

# SUBMISSION TO THE INQUIRY INTO THE FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

22 January 2018

## **Foreign Influence Transparency Scheme Bill 2017**

Universities Australia welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security inquiry into the *Foreign Influence Transparency Scheme Bill 2017*. Universities Australia is the peak body for Australia's 39 comprehensive universities, which educate more than a million students and undertake research to add to the stock of advanced knowledge, and has been valued at more than \$160 billion.

Universities are mindful of the need to support an appropriate legislative framework to maintain national security. As part of their daily business, universities already comply with a vast array of regulatory instruments, often numbering into the hundreds, including a range of legislation supporting national security, including autonomous sanctions regimes and the *Defence Trade Controls Act 2012* (which is designed to ensure that sensitive Australian technology is not inappropriately provided to outside nations). However, Universities Australia is concerned that the *Foreign Influence Transparency Scheme Bill 2017* has the potential to stifle innovation and valuable academic research, as well as compromising the ability of Australia's universities to develop a philanthropic culture in Australia.

## Recommendations

### **Recommendation 1:**

Universities Australia recommends that the Government not proceed with the Bill until it has undertaken a thorough consultation process with stakeholders, particularly the higher education sector.

### **Recommendation 2:**

Universities Australia strongly recommends that the Parliament provides a specific exemption for activities that are predominantly academic or scholastic in nature. At a minimum, such a definition should include teaching and research activities, including the communication of research findings by any means.

### **Recommendation 3:**

Universities Australia recommends that proposed section 11 be amended to remove references to 'collaboration'.

### **Recommendation 4:**

Universities Australia recommends that expanded exemptions for legitimate business dealings and development be included in the Bill. This should include the normal conduct of business dealings of both commercial enterprises and the already heavily regulated, legitimate core business of non-profit organisations such as universities.

### **Recommendation 5:**

Universities Australia recommends that legitimate advocacy on behalf of international students and other vulnerable groups (such as temporary workers) be exempted from this scheme.

## Australian universities – actors on the world stage

Universities are increasingly international enterprises, and will only be more so in the future. International research collaborations deliver economic and social value to Australia; international students increasingly choose to study in Australia; and international engagement links Australian students, researchers and innovators with unique opportunities available in other countries. It is not possible to remain at the cutting edge of innovation without strong international partnerships; the modern research and innovation effort is bigger than any single nation.

International collaborations are increasingly the most successful model for creating ground-breaking new research results to tackle global challenges and harness huge opportunities. The Square Kilometre Array mega radio telescope, part of which is to be built in Western Australia, boasts involvement from countries covering more than 40 per cent of the world's population

Smaller international partnerships and collaborations are also important. The Government's own New Colombo plan recognises the value of international mobility of students to create closer economic and cultural ties between Australia and its neighbours. The National Innovation and Science Agenda has encouraged Australia's researchers to reach beyond our shores, through its [Global Innovation Strategy](#). International collaborative science programs commonly allow Australian researchers and innovators access to facilities and expertise not available in Australia, often for a tiny fraction of their true cost. In fact, government funding of these programs has been shown to attract leverage up to 7.7 times the government contribution.<sup>1</sup>

International engagement and collaboration is not an optional extra in higher education and research. World-leading teaching relies on strong links with regional and global partners, ensuring that Australian universities provide both Australian and international students with globally-relevant skills and knowledge. Researchers rely on international networks to stay up-to-date with the latest techniques and developments in the field. Indeed, scientific and research cooperation is vital to the national interest – such cooperation facilitates access to resources such as Japan's Himawari weather satellites, which underpin Australia's weather prediction capabilities.

Such partnerships do not suddenly emerge as fully-fledged initiatives. Academic partnerships frequently have their beginnings in informal relationships and discussions that identify opportunities for collaboration for mutual benefit. Given the significant involvement of governments and related bodies in education and research around the world, it is therefore unsurprising that governments are almost invariably involved in developing partnerships that have any significant scale. The support of governments is critical to making a success of partnerships, even if the support is not financial in nature. Therefore, opportunities to develop innovative partnerships rely on the ability of prospective partners to involve governments in discussions surrounding opportunities for partnerships.

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<sup>1</sup> Australian Academy of Science, 2001, *Program of international scientific and technological collaborations, funded as part of DISR's International Science and Technology Networks – a review*, Canberra, p.3, <http://web.archive.org/web/20090925161632/http://www.science.org.au/reports/16march01.pdf>

Universities Australia is concerned that the proposed Foreign Influence Transparency Scheme may have the unintended consequence of stifling innovative partnerships with international collaborators, and urges the Government to consult more extensively with the higher education sector prior to proceeding with this scheme.

### **Recommendation 1:**

Universities Australia recommends that the Government not proceed with the Foreign Influence Transparency Scheme Bill 2017 until it has undertaken a thorough consultation process with stakeholders, particularly the higher education sector.

### **Acting ‘on behalf’ of a foreign principal**

Universities Australia is concerned about the breadth of the concept of acting ‘on behalf’ of a foreign principal (section 11), particularly the Bill’s construction that acting ‘in collaboration with’ a foreign principal amounts to acting ‘on behalf of’. *Collaboration* is not more closely defined, which could mean that legitimate academic research partnerships with individuals or institutions are deemed to be arrangements where Australian academics are acting on behalf of foreign principals. This could have significant consequences both for the development of international partnerships, and for academic freedom.

Collaboration is a key component of academic practice, and international collaboration especially so. Many good ideas are developed from international collaborations, and it is important that academics have the ability to put these ideas before governments where it is appropriate to do so. Examples of this could include informing government of the results of international, policy-relevant research; appraising government of opportunities to create or participate in new programs and initiatives. However, these activities, if they include an international partner, could potentially be captured by the proposed law. Any contact with a government official on such matters could potentially be a ‘registrable activity’, no matter how minor or how preliminary the contact. Similarly, almost any policy-relevant communications activity could be captured.

Although the proposed section 14 may provide an avenue for a court to weigh up whether the activity was for the purpose of political or governmental influence taking into account all circumstances, it would be vastly preferable for more concrete legislative guidance to be provided around how far ‘in collaboration with’ a foreign principal should extend. Universities Australia is concerned that normal academic collaborative activities would be unduly stifled by the potential for capture under this scheme, even if it is expressly intended to be otherwise.

Example: Professor Jones, an expert on hydrogeology at an Australian university, has a research collaboration with an academic at a Brazilian research institution. They jointly publish an article in an Australian scientific journal comparing water management policies in Australia and overseas. Using the article, they subsequently publish an opinion piece on Professor Jones' web page arguing for improvements to water management policies in the Murray-Darling basin, which is republished by a number of other sites.

Consequently, Professor Jones may have inadvertently broken the proposed law. She has engaged in communications activity that could be construed as having the purpose of influencing a decision or process of government (arguing for a policy change), in collaboration with a foreign principal (a foreign citizen or public enterprise). Her activity is not covered by the exemptions in division 4.

Universities Australia has grave concerns for the legitimate conduct of academic research, debate and communications with international collaborators should the proposed law be passed in its current form.

Universities Australia also has concerns relating to section 11's reference to 'funding or sponsoring' by a foreign principal. There are a number of generous overseas donors who have invested in Australian research and higher education. For example, the United States-based Atlantic Philanthropies has invested more than AUD\$500 million in Australian projects. Yet if the results of philanthropically-funded research could give rise to beneficial policy change, any communication of that research to Government could potentially be a registrable activity.

For example, a recently-announced blood test for eight rare cancers could save thousands of lives and millions of dollars if it can be successfully deployed. Should any of the Australian researchers that worked on this test and received any funding through Johns Hopkins University in the United States subsequently suggest its inclusion on the Medicare Benefits Schedule to the Commonwealth Department of Health, then they would have undertaken a registrable activity and could potentially have broken the proposed law.

It should be noted that the *United States Foreign Agents Registration Act*, upon which the proposed Australian legislation is modelled, contains an express exemption for academic activity:

*Exemptions:*

*(e) Religious, scholastic, or scientific pursuits :Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts,<sup>2</sup>*

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<sup>2</sup> [United States Code, Title 22, § 613\(e\)](#)

Although Universities Australia would prefer that the Bill is redrafted in such a way that it does not capture academic activity, the addition of a similar exemption to the Foreign Influence Transparency Scheme Bill would be advisable to avoid normal academic activities becoming registrable activities. Although it may not be the intent of the law to capture these scenarios, it remains that researchers attempting to provide significant benefit to the Australian community could be captured by these proposals. This would have the effect of rendering academics conducting their ordinary business inadvertently liable to prosecution.

### **Recommendation 2:**

Universities Australia strongly recommends that the Parliament provides a specific exemption for activities that are predominantly academic or scholastic in nature. At a minimum, such a definition should include teaching and research activities, including the communication of research findings by any means.

### **Recommendation 3:**

Universities Australia recommends that proposed section 11 be amended to remove references to 'collaboration'.

## **Stifling opportunities for innovation**

Universities Australia is concerned that the proposed law would have consequences for the development of international partnerships. As a relatively small nation, Australia remains a net importer of ideas and expertise. As such, many opportunities for Australian innovation have their genesis overseas. Australian innovation benefits from overseas involvement in the development of new knowledge, and a variety of 'foreign principals' invest in Australian innovation. In early-stage innovation, research and development often encompasses government involvement. There can often be opportunities for universities to partner with Australian and overseas individuals, institutions, governments and businesses.

Using the broad interpretation for acting 'on behalf of' a foreign principal, it is conceivable that any contact between Australian universities or academics and representatives of Australian governments could give rise to liability to register under this scheme if the content of the communication had any relationship to preceding discussions with overseas collaborators or partners. Conceivably, even a short telephone discussion between an Australian academic and a public servant regarding the possibility for participating in an international research scheme could create a liability to register, given that proposed section 15 emphasises that registrable activities give liability to register, even for one-off instances.

Discussions between Australian academics, institutions and governments are necessary and important for the conduct of the Australian education and research enterprise. Should the foreign influence transparency scheme be implemented with overly broad coverage, there may be a significant restriction on the ability of Australian researchers and innovators to capture opportunities that could be beneficial for Australia. Joint research opportunities, investment in innovation precincts, possibilities for exchanges of knowledge and talent – these are all things that are beneficial to Australia, usually require government involvement, and involve overseas partners. Although we acknowledge that the proposed scheme will not technically prevent such opportunities from being realised, the addition of further regulatory barriers to having discussions

with government officials could easily stifle opportunities for innovation. This would be at odds with the Government's strong emphasis on improving innovation in Australia.

The current exemption in the Bill protecting the negotiation of a contract is insufficient to ensure that opportunities for innovation are not lost as a result of the proposed scheme.

#### **Recommendation 4:**

Universities Australia recommends that expanded exemptions for legitimate business dealings and development be included in the Bill. This should include the normal conduct of business dealings of both commercial enterprises and the already heavily regulated, legitimate core business of non-profit organisations such as universities.

### **Protecting the welfare of international students**

Universities in Australia host more than 350,000 international students who live in Australia on short-term student visas. In addition to contributing more than \$28 billion to the Australian economy, these students make a significant social contribution to the Australian community, and their experiences in Australia help promote connections between Australia and overseas businesses and institutions. As the effective sponsor for these temporary migrants, Australian universities have a strong interest in ensuring their welfare in Australia, as does all levels of government.

Yet under the proposed law, each one of these students could be considered a foreign principal. If a university was to make representations to government on their behalf, this could potentially become registrable conduct. If a staff member attempted to assist a student in dealings with government, they may inadvertently have contravened the law if they have not registered under the scheme.

#### **Recommendation 5:**

Universities Australia recommends that legitimate advocacy on behalf of international students and other vulnerable groups (such as temporary workers) be exempted from this scheme.

### **Concluding remarks**

It seems that the breadth of legislative capture of this scheme could have serious consequences for students, university research and teaching collaborations, and indeed government. Implementing this scheme in its current form could damage Australian competitiveness and prosperity. Universities Australia strongly urges the Government to reconsider the framing of this legislation to ensure that Australian universities continue to be able to compete on the world stage. Unduly hampering universities' international engagement leaves us unable to take advantage of global opportunities. Such an outcome would be to the detriment not only of students, researchers and innovators, but undoubtedly also the national interest.