particularly with their provision of specialist advice on matters related to the control scheme.

We would strongly suggest that a similar approach could work well in the implementation of this scheme, particularly the provision of a dedicated contact point with ready access to advice on compliance. This would have the advantage of making the scheme more effective through reducing barriers to compliance.

Recommendation 3:

Universities Australia recommends that should the scheme become law, the responsible Department looks to the experience of the implementation of the *Defence Trade Controls Act 2012* to assist with an effective and efficient roll-out.