

Senate Foreign Affairs, Defence and Trade Legislation Committee
Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and
Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments)
Bill 2020

QUESTION ON NOTICE / Verbal

**1 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
and Australia's Foreign Relations (State and Territory Arrangements) (Consequential
Amendments) Bill 2020 - 13 October 2020**

Senator Janet Rice

Question

RICE: Basically it was: there was a criticism that how this legislation interacts with other legislation and other schemes is not well articulated. So is that going to be forthcoming as well?

NEWNHAM: Yes. I note that that has been a line of concern from a number of stakeholders—potentially, the overlap here. We've looked through those other frameworks at the stakeholders that are affected, the mandates of those frameworks and the outputs of those frameworks. I would just come back again to the test, at the top of the objectives of this bill, being consistency with foreign policy and foreign relations. That is not the mandate of UFIT, the University Foreign Interference Taskforce. It is not the mandate of defence export controls. They are different mandates, starting from different positions. The stakeholders impacted by this scheme, as I've mentioned before, are states and territories and their entities: universities, local governments—again, a different range of stakeholders from those other frameworks. And the outputs, in terms of the transparency in consultation requirements, again are distinct from those other frameworks that exist. If your question, though, goes to how they will interact with each other, our expectation is that from time to time they'll be highly complementary of one another and information gained by a certain process may well be relevant elsewhere. I'm not sure I've answered your question exactly. We do see that level of complementarity, minimal duplication of what's already in existence and the potential for this framework to bolster what is already in existence, but not with unnecessary duplication.

RICE: Maybe you could take on notice actually articulating those relationships—how they do and don't interact with those other schemes—if you feel there is minimal duplication, because that certainly isn't clear to a lot of the people we have heard evidence from today.

NEWNHAM: Thank you. I guess I would just say we've looked at, for example, UFIT, the University Foreign Interference Taskforce—the mandate of that framework, the stakeholders that are caught by it and the outputs of that framework. There are, to be honest, quite different starting points for the work of that group. We've looked at the Defence Export Controls, which of course do have, from time to time, foreign policy considerations. But again none of them line up with the test that is applied in this framework, the stakeholders to which it applies or the transparency schemes, and again I would come back to judgements being made about written arrangements between governments. This is not, in any way that we can see, overlapping with, as I said, the

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mandates that exist elsewhere. I'm happy to take it on notice but I'm not sure we can better articulate that. But I want to make sure I've understood the question.

RICE: Yes, I think you have. I'll leave that one there.

Answer

Please refer to Hansard.

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**2 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Tim Ayres

Question

NEWNHAM: There is the sense of the overall government position of China in relation to the BRI and then there are specifics about the infrastructure needs around the Indo Pacific region and the sorts of infrastructure projects that might have, as I said, all of those requirements which I mentioned a minute earlier about debt burdens, genuine need and so forth. I think it's important to recognise the difference between macro-level endorsement of a concept of something and then to recognise that in certain circumstances, on a case-by-case basis, that infrastructure projects may have merit and that Australian company engagement in those projects in those circumstances could be a positive development.

AYRES: I asked you too broad a remit for a question on notice about engagements of state and territory governments. But can I ask you to provide on notice a list of the times in which the department communicated the policy position that you just outlined to the Victorian government over the course of 2018?

NEWNHAM: I'm happy to take that on notice.

Answer

Our records indicate that DFAT communicated the Commonwealth's position specifically on the BRI to the Victorian Government four times in 2018. We believe that BRI-related issues were also likely to have been raised incidentally in the course of numerous discussions conducted by other DFAT officials that covered a range of issues.

Date
5 February 2018
7 May 2018
18 June 2018
27 June 2018

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**3 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Tim Ayres

Question

AYRES: I have a couple of quick questions about the legislation itself. What other agencies were involved and/or consulted with in drafting the legislation?

NEWNHAM: In the course of the policy development, I don't have to hand the entire—a range of— Senator

AYRES: Can you provide that on notice for us?

NEWNHAM: I'll take that on notice.

Answer

The following departments and agencies have been involved in, or consulted in the course of, drafting the legislation:

- Attorney-General's Department
- Australia Security Intelligence Organisation
- Department of Defence
- Department of Education, Skills and Employment
- Department of the Prime Minister & Cabinet
- Department of Finance
- Department of Health
- Department of Home Affairs
- Department of Industry, Science, Energy and Resources
- Department of Infrastructure, Transport, Regional Development and Communications
- Office of National Intelligence
- Treasury.

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**4 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
and Australia's Foreign Relations (State and Territory Arrangements) (Consequential
Amendments) Bill 2020 - 13 October 2020**

Senator Tim Ayres

Question

AYRES: Was the department tasked with a deadline to complete the legislation and, if so, what was it?

NEWNHAM: Bear in mind, of course, that the department was heavily engaged. But a number of departments were heavily engaged then in the process; it wasn't unilaterally or solely handled by the department. As for the time line that it was working towards, I could not be sure. I know that folks had an eye to the sitting schedule of parliament and the remainder of the time left in the course of this year. I think there was a sense of moving as quickly as was possible to bed down the details, noting the sitting schedules, the potential for committee consideration and so forth.

AYRES: Can you provide me on notice with the deadline that was provided? You're saying, really, this year.

NEWNHAM: I'm happy to take it on notice. I would just note that of course

AYRES: Other departments were engaged and they may have been issued with drafting instructions about deadlines. Was DFAT issued with instructions about deadlines?

NEWNHAM: I'll take that on notice, Senator.

AYRES: Thank you. And reasons for the deadline, or rationale for that deadline—will you take that on notice, too?

NEWNHAM: If you ask me to take that on notice, I'll take it on notice. I would note what I mentioned a second ago, which was an eye to the sitting schedule for the remainder of the year and noting the need for scrutiny and consideration of the elements here and stakeholder engagement along the way. I think you're taking into account—

Senator AYRES: I'm really trying to get to what the reason was for the rush. It was a very quick process.

NEWNHAM: Again, I would just use those same reference points I mentioned a second ago: sitting schedules, stakeholder engagement, committee consideration and the range of agencies involved.

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Answer

The Bill was developed with the intention that it be introduced in the Spring 2020
Parliamentary Sitzings.

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**5 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
and Australia's Foreign Relations (State and Territory Arrangements) (Consequential
Amendments) Bill 2020 - 13 October 2020**

Senator Tim Ayres

Question

AYRES: And when was this version of the bill settled?

ROPER: I don't have the date of policy approval in front of me. We might need to take that on notice.

CHAIR: Can you take that on notice?

NEWNHAM: We'll take that on notice.

AYRES: Can you provide on notice the date that it was settled and then the date of policy approval?

NEWNHAM: Yes.

Answer

This version of the Bill was settled on 1 September 2020, with policy approval provided prior to introduction.

QUESTION ON NOTICE / Verbal

6 – Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020 - 13 October 2020

Senator Tim Ayres

Question

AYRES: What universities were consulted during the drafting of the legislation?

NEWNHAM: To our knowledge, no universities were consulted during the course of drafting the legislation. But I would repeat—and I don't need to go back through it all—the comments I made earlier, that in development of policy like this the materials that were relevant to development of this policy were known to the government. What I mean by that is that the increasing role of these states and territories, universities and local governments in global affairs; the complexity of conducting global affairs; and the fact that there is no register, or stocktake or way in which the federal government has any sense of the arrangements that are in place and what they apply to, or the ability to apply a level of due diligence. Frankly, the consultation that flows from formalising that is not in existence as well. So the reference points needed to develop that policy were in existence, and I know that means the answer is that universities were not consulted formally during the policy development but of course it drew on years, frankly, of engagement on these sorts of issues.

AYRES: On what the department thinks it knows about this—

NEWNHAM: Well, I would say—

AYRES: That's the problem, isn't it? They are up in arms about the legislation now and are probably entitled to have a view that the department could have consulted with them. Were you directed not to consult with them?

NEWNHAM: Senator, I don't know that there was a direction to or not to. I'd have to check on that.

Answer

Consistent with usual practice, the legislation was developed, and consulted on, within Government.

The Bill was developed on the basis of expertise held by the Commonwealth Government in relation to the complexity of foreign relations, and based on years of close engagement with states, territories, local government and universities.

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**7 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Amendments) Bill 2020 - 13 October 2020**

Senator Rex Patrick

PATRICK: I've got three lines of questioning. The first is probably very simple. It just goes to numbers in the PBS. In relation to this bill, there's a line item: 'Consistency of Australia's Foreign Relations (State and Territory Arrangements) Bill' with a departmental allocation of \$9.8 million. This perhaps goes to questions from other senators about resourcing. Is that number for personnel?

NEUNHAM: Unless one of my colleagues has the specifics of \$9.8 million, I'll take that bit on notice, but I could certainly come back on the budget allocation overall and the intention underneath that, from a starting point of view.

PATRICK: That's what I'm interested in. There's also a capital line of something like—

KITCHING: It's \$5.17 million plus \$1.65 million.

PATRICK: Yes.

KITCHING: What is that for? That actually answers my question that I was going to put on notice.

Answer

It was announced, in the 2020-21 Federal Budget, that DFAT will receive \$25.0 million in new funding over two years for work to implement the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.

The funding will support staffing, other operating expenses and the design, development and deployment of information technology, including the public facing register contemplated by the Bill.

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QUESTION ON NOTICE / Verbal

**8 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Rex Patrick

PATRICK: I presume you've sought advice in respect of the constitutionality. That's part of what you might have received from the Solicitor-General?

NEWNHAM: Yes.

PATRICK: I presume that went, to a large degree, in the construction of section 52, which talks about the considerations that the minister must make—is that fair?

NEWNHAM: Senator, I couldn't go into the substance of legal advice provided to the government in the course of policy establishment.

PATRICK: You might be aware of the case of Egan and Chadwick in the New South Wales Supreme Court where Justice Priestley says, 'The functions and the status of the—sorry; I will just get the right quote. I don't want to miss—

CHAIR: Stop trying to be a lawyer!

PATRICK: The last thing I want to be is a lawyer!

KITCHING: Oh! That's not very nice!

CHAIR: I think he's engaging in social climbing!

PATRICK: I'll read this to you: 'The justification for legal professional privilege does not apply when a house of parliament seeks the production of executive documents. It must have the power to call for information relevant to the fundamentally important task of reviewing, changing and adding to the statute laws of the state. There will be from time to time information in the executive documents necessary or useful for carrying out this task. It is the position of the Senate that legal professional privilege does not apply.'

I'm asking you to table that document, and of course you have the right to refer that back to the minister and advance a public interest immunity if you so wish to. Otherwise, I would ask that you table that advice in accordance with law.

CHAIR: Let's take that on notice and allow the officials to consider.

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PATRICK: Thank you. So you're taking that on notice?

NEWNHAM: Yes.

PATRICK: I expect either the legal advice or a public interest immunity; thank you. I might just go finally to the last line of questioning that I have. This goes to an amendment that I've foreshadowed to the media—and I apologise I haven't managed to get it drafted; it is complex.

Answer

The Attorney-General has written to the Chair of the Committee submitting a public interest immunity claim on the information sought by the Committee.

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QUESTION ON NOTICE / Verbal

**9 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Rex Patrick

Question

PATRICK: If a decision was made to boycott—

NEWNHAM: Yes.

PATRICK: I'll just go back to the difficulties in 1980 when athletes were encouraged not to attend. I think that's an unfair position to put athletes in, rather than having a government say, 'We are boycotting the games,' and then implementing that through an order or some sort of control. It's not contemplated in the bill. I'm intending to put something about that in the bill, which is why I'm asking the question. You could say to me, 'That's an unreasonable place to put it.' You could say, 'We actually have that power somewhere else,' in which case the amendment is not necessary. That's where I'm going with this.

NEWNHAM: Of course, judgements on inclusions in or out of the bill are for parliament and government as well. I would note that I couldn't really go further than what I've already mentioned here, which is that the objectives of this bill, as it stands—recognising suggestions for changes—do not contemplate NGO related arrangements to be caught here, unless that fits within the parameters, and what you've outlined here would not. I note Minister Colbeck's comments that I mentioned a moment ago. I'm happy to take it on notice, but I would just stress that these are policy responsibilities. In terms of the status quo and how it fits with the bill, I would not have the expertise to speak to that.

PATRICK: This is to assist me with my amendment. I'm not asking the department to boycott anything at this point in time. I'm simply saying: were the government to make a decision to boycott an Olympic Games, what legal mechanisms are you aware of within your portfolio that would allow the government to give effect to that policy decision? And I'm happy if you take it on notice.

NEWNHAM: I will take it on notice.

Answer

The Australian Olympic Committee (AOC) is responsible for selecting, sending and funding Australian teams to the Olympic Games. The Australian Olympic Committee is a non-government organisation.

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As a National Olympic Committee, the Australian Olympic Committee is required to comply with the International Olympic Charter. The International Olympic Charter sets out the conditions for participation in the Olympic Games. The International Olympic Committee is the international non-governmental, not-for-profit organisation responsible for administering the Olympic Charter.

The Bill regulates foreign arrangements between State/Territory entities and foreign entities (as defined under the Bill). It does not impose obligations in respect of arrangements between non-government organisations such as the Australian Olympic Committee and the International Olympic Committee.

QUESTION ON NOTICE / Verbal

**10 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Concetta Fierravanti-Wells

Question

FIERRAVANTI-WELLS: So, therefore, I don't understand why corporations—and I'm going particularly to foreign entities—that operate on a commercial basis have been excluded. You see, many of these regimes purport to operate on a commercial basis, yet they have no institutional autonomy. So let's be clear here. The point of this legislation—what does it try and seek to do? It goes to the heart of offensive behaviour or behaviour that is perceived to be offensive in the eyes of the Australian public, where you have had governments influencing the activities of their state owned enterprises or their universities or other, and those activities have worked to the detriment of Australia. So, really, Mr Newnham, there's a total inconsistency in this legislation. Unless you're prepared or unless that section is amended, what is the point of this legislation?

NEWNHAM: There are a number of elements to that question. What I would say is on a couple of fronts. I've mentioned earlier, of course, the objective of the bill. I don't want to re-go through all of that, but I would re-emphasise the objective of the bill. I would re-emphasise the state and territory government, and foreign government and their entities, focus of this bill. Your characterisation of the exclusion of corporations operating on a commercial basis is accurate. But what I would note here is that there are a range of frameworks in existence in Australia presently that deal with a number of commercial entities, including state owned enterprises, whether it be in relation to foreign investment or investment in critical infrastructure—

FIERRAVANTI-WELLS: We had this discussion.

NEWNHAM: Yes.

FIERRAVANTI-WELLS: We had this discussion. And let's not forget that the exemption still—there is no bar—let me rephrase that. There is still a space where state governments—governments full stop—can deal and dispose of assets to foreign government. Unless those assets are covered under FIRB and FATA rules, then it still remains open for those governments, at all three levels, to dispose of those assets. That's really the space here that we're concerned about, is it not?

NEWNHAM: I would have to, I think, take that on notice, but I would note, in addition to mentioning that, the points we made earlier about subsidiary arrangements.

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FIERRAVANTI-WELLS: Yes.

NEWNHAM: It partially answers your question. I take the point that a subsidiary arrangement has to sit under a so-called head arrangement that itself would be caught by the bill and itself is found to be inconsistent with foreign policy, adversely affects foreign relations, and underneath that there is a subsidiary, which can be a commercial arrangement entered into by a corporation underneath. But I take the macro-level point that you're making here. I would again note, of course, the equities of a range of government departments and portfolios in relation to some of the issues you've raised here.

FIERRAVANTI-WELLS: I appreciate that. I'm also conscious of the parameters of the framework that is being proposed by the Treasurer. The Treasurer's framework, as I read it in relation to changes to the foreign investment review framework, will not remove the exemption so that all acquisitions by foreign entities are subject to scrutiny and the national interest test. Therefore, you've still got that space that isn't covered. Here is my question to you, and please take this on notice.

NEWNHAM: Yes.

FIERRAVANTI-WELLS: We've inched our way with what the Treasurer is proposing in his framework, but we're not quite there in relation to dealing with all of those areas, and that's really the area that I'm concerned about. I would appreciate it if you could examine that, particularly in the context that there's still space there that needs to be covered in some way, shape or form. I am not sure if this legislation will cover that space. I would appreciate it if you could consider that and give us an answer to that.

NEWNHAM: I'm happy to take that on notice, unless colleagues want to chime in.

Answer

The scheme does not apply to arrangements by corporations that operate on a commercial basis. This is the case even where the corporation is wholly or partly owned or controlled by a State or Territory or by a foreign government.

However, subsidiary arrangements that are entered into for the purposes of implementing an arrangement between a State/Territory entity and a foreign entity may be considered under the Bill, even where a party to such an arrangement is a corporation.

An arrangement dealing with or disposing of an asset by a State/Territory entity to a foreign corporation would only be covered by the Bill if the arrangement was a subsidiary arrangement to a head arrangement between a State/Territory entity and a foreign entity (as defined under the Bill).

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However, other legislation addresses certain arrangements with foreign corporations, including the *Foreign Acquisitions and Takeovers Act 1975* and the *Security of Critical Infrastructure Act 2018*.

In March 2016, the Government strengthened the role of the Foreign Investment Review Board to ensure infrastructure acquisitions such as the Port of Darwin are fully and appropriately assessed. In June 2020, the Government announced further reforms to strengthen the foreign investment framework, including a national security test to ensure the Government can address national security concerns arising from new individual investment proposals which would otherwise be below the screening thresholds.

The Government also established the Critical Infrastructure Centre in January 2017 to work across all levels of government, and with owners and operators, to identify and manage risks to Australia's critical infrastructure. The *Security of Critical Infrastructure Act 2018*, introduced in 2018, strengthened Government's ability to monitor and protect against risks to critical infrastructure such as water, electricity, gas and port assets.

Questions on the Foreign Investment Review Board and the application of the *Foreign Acquisitions and Takeovers Act 1975* should be referred to Treasury. Questions on the Critical Infrastructure Centre and the *Security of Critical Infrastructure Act 2018* are for the Department of Home Affairs.

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QUESTION ON NOTICE / Verbal

**11 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Concetta Fierravanti-Wells

Question

FIERRAVANTI-WELLS: Thank you. It is a complex area. Here is the next question I'd like to ask. We've discussed today whether we should create a new scheme or look at the FITS and augment the FITS so that we're not reinventing the wheel and DFAT is not going outside its parameters. We are talking about a framework that we've certainly had an opportunity to examine as a consequence of both Senator Abetz and me on privileges. So, again, could you respond to that, because I'm really very concerned about that. We don't want to reinvent the wheel. The other thing is—I'm putting these on notice, because you're not going to be able to answer all of this—

NEWNHAM: Okay.

Answer

The scheme established by Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 (the Bill) and the Foreign Influence Transparency Scheme (FITS) are distinct schemes that are driven by different policy intents.

The FITS is designed to provide the public with visibility of the nature, level and extent of foreign influence on Australia's government and political processes at the federal level. In general terms, it regulates individuals and entities undertaking registerable activities such as parliamentary lobbying, general political lobbying, communications activity or disbursement activity on behalf of foreign principals, by requiring these activities to be listed on the public register. FITS is a transparency mechanism, and does not operate to prevent individuals or entities undertaking any registerable activities. The FITS is administered by the Attorney-General's Department.

The Bill ensures arrangements entered into by States and Territories and their entities, including local governments and Australian public universities, are consistent with Australia's foreign policy. It achieves this by requiring that foreign arrangements be notified to the Minister for Foreign Affairs, and by giving the Minister for Foreign Affairs the ability to prevent or cancel arrangements that would adversely affect Australia's foreign relations or be inconsistent with Australia's foreign policy. Given the Bill's foreign policy intent, it will be administered by the Department of Foreign Affairs and Trade.

QUESTION ON NOTICE / Verbal

**12 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Senator Concetta Fierravanti-Wells

Question

FIERRAVANTI-WELLS: The third area that I'd like to look at is section 51. I'd like to go back to that discussion. You mentioned the matters that the minister must take into account when making that decision. Presumably, wherever this ends up being, there will be a consideration. What are the obligations, then, on the Commonwealth? I'll ask this particularly in the context of an arrangement which has financial implications. Is there an obligation to consider restitution? Let me use this example: with the port of Darwin, at the time, the Northern Territory government approached the Commonwealth—and this is in evidence given to the economics committee in relation to subsequent changes to FIRB legislation—which was the then Abbott government, and said, 'We need to develop our port.' The Abbott government and those advising said no, for whatever reasons—I'm not sure what those considerations were—and then the Northern Territory government embarked on a particular process. Let's use a similar circumstance where a proposal is put to the Commonwealth. The minister says no. What then are the consequences—the obligations and the potential financial consequences—of the Commonwealth saying, 'No, you can't enter into that arrangement'? Where would that have left the Northern Territory government or an example like it? Do you see what I'm asking? Again, please take that on notice, because I think that's an important consideration. We don't want a circumstance where there are financial consequences, and, because of that, the minister lets something go to the keeper when we really shouldn't have let it go to the keeper. Do you see where I'm going?

NEWNHAM: I do. I can provide answers to all of these, but I'm conscious you are moving through them and wanting them on notice, so—

FIERRAVANTI-WELLS: No—I just thought you may have wanted to provide me with a considered response on notice.

NEWNHAM: It might be we do both. I might ask my colleagues to speak to the earlier part of that last question on section 51 and the considerations there, but what I can say, though, is if the operation of the bill, if it's to be enacted, would result in the acquisition of property from a person otherwise than on 'just terms', and that's got a meaning within the Constitution, the Commonwealth is liable to pay a reasonable amount of compensation. Now, that would depend on the facts in each case, but I think that partially goes to the

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points you've made, noting, of course, decisions like that would not be taken lightly. I would turn to either Ms Sheehan or Ms Roper on your earlier part of the question on section 51. Again, if you would insist, Senator, I'm happy to take the earlier—I'm dropping back one question now, which goes to—

Senator FIERRAVANTI-WELLS: Sure, that's fine.

Answer

The Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 does not apply to arrangements by corporations that operate on a commercial basis. This is the case even where the corporation is wholly or partly owned or controlled by a State or Territory or by a foreign government. Other legislation addresses certain arrangements with foreign corporations, including the *Foreign Acquisitions and Takeovers Act 1975* and the *Security of Critical Infrastructure Act 2018*.

Accordingly, the scheme would not apply to arrangements such as the Port of Darwin lease to the Landbridge Group. An arrangement such as the Port of Darwin lease would only be covered by the Bill if the arrangement was a subsidiary arrangement to a head arrangement between a State/Territory entity and a foreign entity (as defined under the Bill). The Minister for Foreign Affairs may make a declaration in respect of a subsidiary arrangement if a declaration has been made in respect of the head arrangement, or the head arrangement was entered into in contravention of a decision of the Minister under the Bill, or the head arrangement is a pre-existing core arrangement that was not notified to the Minister; and the subsidiary arrangement is adverse to Australia's foreign relations or inconsistent with Australia's foreign policy.

In relation to the broader question of financial consequences, the Minister for Foreign Affairs is required to take into account certain matters in relation to the State or Territory to which an arrangement relates when making a decision to make a declaration under the Bill in relation to a non-core arrangement or an arrangement in operation (section 51).

This includes:

- the importance of the arrangement in assisting or enhancing the functioning of the State or Territory
- the extent of the performance of the arrangement
- whether the declaration would impair the continued existence of the State or Territory as an independent entity
- whether the declaration would significantly curtail or interfere with the capacity of the State or Territory to function as a government
- whether the declaration would have significant financial consequences for the State or Territory
- whether the declaration would impede the acquisition of goods or services by the State or Territory, including, for example, for the purposes of infrastructure

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- whether the declaration would have an effect on the capacity of the State or Territory to complete an existing project that is to be delivered under the arrangement (either at all, or within the intended timeframe)
- any other matter the Minister considers is relevant

to the extent that information concerning those matters has been given to the Minister by the State or Territory.

In addition, the Bill provides (section 57) that the Commonwealth is liable to pay reasonable compensation to a person if the operation of the scheme results in acquisition of property (within the meaning of the Constitution) otherwise than on just terms.

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**13 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
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Amendments) Bill 2020 - 13 October 2020**

Chair Senator Eric Abetz

Question

CHAIR: Alright. Thank you. Why aren't hospitals included in this legislation? To get to the point: hospitals are often, if you like, state-run institutions. Westmead Hospital in New South Wales had arrangements with another facility in China, about which I spoke in the Senate, linking them with the ugliness of forced organ transplants. So I'm just wondering why this is not included.

NEWNHAM: Hospitals are excluded from the scheme in terms of the definition of state and territory entities. They have a public health focus, and the low risk of arrangements that they are engaging in, in terms of the way they would impact on foreign relations and foreign policy, was a consideration for the way in which that was defined. I would note earlier comments on subsidiary arrangements whereby entities that are not deemed state and territory entities may nevertheless have arrangements that sit underneath a head arrangement.

CHAIR: But wouldn't a state-run hospital be seen as a state entity?

NEWNHAM: Not for the purposes—actually, I'm going to pause there because I can see Ms Sheehan wanting to speak too.

SHEEHAN: I was just going to pick up on your reference to forced organ donations. My understanding is that that's where your concern is stemming from. I don't have all the details, but I understand that if we're talking about organ trafficking then it may well be the case that there are certain criminal provisions that might apply to that situation, or in relation to organ donation more generally, rather than other regimes that would apply to regulate how that works.

CHAIR: Wait a minute. That was the argument the universities were providing to us for why this legislation's not needed: that there are criminal and other espionage provisions and therefore we don't need this regime for universities. If we're going to run that argument as to why we don't need it for hospitals, why doesn't it apply to universities?

SHEEHAN: I was raising that in relation to organ donation specifically, so other regimes that might deal with organ donations, when it comes to universities and how the other regimes that the universities have mentioned go to really different mandates, not a foreign policy mandate.

Senate Foreign Affairs, Defence and Trade Legislation Committee

Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and
Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020

CHAIR: Yes, but I would have thought that this is the sort of example where a government concerned about human rights and other issues might want to intervene and say, 'Sorry, Westmead Hospital, this ain't good enough, and we will intervene to stop it.' They'll be able to say, 'Well, you specifically excluded hospitals from the regime, so guess what,' metaphorically speaking, 'middle-finger salute to you.' Take that on notice; I suppose it's a policy issue, in fairness as well, as to what is or is not included in the regime.

Answer

Hospitals are specifically excluded from the definition of State/Territory entity under the Bill.

Arrangements between Australian hospitals and foreign entities will only be considered under the Bill if they are a subsidiary arrangement to a head foreign arrangement.

While hospitals may enter arrangements with foreign entities, this is for a public health purpose and is unlikely to have any significant impact on Australia's foreign relations and foreign policy. The Bill's application has been restricted to those arrangements most likely to impact Australia's foreign relations and foreign policy in the interests of minimising regulatory impact.

Senate Foreign Affairs, Defence and Trade Legislation Committee
Inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and
Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments)
Bill 2020

QUESTION ON NOTICE / Verbal

**14 – Inquiry into Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
and Australia's Foreign Relations (State and Territory Arrangements) (Consequential
Amendments) Bill 2020 - 13 October 2020**

Chair Senator Eric Abetz

Question

CHAIR: I might try to finish on this one, and it circles back to the Framework Agreement between The Government of the State of Victoria of Australia and the National Development and Reform Commission of the People's Republic of China on Jointly Promoting the Silk Road Economic Belt and the 21st Century Maritime Silk Road. I have this framework agreement in front of me, and I understand that this is the one that the department was consulted about on the actual day of its signature—is that correct?

NEWNHAM: We received an embargoed copy on the day of its signature.

CHAIR: Right. For your input or comment, or just for your information?

NEWNHAM: I'm not aware that there was any input—

CHAIR: Take that on notice.

NEWNHAM: but I'm happy to take that on notice.

CHAIR: Yes—as to why it was forwarded to the department.

NEWNHAM: Yes.

Answer

The Victorian Department of Premier and Cabinet emailed an embargoed, information-only copy of the document to DFAT on 23 October 2019, the same day the parties signed it.