



The Group of Eight Limited
ABN 98 089 687 990

GPO Box 139
Canberra ACT 2601
Level 4, 10 Moore Street
Canberra ACT 2600
Australia

t: +61 (0)2 5123 6700
www.go8.edu.au

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Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600
E: picis@aph.gov.au

Go8 Submission to the Review of the Foreign Influence Transparency Scheme Act 2018

The Group of Eight (Go8) welcomes the opportunity to provide input into the review of the Foreign Influence Transparency Scheme Act 2018. Please note this submission presents the views of the Go8 network, and our members may also make their own, more detailed submissions.

Also note that the Go8 is happy for this submission to be published and does not wish any of it to be treated as confidential

The Go8 represents Australia's eight leading, research-intensive universities.

As a collective:

- We undertake 70 per cent of Australia's university research and spends \$6.5 billion on research each year.
- Seven of our eight members are ranked in the world's top 100 universities, and all of our members are ranked in the top 150.
- The overwhelming majority (99per cent) of our research is assessed by the Excellence in Research Australia (ERA) exercise as being at world class or above; and
- Independent analysis by London Economics found that every one dollar of Go8 research income delivers almost ten dollars of benefits to the wider community.

Research intensity and strong international connections go hand in hand, as high quality / high impact research tends to be amplified by facilitating collaboration between the best and brightest minds around the globe. We have just had a powerful example of this as the international scientific community came together to find solutions to the COVID-19 pandemic in a short space of time. As noted by the Therapeutic Goods Administration:

Australia is working internationally to share research and information supporting new COVID-19 vaccines. Indeed our ability to work collaboratively with like-minded countries will give greater assurances that new vaccines are safe, efficacious and manufactured appropriately.¹

The Australian Government recognises the need to support the best Australian researchers to make these connections through programs such as the Australia-India Strategic Research Fund (AISRF), the Australia-China Science and Research Fund (ACSRF), and national competitive grants programs run through the Australian Research Council (ARC).

¹ <https://www.tea.gov.au/covid-19-vaccine-international-collaboration>.



However, the Go8 also understands and agrees with the counter side of this phenomenon i.e, that the high quality of our research, and our extensive international connections – while providing Australia with a valuable asset that underpins ongoing national prosperity – also makes us an attractive target for foreign interference activities.

As we outlined in some detail to the Committee in our submission to the *Inquiry into National Security Risks Affecting the Australian Higher Education and Research Sector*, Go8 universities have taken an active approach to managing these risks.

These include: being a founding and active member of the Universities Foreign Interference Taskforce (UFIT); being instrumental in the drafting of both the 2019 and 2021 versions of the *Guidelines to Counter Foreign Interference in the Australian University Sector*;² and implementing a comprehensive suite of counter foreign interference measures at each of our member universities.³

The fundamental tension at the heart of efforts to counter foreign interference comes from the need to balance adequate protections while not damaging the very connections and exchanges of ideas that we are trying to protect. In other words, it is imperative to *Australia's* future prosperity – not just that of the university sector – that attempts to mitigate against the risks of foreign interference do not inhibit our ability to interact effectively and cooperatively with the rest of the world. The Go8 recognises that this is a difficult equation to get right, and that Australia is not the only nation struggling to do this effectively. We therefore support the need for a thorough and close review of legislation such as the FITS to provide a critical evaluation of whether it has been, or remains, fit for purpose.

Consequently, the feedback we offer in this submission is intended to assist in improving the broad suite of foreign interference legislation from its current state of overlap and incoherence into a more effective, consistent and useful whole.

Context

The FITS Act came into effect in December 2018. It is intended to “provide transparency for the Australian Government and the Australian public about the forms and sources of foreign influence in Australia”.⁴ The Go8 understands that foreign influence is quite distinct from foreign interference, however, as noted in a report from the National Security College at the Australian National University, the two exist across a “continuum of risk to Australia’s values, interests and sovereignty”.⁵

The FITS Act was among the early suite of foreign-compliance related legislation created by the Commonwealth, though earlier legislation such as the Defence Trade Controls Act (2012, updated in 2018) was already operating within this space. Since then, universities have become subject to a range of additional foreign compliance-related measures, including:

² <https://www.dese.gov.au/guidelines-counter-foreign-interference-australian-university-sector>

³

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/NationalSecurityRisks/Submissions

⁴ <https://www.legislation.gov.au/Details/C2017B00265/Explanatory%20Memorandum/Text>

⁵ https://nsc.crawford.anu.edu.au/sites/default/files/uploads/nsc_crawford_anu_edu_au/2021-02/nsc_foreign_interference_op_2021.pdf



- The *Guidelines to Counter Foreign Interference in the University Sector* (the *Guidelines*), originally launched in November 2019 and refreshed throughout 2021;
- Australia's Foreign Relations (State and Territory Arrangements) Act 2020;
- Security Legislation Amendment (Critical Infrastructure) Bill 2020;
- Inquiry by the Senate Foreign Affairs, Defence and Trade References Committee into Funding for Public Research into Foreign Policy issues (2021);
- Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry into national security risks affecting the Australian higher education and research sector 2021;
- Australian Research Council implementing foreign interference due diligence screening questions, 2021; and
- Creation of the TEQSA Integrity Unit.

The above list represents a mix of legislation, processes and bodies. It would therefore be beneficial to both the sector and Government itself, to clarify how all of these pieces are intended to work together to create a coherent, cohesive whole, in which each item has a clearly defined and complementary role within the overall framework.

As noted by the Hon Ben Morton MP in the Government's *Regulator Performance Guide* July 2021,⁶ "regulations and how they are administered should be fit-for-purpose and implemented in a way that maintains critical safeguards while reducing the regulatory burden".

The FITS legislation should be no exception. We must have a properly calibrated network of regulation that supports and strengthens our assets, while not diverting university and government resources in ineffective, duplicative and unnecessary activities.

This would be consistent with the principles outlined in the *Regulator Performance Guide*, including that regulators:

- "should take into account and respond to community expectations of good regulatory practice to build trust and public confidence in their operations and in Australia's regulatory system".
- "identify and minimise duplication and harmonise activities with other regulators to achieve better regulatory outcomes, including establishing clear operational scopes, sharing intelligence and producing common guidance where appropriate, providing clarity, and reducing the overlapping compliance burden on business and individuals".
- "take into account the cumulative burden of regulations... when establishing and implementing processes".

A clear, coherent framework will assist in building this trust and public confidence, especially in the context of Australia moving out of a pandemic year when extra effort has had to be diverted to overcoming unexpected and significant challenges.

Recommendation 1: that the Committee urge the Government to provide clarification of how its suite of foreign interference and foreign compliance related measures are designed, implemented and monitored to enhance the national interest, in a proportionate and responsive manner under a single framework.

⁶ <https://deregulation.pmc.gov.au/sites/default/files/regulator-performance-guide.pdf>



Burden of the FITS Act

Most Go8 members have indicated that once the FITS Act was implemented, the level of burden has been relatively low. This is also reflected in the small proportion of registrants connected to universities or academia currently listed on the public register.

However, one large member reports a significant initial impost of assessment and administration due to the FITS representing an entirely new area of compliance. This was partly exacerbated by a lack of clear definitions within the legislation. For example, the charitable activities exemption is one that requires more clarity on when it can be utilised.

This has also been noticeable with other pieces of legislation that were not targeted to higher education or designed to take particular aspects of the sector into consideration.

For example, it would be easier for universities and Government to assess and mitigate against the risk of foreign interference if there was more clarity around the engagements or research activities that are of greatest concern. Having this clarity would allow universities – and administering Government departments – to focus resources to the highest priority areas of risk.

This has been particularly evident in relation to the *Foreign Arrangements Scheme*, which appears to have been tailored to suit the operations of State Government entities, rather than universities. The Go8 therefore urges the PJCIS to recommend to Government that it works with the sector during the development stage to ensure that the provisions of any Bill that are to be applied to universities are meaningful within that context.

Recommendation 2: that the PJCIS recommend to Government that the specifics of the higher education and research sector be considered when creating new legislation, to ensure that the provisions of any Bill is meaningful within that context.

Effectiveness of the FITS Act

The Go8 suggests that a suitable body is required to lead the work to review the existing suite of legislation and measures and suggest both how they could operate in a coordinated, coherent fashion and what amendments might be necessary to ensure this objective can be met.

This would also help to ensure that any revisions to the FITS Act are linked and aligned to the full suite of legislative and policy changes, enhancing the effectiveness of Australia's overall framework.



For example, the Strengthened Export Controls Steering Group, established to assist the implementation of the Defence Trade Controls Act 2012, was chaired by then Chief Scientist Professor Ian Chubb, and comprised of senior representatives from industry, research and government. It worked to ensure the new controls were effective and fit for purpose, while not unnecessarily restricting trade, research and the international competitiveness of the research sector. Such a body would help to ensure the foreign interference framework operates in a way that is proportionate and responsive to the needs of the various sectors likely to be affected. This would also provide the advantage of ensuring that one body has oversight of the design of the framework.

Similarly, the effectiveness of the Government's counter foreign interference measures would be enhanced by having one agency made responsible for the design and coordination of administration for the framework. This would allow for a whole of Government view on how each piece in the framework is operating and working as a whole. This could be modelled on the Critical Technologies Policy Coordination Office (CTPCO), currently located within Prime Minister and Cabinet, established to provide coordinated whole-of-government advice on technology developments, opportunities and risks, and to recommend actions to promote and protect critical technologies.⁷

Recommendation 3: that the PJCS recommend to Government the need to lead coordinated efforts to create a schema of how its counter foreign interference efforts create a coherent whole, and recommend appropriate legislative adjustments to ensure a consistent, coherent approach to countering foreign interference in the university sector.

Recommendation 4: That the PJCS recommend to Government that one agency is given responsibility for the design and coordination of the administration for the framework. This could be modelled on the Critical Technologies Policy Coordination Office, located within the Department of Prime Minister and Cabinet.

The Go8 would be happy to work with suitable areas of Government to help devise a regulatory framework that is thoughtful, measured, proportionate and targeted to the desired end result.

As always, the Go8 is happy to provide further engagement with the Committee, or discuss any aspects of the above submission. I can be contacted via email [REDACTED] if I can be of further assistance.

Yours sincerely

[REDACTED]
VICKI THOMSON
CHIEF EXECUTIVE

⁷ <https://www.pmc.gov.au/domestic-policy/critical-technologies-policy-coordination-office>

