

Submission to the review of the Foreign Influence Transparency Scheme Act 2018

1. I welcome the opportunity to make a submission to this review. I do so in my personal capacity, not as a representative of any institution I am affiliated with.
2. The *Foreign Influence Transparency Scheme* (FITS) is a key part of Australia's response to managing foreign influence risk in the 21st century. Its introduction recognised, on the one hand, the importance of welcome foreign influence to a democracy like Australia and, on the other, the growing risk we face from influence that seeks to subvert our democracy.
3. To assist the Committee with its review, I have enclosed an occasional paper, published by the Australian National University's National Security College in 2021, *The Domestic Security Grey Zone: Navigating the Space Between Foreign Influence and Foreign Interference*.
4. For context, I draw the Committee's attention to:
 - a. Part 1's discussion of Australia's approach to managing foreign influence risk and the role and limitations of FITS (*pages 6-8*).
 - b. Part 3's examination of why certain forms of foreign influence, short of foreign interference, can carry risk to a democracy (*pages 13 and 15*).
5. I also draw the Committee's attention to the recommendations in Part 4 and in particular:
 - a. The principle of Active Transparency (*page 17*)
 - b. Options for recalibrating FITS (*page 20*).
6. I am available to provide further information or assistance to the Committee as required.

Yours sincerely

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THE DOMESTIC SECURITY GREY ZONE: NAVIGATING THE SPACE BETWEEN FOREIGN INFLUENCE AND FOREIGN INTERFERENCE

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About this report

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EXECUTIVE SUMMARY

Australia has been a global first mover in updating its legislation, policy and bureaucratic structure to manage foreign influence risk in the 21st century.¹ Australia's response has focused on criminalising, disrupting and deterring the most pernicious form of foreign influence – foreign interference. However, a 'grey zone' is emerging between acceptable foreign influence activities and unlawful foreign interference. This paper asks: how should Australia address foreign influence that falls short of interference, but is nonetheless inconsistent with Australian values, interests or sovereignty?

It recommends that Australia's response be guided by four principles:

- **Active transparency:** Australia has a range of foreign influence 'transparency' measures. These include the Foreign Influence Transparency Scheme (FITS), and the new public register of state government, local government, and public university 'foreign arrangements' established by the *Foreign Relations Act* (2020). The next step is to ensure information about foreign interference is collected and presented in meaningful ways, and its significance is contextualised and explained. Decision-makers in civil society, business and government should be empowered with guidance and options for how to respond to foreign influence information.
- **Country agnostic, but context-aware:** Australia adopts a 'country agnostic' approach to the administration and enforcement of its foreign interference offences. However, for foreign influence short of interference, there is a need for decision-makers to pay closer attention to the political context of the source country. This includes understanding the source country's broader foreign policy and strategic objectives, and how the source country deals with influence in its own political system. It should also include considering whether there is reciprocity in the relationship – that is, whether influence is permitted to flow both ways.
- **Prioritise democratic political rights and social cohesion:** Any step-up in Australia's response to foreign influence should be designed to defend

and support social cohesion, trust in institutions and individual rights.

- **Empower a decentralised response:** There is a role for active monitoring of foreign influence risk by government in some contexts, and existing foreign interference laws should be enforced. However, the most important policy responses will be those that build the institutional capacity of social and economic actors to identify problematic foreign influence and to push back or build resilience to its effects.

To operationalise these four principles, this paper offers policy options including:

- **Adopt a foreign influence continuum:** There is an opportunity to move policy frameworks and public discourse beyond a binary divide between 'influence' and 'interference' and instead to think of foreign influence along a continuum of risk to Australia's values, interests and sovereignty.
- **Establish an independent Sovereignty Commissioner:** A publicly visible commissioner could play a key role in implementing 'active transparency' by assembling and disseminating information to help decision-makers and the public understand the context of individual acts of foreign influence, and the actors and methods of foreign interference.
- **Create a dedicated national online portal for foreign influence risk:** A portal could include standard guidance for assessing foreign influence risk and clearer, more responsive mechanisms for triaging and responding to concerns about potential interference. Ideally, the portal would not be managed by a national security agency, but an appropriately resourced independent commissioner's office.
- **Update legislation to capture 'precursors' to interference:** Legislation should be updated to capture activities and behaviours which are precursors to, or create opportunities for, unwelcome foreign influence. This should include both reviewing laws, and better resourcing responses and enforcement, in the areas of disinformation, data protection and privacy.

- **Support a robust, independent media:** There is a need to protect Australian media freedom and plug gaps in its media ecosystem. Key lines of effort should include: increasing support for independent foreign-language content, addressing regional and local government ‘news droughts’ and removing impediments to free and fair reporting on national security matters.
- **Recalibrate and expand foreign influence reporting obligations:** FITS should be updated to ensure the register presents useful and meaningful information. There is also a need to equip the body administering the scheme with resources to engage in outreach and more calibrated powers short of enforcement action (such as the ability to issue guidance and binding notices).

Who is this paper for?

While this paper focuses on Australia, its analysis and findings are intended to be relevant across democracies. Australia has been a “canary in the coal mine” in its experience of Chinese Communist Party (**CCP**) foreign interference,² as well as a first mover in responding. It is well-positioned to continue to create new standards of international best practice in ways that both protect citizens’ political rights and freedoms, and Australia’s sovereignty, values and interests.

INTRODUCTION

In a world of accelerating technological change, economic entanglement and geopolitical uncertainty, foreign influence has emerged as a key challenge for 21st century governments and societies. This paper addresses one aspect of that challenge: how can liberal democracies address activities in the 'grey zone' between routine diplomatic influence and unlawful foreign interference?

Increasingly, liberal democracies draw a sharp line between accepted acts of foreign influence and 'foreign interference' – which is proscribed in law. Australia has played a leading role in formalising this distinction, defining foreign interference as conduct by or on behalf of a foreign actor which is intended to influence Australian politics or prejudice national security and which is coercive, covert or deceptive.³ However, not all activities and behaviour which fall short of narrow legal definitions of foreign interference are welcome or acceptable in a democracy. This debate is underscored by recent controversies in Australia and elsewhere about the risks of state-affiliated technology companies like TikTok⁴ and Huawei,⁵ state-affiliated social media influence campaigns,⁶ and the united front work of the CCP,⁷ including influence on university campuses,⁸ and among business elites.⁹ Additionally, state actors, notably China and Russia, have adopted strategies, organisational structures and tactics which exploit the grey zone between acceptable foreign influence activities and unlawful foreign interference.

In many respects, this domestic security grey zone is analogous to the military-strategic grey zone – wherein states engage in coercive conduct short of armed conflict to advance their interests while staying below thresholds that would trigger a response. Efforts to respond to the military-strategic grey zone are more mature and yield insights that can be transferred to how democracies address the grey zone emerging on their home fronts. This paper identifies these insights and translates them to the domestic Australian context.

Part 1 introduces the concept of foreign influence. Throughout history, states have sought to manage the risks of foreign influence through a mix of legislative, policy and social measures. The types of measures adopted vary depending on the state's political system, values and threat perceptions. In Australia, the focus has been on criminalising the most pernicious form

of influence – foreign interference. In general, other kinds of influence are welcomed provided they are transparent.

Part 2 argues that the measures democracies use to manage and absorb foreign influence are under stress and need updating. Foreign influence has shifted from a mostly closed-door, elite practice to a constant that affects all parts of society. Modern authoritarian regimes have also heavily invested in foreign influence strategies to 'forward defend' their own political systems and to achieve asymmetric strategic advantages.

Part 3 seeks to understand which activities and behaviours short of foreign interference might be inconsistent with – or carry risk to – a democracy's values or interests. To do this, it first identifies four characteristics common to activities in the military-strategic grey zone – which achieve strategic effects by being:

- below thresholds for a legal response
- deniable
- integrated, as part of a broader, multi-faceted campaign, and
- incremental, achieving objectives gradually.

The part concludes by identifying characteristics of the domestic grey zone which differ from the military-strategic grey zone, and therefore may require a modified response:

- intersections with political and civic rights
- the need for national-level responses, and
- the need for reciprocity.

Part 4 identifies structural, legal and convention-based policy options that can help to reduce the frequency and limit the impact of foreign influence which is contrary to Australia's values, interests or sovereignty. A key insight is that policy frameworks and public discourse should move beyond a binary divide between 'influence' and 'interference'. It may be more useful to think of foreign influence along a continuum of risk. Policy responses should emphasise measures that build the capacity of social and economic actors and institutions to identify problematic foreign influence and to push back or build resilience to its effect.

PART 1. CONCEPTUALISING FOREIGN INFLUENCE

States have always regulated foreign influence – prohibiting some activities and behaviours, while modulating others via regulation, norms and institutional design. This Part introduces working definitions of influence and foreign influence, and examines why, how and to what extent states moderate foreign influence. In general, liberal democracies are more open than authoritarian regimes to influence on a wider array of issues and from a broader set of actors (including foreign actors). The Part concludes with analysis of how Australia and comparative democracies address foreign influence today.

What is ‘foreign influence’?

The pursuit by states of influence is a fundamental, enduring feature of international relations. Countries seek to influence their allies as well as their competitors and adversaries in a range of domains—including diplomatic, economic, informational and military. There are three broad categories of influence: coercion (such as armed aggression or economic sanctions), inducement (such as concessional loans or elite cultivation) and persuasion (such as cultural exchange or, more perniciously, propaganda and disinformation).¹⁰ Arguably, all interactions between states are ultimately in pursuit of influence.

This paper focuses on what is commonly termed “foreign influence” – that is, influence activities that target, or otherwise affect, a country’s domestic sphere, including:

- political institutions and actors
- economic institutions and private sector actors, and
- civil society groups and citizens.

This type of domestic-oriented influence is an important feature of relations between states in an open, globalised world. It can advance interstate cooperation and

development and contributes to a country’s ability to sustain a diverse, open and informed political debate. However, not all acts of foreign influence are positive. It is for this reason that, throughout history, foreign influence has always been a regulated space. States have always moderated and mediated foreign influence to ensure it is consistent with their political and legal systems, national interests and values. Technology and prevailing levels of globalisation have also put limits on levels of foreign influence – by affecting the scale at which it is possible, and the costs and likelihood of achieving successful outcomes.

Foreign influence has always been moderated and regulated

In all states there is a continuum between foreign influence that is considered acceptable and that which is considered unacceptable – in the sense that the risk or actual threat it poses to national interests, values or sovereignty is too high. Where states position themselves on this continuum varies across time, and between legal and political contexts. There are some hard lines. At one end of this continuum, as *Figure 1* visualises, certain types of influence activities or behaviours are completely blocked or criminalised. Foreign influence activities that fall to the left of this hard line are permitted but managed and regulated proportionate to the perceived risk. In general, liberal democracies are more open to foreign influence, and position their ‘hard stop’ further to the right of the spectrum. Authoritarian regimes, which are characterised by centralised political control, place their hard stop much further towards the left, as visualised in *Figure 1*.

Of note, many of the laws and norms which shape or restrict foreign influence to the left of a state’s ‘hard stop’ may primarily be targeted at regulating *domestic* activity and behaviour, but indirectly shape foreign influence. For example, laws prohibiting political bribery and

Figure 1: Responses to foreign influence in different systems

Figure 1A: Liberal democracy

Regulated proportionate to perceived risk

Proscribed

Figure 1B: Authoritarian regime

Regulated proportionate to perceived risk

Proscribed

corruption protect against foreign interference, even if they are primarily designed to uphold the domestic rule of law. Similarly, competition and anti-trust policy are primarily designed to ensure good economic outcomes, even as they may indirectly prevent a monopoly by foreign state-affiliated companies in key sectors, such as the media.

The balance countries strike between what is not acceptable and what is acceptable, but managed, not only varies between political systems but has also shifted throughout history in response to countries' changing political values and threat perceptions. In 1796, retiring US president George Washington termed foreign influence "one of the most baneful foes of republican government."¹¹ He argued for stringent policy and institutional responses including the absence of political parties – which he thought would be weaponised by foreign powers – and for an isolationist foreign policy, to reduce foreign actors' interest in meddling in US politics.

Before the end of the First World War, most western countries placed their 'hard stop' much further to the left – and more heavily regulated the foreign influence that was allowed. Conversely, the ideal of an open society, expressed in ancient Athenian leader Pericles' funeral oration in c.430 BCE was a polity "thrown open to the world" that "never expel[s] a foreigner." In this model, espionage and interference would not be managed by laws or prohibitions, but by the decentralised choices of an informed and loyal citizenry.¹² This approach is echoed in modern 'total defence' or 'civil defence' approaches taken by Baltic and Nordic democracies.

Authoritarian and democratic approaches to influence

All political communities have rules, norms and institutions that limit *what* can be contested, *by whom*, and *how*. Different states' policy settings on foreign influence should be viewed against this backdrop. Here, again, there are sharp differences between authoritarian regimes and democracies.

- **What:** In authoritarian regimes, the zone of acceptable political contestability is considerably smaller than in democracies. This is because authoritarian regimes rely, at least in part, on social and information control to ensure their legitimacy and survival.¹³ Conversely, democracies continually contest and revise questions such as who should be in government, which political values and interests should be prioritised, and how the government should implement its policy agenda.¹⁴

- **Whom:** Democracies "draw on disagreements within their population to solve problems." Conversely, although in authoritarian regimes there may be policy contestation between factions within the ruling elite, most of this is "carefully insulated from the public realm."¹⁵
- **How:** Since contestation is a broad, pluralistic endeavour in democracies, good governance depends on contestation occurring in a mostly open, public fashion. Conversely, authoritarians benefit from "pluralistic ignorance or preference falsification, under which people only have private knowledge of their own political beliefs and wants, without any good sense of the beliefs and wants of others."¹⁶ This prevents dissenters from mobilising against the ruling party. For example, Pomerantsev and Chen argue that in Russia "no one knows which parties or voices are genuine, and which are puppets of the regime, creating general paranoia and despair."¹⁷

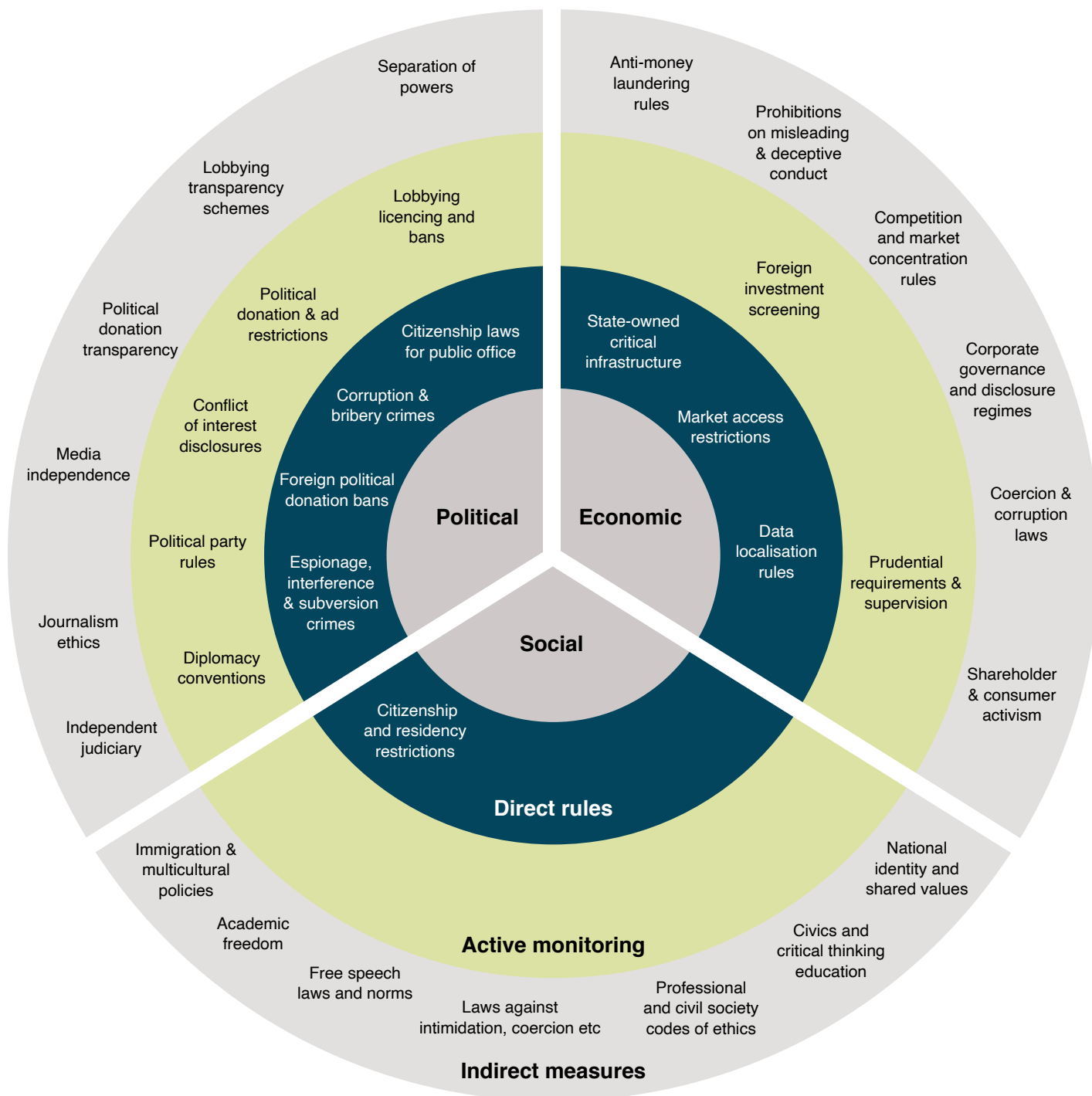
Managing influence

Beyond rules which prohibit specific foreign influence activities and manage others, an ecosystem of political, economic and social features (including laws, norms, institutions and values) regulate influence, diminishing the opportunity for harmful foreign influence activities, and mitigating their consequences if they do occur. These features can be broadly separated into:

- **Direct rules:** measures that ban or require certain actions
- **Active monitoring:** mechanisms for screening foreign influence risk in important sectors, and
- **Indirect measures:** institutional, cultural or policy factors that curtail or otherwise shape influence.

Figure 2 conceptualises this ecosystem and provides examples of features that are commonly present in democracies. For example, one common 'direct' rule, which can reduce the risk of harmful foreign influence, is constitutional limits on whether foreign-born or dual nationals can hold elected political offices.¹⁸ A common 'active monitoring' measure is screening of foreign investment proposals that meet thresholds of risk or importance. Common 'indirect' measures include an independent media that holds all forms of power and influence to account (including foreign sources). Authoritarian regimes also use many of the features in *Figure 2* – but their toolkits include more 'direct' and 'active monitoring' measures towards the centre of the circle, such as censorship, media restrictions, outright

Figure 2: Common methods of managing foreign influence



bans on foreign ownership/investment in certain sectors, and government monitoring of private and corporate activity.

Australia's approach to foreign influence, in comparative perspective

A narrow 'proscribed' zone for political interference

In 2018 Australia enacted new laws to criminalise the most pernicious kinds of foreign influence – foreign *interference*. Australia's foreign interference offences cover political influence which is coercive, covert or deceptive. In this, they capture only a very narrow set of activities and, since they are criminal offences, prosecutors would need to establish guilt 'beyond reasonable doubt' – the highest legal threshold in common law systems. Also in 2018, the government created a new position to coordinate responses to foreign interference across federal government departments and agencies – the National Counter Foreign Interference Coordinator (**NCFIC**) within the Department of Home Affairs – and a Foreign Interference Threat Assessment Centre in the Australian Security and Intelligence Organisation (**ASIO**). To date, only one person has been charged under Australia's foreign interference offences,¹⁹ despite successive Directors-General of ASIO identifying the threat Australia faces from foreign interference as "unprecedented."²⁰ However, the low level of prosecutions does not indicate that these laws are ineffective. Part of the NCFIC's role is to discover and disrupt, or to deter foreign interference activities.²¹ It also engages in outreach particularly with at-risk sectors of Australia's economy and society, to help them develop mitigation strategies and build resilience to foreign interference.²² Success at these missions would of course reduce the volume of activity that requires a law enforcement response. The Australian Government has also shown a tendency to approach individual foreign interference cases via migration law processes, such as citizenship application rejections and visa cancellations on national security and character grounds.²³

Australia's decision to define foreign interference should be contrasted with European and American approaches. The European Union (**EU**) is yet to develop a common framing of 'foreign interference' – something analysts have argued will "delay or complicate lawmakers' initiatives and muddy civil society's efforts to build awareness and rally opposition against incursions into democratic processes."²⁴ Terms used by national leaders and in intergovernmental statements range from 'external', to 'malicious' and 'manipulative' interference. Currently, European and US policy definitions tend to

define problematic foreign influence by reference to a catalogue of common tactics, such as cyber-attacks, malign finance, and disinformation.²⁵ This approach will prove insufficient as adversary tactics and strategies evolve.

Further, rather than focusing on unlawful *conduct* as in Australia, US officials have developed a framework based on the *intent* and strategic *objectives* of actors. The FBI, for example, describes "malign foreign influence" operations as those used to "spread disinformation, sow discord, and... undermine confidence in our democratic institutions and values."²⁶ The Department of Homeland Security defines "foreign interference" as "malign actions ... designed to sow discord, manipulate public discourse, discredit the electoral system, bias the development of policy, or disrupt markets *for the purpose of* undermining the interests of the United States and its allies."²⁷ This is broader than Australia's foreign interference offences, which predominantly target interference in the political sphere ("political or governmental processes") or that is prejudicial to national security – rather than interference with market processes, for example.

Australia's approach of defining and criminalising only a narrow set of behaviours was intended to avoid over-securitising foreign influence matters, and to ensure political speech was protected, while focusing resources and attention on the most pernicious activities.²⁸ NCFIC has also been very clear in messaging that its approach is 'country agnostic' – classifying conduct as foreign interference is not based on country of origin. This is again different to the approach of other governments, and researchers, which frame the problem to be solved as malign 'Chinese' or 'Russian' influence. While China and Russia have provided some of the most salient case studies of foreign interference in recent years, these definitions risk becoming outdated as actors, and their approaches, evolve. They also distract attention from which influence activities are pernicious, and why, since the quantum of acceptable/low-risk influence from large countries like China and Russia will always be larger than the quantum of problematic/high-risk influence.

Focus on 'transparency' for all influence short of interference

Australia's current policy settings draw a sharp distinction between foreign interference and foreign influence – explicitly stating that foreign actors are "free" – indeed welcome – to promote their interests in Australia, provided this is done in an "open and transparent" way.²⁹

As a democracy based on the rule of law, Australia has long decades maintained mechanisms directed at increasing political influence transparency – such as disclosure of political party donations, electoral campaign rules, an independent media, integrity and corruption commissions in state politics, and conflict-of-interest disclosures for politicians. However, in 2018 the government recognised that this patchwork of measures was alone insufficient for ensuring foreign influence is transparent and introduced the Foreign Influence Transparency Scheme (**FITS**), administered by the Attorney General's Department (**AGD**). The purpose of FITS is to provide public and government decision-makers with visibility of the nature, level and extent of foreign influence on Australia's government and political process, economy and society. Importantly, registrable activities extend beyond political lobbying (i.e. closed-door engagement with politicians) to also include 'communications activities', capturing activities that influence public debate and decision-making more broadly.

However, there are key limitations to FITS' usefulness. The scheme relies on self-disclosure. This places a high enforcement burden on government. In practice, even without resource constraints, a democratic government cannot review all private interactions with foreign actors to determine which should have been registered under FITS. Further, the FITS enforcement toolkit is mismatched with the scheme's purposes. The government cannot issue civil penalties for failure to register or update details on FITS – its only resort is criminal prosecution. Given the extreme nature of this penalty, the government is unlikely to exercise its prosecutorial discretion except in the most egregious cases – meaning it lacks the ability to incentivise day-to-day compliance with the register. Only punishing egregious non-compliance, after the fact, does little to incentivise accurate and fulsome reporting. Criminal proceedings would raise both evidentiary and resourcing barriers, since the government would need to be able to meet a criminal standard of proof to succeed. There is also a disconnect between the legislative intent of FITS – to provide a resource of accurate information about foreign influence to the public and decision-makers – and public perceptions of the scheme. While FITS is in fact an 'indirect' mechanism designed to improve public decision-making (per *Figure 2*), it is widely misperceived as a 'blacklist' or licensing scheme – more akin

to a 'direct' measure – or as a way to facilitate 'active monitoring' by government of political and economic activities.³⁰ This has a chilling effect on entities' willingness to register – since they perceive being on the register could result in reputational risk and failing to update information once registered could result in criminal legal risk. It is likely that the location of the register (in AGD), the fact that it was legislated at the same time as the foreign interference offences, and the criminal consequences of non-compliance, have contributed to these perceptions.

Supporting ecosystem of laws, norms and institutions

Australia has a mix of other rules, norms and institutions that help to mediate and moderate foreign influence to ensure it is consistent with Australian values, interests and sovereignty – including in many of the categories in *Figure 2* above. Examples include:

- **Direct rules minimising the opportunity for, and consequences of, certain foreign influence activities.** This includes constitutional citizenship requirements for federal parliamentarians and restrictions on foreign political donations.
- **Active screening of certain high-risk activities.** This includes review of certain economic transactions by the Foreign Investment Review Board, supervisory and information-gathering provisions in relation to critical infrastructure,³¹ and the new *Foreign Relations Act*, which allows the Foreign Minister to review agreements with foreign governments that are entered into by state and local governments and public universities.³²
- **Indirect measures.** These include general public messaging about the threats to security and democracy from foreign interference – such as the Director-General of ASIO's first annual threat assessment³³ – and engagement with at-risk sectors such as universities to help them identify foreign interference risk and implement appropriate controls.³⁴ Outside of government policy, one of the most important bulwarks in Australia against harmful foreign influence is the media.³⁵ Investigative journalism in 2017, for example, helped to build political will for the foreign interference legislation reforms,³⁶ and subsequent pieces have heightened attention on both interference and other forms of harmful influence.

PART 2. TRENDS AND DRIVERS IN FOREIGN INFLUENCE

This part examines key technological, economic, social and geopolitical trends that have placed stress on how democratic systems manage and absorb foreign influence. These trends are both increasing the pace and scale of foreign influence activities and changing its targets. In the 21st century, foreign influence has shifted from a mostly closed-door, elite practice to a constant that affects all parts of society. It has also moved from being one-directional communications via official channels, to influence that is networked, blended and multi-modal. At the same time, the rise of modern authoritarian regimes, which have very different approaches to regulating and engaging in foreign influence, is placing significant pressure on the systems democracies use to regulate foreign influence.

Foreign influence in the 20th century

The centrality of citizens to foreign relations has been growing since the early 20th century. Pre-20th century diplomacy was highly formal, interpersonal, slow and usually protected by secrecy.³⁷ Following the First World War, there was a movement towards openness in foreign relations and diplomacy – since the war was widely perceived as the consequence of secretive diplomacy by irresponsible elites.³⁸ US President Woodrow Wilson's famous fourteen points for post-war recovery, for example, advocated for “no private international understandings of any kind” and for diplomacy to “proceed always frankly and in the public view.” With the idea of ‘open diplomacy’, came the associated notions of parliamentary accountability for foreign policy, and a more broadly recruited civil service. Public opinion and domestic civil society thus began to matter more to international relations, changing the nature and sources of power and influence in international affairs.³⁹ During the Cold War, new media, particularly broadcast radio and TV, and ideological contest between the US and Soviet Union, further widened the influence aperture, and gave rise to the notion of ‘public diplomacy’ – that is, activities by state officials but with the objective of influencing a foreign government, by influencing its citizens. Notwithstanding the focus on citizens, public diplomacy was generally conducted via engagement

with peak civil society or business bodies and elites in government and business.

While public diplomacy influences citizens via open, public and inclusive means,⁴⁰ there is another type of foreign influence outside of formal diplomatic channels. There is little definitional certainty about what to call this type of influence. During the Cold War, common terms included ‘political warfare’ or covert ‘active measures’ – the tactics included disinformation, propaganda, psychological operations, political sabotage and subversion.⁴¹ While the prevalence of these activities accelerated during the Cold War, their reach, scale and effectiveness was limited. As Thomas Rid has explained, in the pre-internet age these activities were largely “slow moving, highly-skilled, close-range [and] labour-intensive.”⁴² Active measures were conducted by operatives on the ground able to infiltrate specific political groups or engage with elites or ‘influencers’. Where they were technology-enabled, they relied on expensive broadcast infrastructure such as radio which could distribute messaging widely, but without segmenting target groups, and customisation. Because of the narrow and closed-door nature of Cold War active measures, these issues tended to be dealt with by domestic security and counter-espionage agencies. For example, in Australia, well before the foreign interference offences were created, the *ASIO Act 1979* empowered ASIO to collect intelligence about, and advise government on responding to, clandestine or deceptive acts of ‘foreign interference’ and political sabotage, as part of its protective security mission.

New trends in foreign influence

A number of trends have made 21st century public diplomacy unprecedentedly citizen-focused, while at the same time significantly increased the scale and prevalence of active measures. As a result, influence has evolved from a narrow, elite practice that primarily affects professionalised and / or secretive parts of government, to one that affects all portfolios and levels of government, as well as entire societies and economies. These trends are summarised in *Figure 3*.

Figure 3: Trends changing the foreign influence landscape

Trend	Sub-trend	Implications
1. Accelerated globalisation	(a) Compression of time and space ⁴³	Influence has become a more useful and responsive tool of statecraft – able to be conducted at distance, yet with immediacy. The political, economic and social realms of states are unprecedentedly porous to foreign actors.
	(b) Economic interconnectedness	Deep linkages across national borders involving state and local governments, companies and research sectors create new opportunities for foreign influence activities.
	(c) Privatisation and liberalisation	As more economic activity in strategic and sensitive sectors – from banking and finance, to operation of critical infrastructure, and development of critical technologies – is undertaken by private actors, these private actors find themselves subject to foreign influence activities that, previously, only governments or government-owned entities would have needed to deal with. They may also engage in foreign influence activities to advance their own corporate agendas.
	(d) Mass migration	Significant movement of people for work, study and migration has expanded ability of states to manipulate diaspora communities, particularly where states continue to view their expatriates as their ‘nationals’ or citizens, and seek to influence or coerce them by targeting family members who remain in their jurisdiction.
2. Advances in digital technologies	(a) Digitalisation of political, economic and social functions	This has broadened and deepened foreign actors’ access to all elements of a target state, and extended the possible tools of foreign influence – including to spread information, to access and manipulate datasets, or to manipulate algorithmic decision-systems. In particular, the rise of virtual social networks has created new models of influence – such as ‘participatory propaganda’, whereby citizens become active, if unwitting, agents in their and their community’s persuasion. ⁴⁴
	(b) Manipulative consumer platforms	Consumer platforms, such as social media, are optimised for shaping users’ preferences and behaviours. ⁴⁵ Ecosystems designed to maximise user attention and advertising revenue can be repurposed into powerful political influence tools. Additionally, machines are getting better at predicting human behaviour and the outcomes of complex social interactions, enhancing states’ ability to influence effectively.
	(c) Surveillance, mass data collection and incentive systems	Surveillance is the default business model of the internet. Mass collection of private data by companies and governments, together with advances in machine learning, has created new opportunities for digital profiling of citizens, and micro-targeted foreign influence. ⁴⁶ Digital incentive ecosystems, epitomised by China’s social credit system, can enable states or corporations to effect behaviour (and even opinion) change at scale through surveillance, rewards and punishment. Such surveillance systems (with their implicit threat of punishment) also encourage self-censorship.
	(d) Democratisation of tools of influence	The ability to use social media, automate digital ad campaigns and create misleading online content (such as ‘deep fakes’) is increasingly cheap and easy for amateur users. While much discourse focuses on the way in which major powers – like China and Russia – engage in influence activities, non-state actors such as terrorist groups, political extremists and conspiracy networks, also have access to sophisticated foreign influence tools.

Figure 3: Trends changing the foreign influence landscape

Trend	Sub-trend	Implications
3. Greater public engagement in policymaking and scrutiny of government decisions	(a) Citizens increasingly expect more official openness, stronger government accountability and oversight, and explanation of decisions. ⁴⁷	As citizens take more interest in government processes and decision-making, they also become more relevant targets for foreign influence campaigns. There is a future risk that if governments fail, or are perceived to fail, to meet rising citizen expectations, mistrust in political processes may be exploited or deepened by opportunistic foreign influence campaigns.
4. Social and political fragmentation	(a) Declining trust in political, economic and social institutions ⁴⁸	These trends are exploited by opportunistic foreign influence campaigns. For example, dissatisfied or marginalised political groups can be exploited or infiltrated by foreign influence actors, and mistrust in facts and institutions can increase the appeal of alternative narratives propagated by foreign actors. Declining trust in institutions and opinion leaders also reduces the 'antibodies' within states to push back against foreign influence inconsistent with the society's values and interests.
	(b) Rise in conspiracy and extremist communities ⁴⁹	
	(c) Increasing disagreement about interpretations of facts and data ⁵⁰	
5. Rise of 'modern authoritarian' regimes	(a) The rise in global geopolitical and economic power of authoritarian regimes, especially China	Authoritarian regimes exercise considerably more control than democracies over what is politically contestable, how and by whom, within their societies (see Part 1.2). They are therefore more closed to foreign influence, and view much more foreign influence activities as inherently risky to their interests and the stability of their political system. With growing power, it is now increasingly possible for them to 'forward defend' their domestic systems via influence campaigns abroad. ⁵¹
	(b) The reversal of trends towards economic and political 'opening up' in these regimes	Over the last decade, sub-trend 5(a) has been accentuated in major authoritarian powers Russia and China, which have reversed course on the 'reform and opening up' of post-Maoist China and the late Soviet Union/early Russian Federation approach of openness to economic exchange, and opening of domestic political conditions including media and public debate.
	(c) The adoption by these regimes of explicit influence-based strategies that view democratic institutions, public opinion and private entities as legitimate – and primary – targets.	Authoritarians have long used political influence strategies – such as censorship, propaganda and coercion – against their domestic populations. They can adapt domestic influence tactics to project influence externally (and, due to sub-trend 5(a), perceive they can do so with a degree of impunity and insulation). In particular, China and Russia have adopted integrated 'political warfare' strategies to achieve asymmetric advantages over liberal democracies. ⁵² These strategies use multiple elements of national power, and include actions by economic and social actors – extending the breadth and depth of influence. A core focus for Russia is to discredit liberal democracy, including via disinformation and electoral interference. Under the leadership of Xi Jinping, China has intensified its pursuit of 'discourse power' – designed to "exert influence over the formulations and ideas that underpin the international order" to reshape global institutions and public opinion in China's interests. ⁵³ In specific contexts – including in relation to the political affairs of Hong Kong and Taiwan, and in the aftermath of Covid-19 – China has also increasingly adopted 'Russia-like' tactics designed to discredit democracy and democratic institutions. ⁵⁴

Consequences for liberal democracies

Citizen centrality

Due to the fast pace and adaptive nature of 21st century foreign influence, and the way in which it can now target actors across a society, measures to address its risks must move beyond government-led approaches. As the trends outlined in *Figure 3* continue to advance, community-level resilience will become increasingly important, as will dynamic, decentralised responses from social and economic actors. Law enforcement or intelligence agencies will simply be unable to track, identify and respond to all types of influence that carry risk. Moreover, because influence is now occurring across the full spectrum of social, economic, and political activities, it is also undesirable from a normative perspective for the primary response to be government-led – since this risks corrupting the democratic approach to what is contested, how and by whom, as outlined in Part 1 above.

Tempo and prevalence of influence activities by modern authoritarian regimes

The rise of modern authoritarian regimes, and associated sub-trends set out in *Figure 3*, are placing significant pressure on the systems democracies have for regulating foreign influence. It is important to point out that these challenges do not all stem from deliberate efforts by authoritarian regimes to project power abroad. Democratic systems and liberal democratic ideas – such as free elections, independent journalism, civic engagement and public activism – present challenges for one-party authoritarian systems. Further, liberal democracies' support for transparency, investigative journalism, independent institutions and rule-of-law mechanisms – including to regulate foreign interference – threatens the totalising yet brittle social control that

characterises authoritarian regimes.⁵⁵ As anticipated in trend 5(a) above, part of authoritarians' overseas influence efforts is intended to 'forward defend' their own systems and political values. This also motivates efforts to engage in extraterritorial influence and social control of diaspora populations (also see trend 1(d) above). Moreover, some authoritarian influence may not even be deliberate – but an externality of engagement with a closed regime premised on social and political control. For example, by exporting technologies developed for domestic markets, and optimised for manipulation and control, authoritarian regimes such as China can unintentionally influence political and social processes in foreign countries.⁵⁶

Understanding this context is important. It suggests that the political system an actor comes from, or is associated with, will be important to assessing the risk of any foreign influence activities that actor engages in. Modern authoritarian regimes which heavily limit domestic influence, do not operate on a rule-of-law basis, and have low respect for human rights are likely to be of most concern. While examining an actor's intent can be relevant to understanding if its influence is problematic, this alone will be insufficient – since influence may be inadvertent or unintended. To be able to identify and manage foreign influence risk, individuals in Australia will also need to understand how influence operates in the actor's home system (and their particular sector of business) and whether there is a level of reciprocity between the relevant parties. Thus, while Australia's 'country agnostic' approach may remain an important guiding principle for the narrow set of foreign interference offences, it may need modification when approaching the much wider array of foreign influence activities that fall short of these specific categories, but nonetheless are problematic.

PART 3. MAPPING THE DOMESTIC GREY ZONE

The 2020 Defence Strategic Update highlights the growing threat Australia faces from “grey zone activities,” which are being used with renewed intensity and by a greater number of actors.⁵⁷ The Update recognised the need for Defence to shift strategic policy settings to respond. The Minister for Defence explained how the grey zone problem extends to other areas of national power, outside of the military dimension, in a July speech: “In the grey zone, when the screws are tightened: influence becomes interference, economic cooperation becomes coercion, and investment becomes entrapment.”⁵⁸ While there is a growing recognition that there is also a grey zone between foreign influence and interference, there has been less work on identifying what this is, or developing policy responses. This Part seeks to understand which activities and behaviours, short of foreign interference, might nevertheless be inconsistent with – or carry risk to – a democracy’s values, interests or sovereignty.

Characteristics of the military-strategic grey zone

Grey zone actions exhibit four characteristics that make them difficult for democracies to respond to (and, therefore, make them appealing tools for adversaries). These characteristics are summarised in *Figure 4*, which also describes why each creates challenges for democracies.

Applying grey zone insights to foreign influence challenges

The characteristics in *Figure 4* also manifest in the grey zone between foreign influence and interference. Emerging responses to each of these characteristics can be translated to the domestic grey zone context.

Below legal thresholds

There is a growing recognition that 21st century foreign influence activities short of ‘foreign interference’ can threaten, or pose risk to, a democracy’s interests, values or sovereignty, and that not all problematic influence activity will breach laws designed to punish or deter them.⁶⁹ The Australian Strategic Policy Institute’s Alex Joske has cautioned that foreign interference “often takes place in a grey area that’s difficult to address through law enforcement actions.”⁷⁰ In order to address

this in the military-strategic grey zone, there have been attempts to update decision-makers ‘mental models’. For example, US and Australian military doctrine now emphasises the usefulness of viewing relations between states as a dynamic movement between cooperation, competition, contest and conflict, in preference to outdated war/peace binaries.⁷¹ There is also a recognition that traditional notions of deterrence (at least deterrence via cost imposition) may be poorly suited to respond to grey zone activities, and instead concepts of deterrence-by-denial and resilience may be more appropriate.⁷²

Deniable

Similar to activities in the military-strategic grey zone, foreign influence activities increasingly incorporate elements of deniability. This includes use of proxies (for example, state-affiliated or sponsored online ‘trolls’) and often opaque relationships between civil society and private sector groups. The digital environment exacerbates issues of plausible deniability by making detecting, understanding and attributing responsibility for interference significantly more difficult. There is also often a time lag between an operation occurring and its effects materialising.⁷³ As with the ‘below threshold’ characteristic, deniability means that law enforcement mechanisms are not always suited to addressing the foreign influence challenge. Enforcement measures require governments to meet high standards of proof – which may be difficult when actors conceal their identities, or operate through proxies.

Integrated

Foreign influence activities are increasingly multi-faceted, employing:

- **Blended actors:** a mix of state-affiliated, criminal and genuine actors (both witting and unwitting) as well as exploiting the close relationships between the state and the private sector in hybrid state/capitalist systems such as China.
- **Blended operations:** a mix of lawful and unlawful tactics, covert and overt tactics, acceptable and unacceptable forms of influence, and online and offline activities.

Figure 4: Common characteristics of grey-zone activities

Characteristic ⁵⁹	Description	Challenge for democracies
1. Below thresholds for a legal response	Grey zone actions occur below thresholds that would justify a response, or clearly identify the act as wrongful or unlawful. In the military-strategic domain, grey zone activities exploit the space between 'peace' and 'war'. ⁶⁰ A classic example is Russia's activities in Ukraine. Russia "played on the legal margins" by masking its involvement in hostilities to avoid triggering the international prohibition on the use of force. ⁶¹	By exploiting legal ambiguity, grey zone activities make it difficult for the target to "definitely name and shame" the responsible country. ⁶² Legal ambiguity also "hobbles responses." ⁶³ The available options for responding to them tend to be either too militarised, or extreme, or too constrained, leading decision-makers to either choose an ineffective response or fail to act. ⁶⁴
2. Deniable	Grey zone actions are often designed to make definitive attribution of the responsible actor difficult. To do this, they often involve cyber-enabled action, non-state mercenaries or covert components. A classic example in the military-strategy grey zone is the way in which Chinese fishing vessel militia engage in the South China Sea. Another example is the use by states of proxies to engage in cyber-attacks.	A consequence of deniability is that while intelligence agencies may be able to identify the state responsible for certain conduct, they can struggle to make a public case for attribution that is trusted, without needing to reveal sensitive sources and methods. Deniability also helps grey zone actions elude traditional deterrence theory (since attribution is uncertain, there is uncertainty as to whether the action will be met with retaliation). ⁶⁵ Deniability also helps evade legal responses in rule-of-law systems with established evidentiary thresholds.
3. Integrated	Grey zone actions tend to use multiple instruments of power simultaneously to achieve their objective, including economic, informational, intelligence, and legal aspects of power.	In general, integrated campaigns are easier for authoritarian states to execute and defend against. ⁶⁶ Authoritarians have a more unified control of the levers of state power, and deeper integration between the state and market; and between the state and society. Democracies struggle to mount effective responses, since they require coordination across agencies, levels of government, and often with private sector actors.
4. Incremental	Grey zone actions exploit 'strategic incrementalism' – edging towards their objective over time. They also often pursue aggregation strategies. For example, in the military domain, grey zone actors achieve their objectives through a series of small tactical wins rather than making an "all-out grab." ⁶⁷ Importantly, while they can be, these objectives do not need to be set by the foreign actor ahead of time. Strategies of incrementalism / aggregation can also be opportunistic. The actor may gradually improve its position over time, or shape the environment to maximise its subsequent room for manoeuvre as circumstances change.	Strategic incrementalism means that traditional deterrence theories may be ill-suited to the grey-zone challenge: by the time a target realises that certain grey zone actions are adverse to its interests, it can no longer deter, but must <i>compel</i> the actor to stop. Compellence is harder than deterrence, in part because the target of compellence must change course (often visibly and embarrassingly), whereas the target of deterrence does not have to do anything. ⁶⁸ The gradual nature of grey zone actions also makes it difficult for short-term-focused democratic governments to define and assess the threat, and to build political will to respond to it.

Importantly, foreign influence networks are increasingly vast and decentralised. This includes ecosystems such as China's united front architecture, but also online networked-approaches to influence which incorporate aspects of ground-up, citizen-led curation.⁷⁴ As in the military-strategic grey zone, the integrated nature of foreign influence campaigns makes responding difficult for democracies, since responsibility to different parts of the foreign influence challenge rest with different government departments and agencies. An important insight from the military-strategic grey zone that could be translated to the foreign influence challenge is that governments often cannot *compel* pushback against integrated grey zone activities; but instead use a mix of hard levers (such as law enforcement and bans) and soft, indirect measures (such as leadership, norms and incentives). Further, there is a need to carefully think about the best way to manage and respond to aggregation risk. This insight appears to have informed Australia's foreign investment review scheme – where review is triggered if two or more unrelated foreign entities hold an “aggregate” interest above a particular threshold.⁷⁵

Incremental

As in the military-strategic grey zone, foreign influence strategies tend to move towards their objectives incrementally. By the time influence has reached a tipping point where it becomes interference, it may be too late to respond. Former UK diplomat Charles Parton has suggested that Australia's foreign interference offences do not fully reflect the CCP's methods of unacceptable influence. In his view, Australia should expand its interference construct to include “some concept about the *potential* for interference.”⁷⁶ This is because states including China invest in architectures of influence such as the united front system, espionage networks, or platform technologies that can be activated or repurposed for interference or influence inconsistent with Australia's interests and values. Michael Clarke, Jennifer Hunt and Matthew Sussex take a slightly different approach, emphasising that both unlawful, direct interference and lawful, indirect forms of influence can be damaging to a society:⁷⁷

The provision of gifts, donations, and other inducements (or even threats to release compromising information) ... represents a direct and purposive form of interference, just as, for instance, tampering with election results directly and negatively affects voting integrity. In contrast, efforts to provide research funding to universities in exchange for the ability to shape curricula, engaging in cyber-enabled messaging and propaganda aimed at specific sections of the population, or encouraging business lobbies to back foreign investment partnerships is a longer-term form of influence. Each one is potentially damaging in its own right.

China is increasingly invested in activities of influence prepositioning and preparation – that can be used to gradually shift perceptions and relationships, or quickly repurposed into sharper forms of interference. This includes the CCP's purchase of foreign media, global expansion of Chinese state-owned media, pursuit of worldwide mobile market share, and the expansion of Chinese-owned social media platforms. Media channels that are built over time using advertising and benign content can be repurposed in a crisis.⁷⁸ In 2019, CGTN's English page published videos likening Hong Kong protesters to terrorist groups and repeated fabrications, such as a report claiming that protesters carrying toy weapons were armed with a US-made grenade launcher.⁷⁹

Several insights from responses to the military-strategic grey zone are relevant here. First, there is a need to develop a sensitivity for *time* – slowly shifting perceptions of citizens, policy or business elite may be just as, if not more, corrosive than direct acts of foreign interference such as bribing a particular politician.⁸⁰ Second, there is a need to consider what it means to operate in a ‘zero warning time’ environment. States' intents can shift quickly, or one agency can repurpose or capitalise on human and digital influence networks originally created by another state agency for a less malign purpose. This implies a need for an adaptive, dynamic legal and policy framework that increases resilience to problematic foreign influence, rather than one that seeks to pre-empt or disrupt every act of foreign interference. It also implies a need to treat foreign influence risks as dynamic and contingent, and to regularly reappraise risk and threat assessments.

Differences between the domestic and military-strategic grey zones

Intersections with political and civic rights

While the military-strategic grey zone involves a cognitive aspect, the human terrain is far more central to the foreign influence grey zone. This dynamic means that considerations about human rights and political freedoms are even more important. Additionally, an added complexity emerging from the 'integrated' nature of grey zone foreign influence is that legitimate actors, who enjoy political and civic rights in Australia, are often involved. Yun Jiang, for example, has written about how "members of Chinese communities in Australia often feel trapped between PRC nationalists, the PRC government and popular stereotypes."⁸¹ That said, self-censorship is a key problem in grey zone influence. For example, a November 2018 study found negligible political coverage of China on WeChat channels of Chinese-language news providers. In the lead-up to the 19th Communist Party Congress, no WeChat news channels published an article on Chinese politics.⁸² While this could be an indication of legitimate disinterest in Chinese news, it may also indicate self-censorship – particularly given evidence that WeChat monitors user conversations outside China and flags 'politically sensitive' content.⁸³

Corporate entities also face significant economic pressure from the CCP and CCP-affiliated entities to self-censor. In some cases this pressure is explicit: for example, in 2019 a US basketball coach deleted a tweet supporting Hong Kong protesters, and the US National Basketball Association (**NBA**) subsequently publicly apologised for the tweet, after Chinese tech giant Tencent cancelled streaming of certain NBA games.⁸⁴ In other instances, pressure is indirect and acts of self-censorship are taken to avoid perceived likely consequences.⁸⁵ While corporate entities do not enjoy the same political and civic rights as individuals, they are increasingly important and influential actors

in national political debates. Acts of self-censorship by companies can have a chilling effect on other entities' willingness to engage on certain topics or express certain views, impinge on their employees' rights, and shape or reduce the information and services available to the public at large, often in opaque and unchallengeable ways.

National-level responses required

International law and norms governing conduct in the military-strategic grey zone are multilateral (and often universal) and Australia has limited influence over these laws and norms. However, decisions about what is acceptable or unacceptable influence varies with time and context – and depends on how states and societies define their own values and interests at a point in time. Further, the contours of the influence grey zone will differ between countries, depending on their domestic legal, social, economic and political features. As a result, while multilateral responses may be one aspect of a response to foreign influence, each country will need its own unique response.

Influence is relational and implies reciprocity

Influence implies a two-way relationship between two political communities, or sectors of a society. In this, influence implies that there will be a level of reciprocity and a level-playing field. Grey zone influence is often most risky or problematic when this level-playing field does not exist. This is the case, for example, where influence from one source drowns out alternative sources; comes with strings attached like the need to silence others' views; or seeks to shape the target's views or behaviours without permitting the target to contest the influencer on similar topics or in similar ways. An obvious example of this is self-censorship, where one party to an economic relationship – either through explicit or implicit reasoning – feels the need to suppress activities or viewpoints that are unfavourable to the other party.

PART 4. POLICY OPTIONS

This Part sets out four guiding principles for managing foreign influence risk, and specific policy options to operationalise these principles. As discussed in Part 1, Australia has developed a robust response to the most direct acts of foreign influence – foreign interference. But gaps remain in Australia’s response to influence short of interference that harm Australian interests, values or sovereignty. The principles and policy options in this part are designed to map onto the analysis of the trends enabling 21st century foreign influence, as outlined in Part 2. They are also designed to mitigate the characteristics, set out in Part 3, that make grey zone activities challenging for liberal democracies to respond to.

Guiding principles

Active transparency

Australia’s response to managing foreign influence has tended to rely on ‘passive’ transparency measures – that is, the release of information without further explanation of its context and significance, or options for how people can act based on that information. Despite more public engagement on issues relating to foreign influence and foreign interference, awareness across the political, economic and social realms of the ‘so what’ and ‘what next’ remains nascent. Given the nature of the grey zone influence challenge, transparency of individual acts or facts may mean little unless placed within their broader context or ascribed certain meanings. This is particularly the case for activities that fall short of existing legal thresholds, but nonetheless require a proportionate response, and for activities that if viewed as isolated ‘one-offs’ would not be problematic, but are problematic if viewed as part of an integrated and / or incremental influence campaign. A shift to ‘active’ transparency can empower decision-makers with awareness about foreign influence risks, spark public debate about the types of influence activities and behaviours that are acceptable, and increase the accountability of, or reputational costs on, domestic entities which engage with foreign actors in ways that are out of step with community values.

Country agnostic, but context-aware

Australia should retain its country agnostic approach to the foreign interference offences, since these offences hinge on objective qualities, not the foreign actor’s intent, or actual harm caused. For other types of influence, a modification to the ‘country agnostic’ principle

is recommended. Importantly, no activity should be deemed risky or problematic merely because of its source country. However, since influence is a relational concept, the level of risk will depend on a range of contextual factors, including:

- Australia’s bilateral relations with the influencing country
- the influencing country’s broader foreign policy and strategic objectives, and
- how the influencing country responds to and uses influence in its own political system.

Additionally, there is a need to generate public awareness about the way in which rule-of-law systems are most vulnerable to grey zone foreign influence and most constrained from taking countermeasures. Empowering domestic actors to identify and understand whether foreign influence activity is coming from a country with a robust rule-of-law can therefore help them to identify whether that influence is problematic or risky. So too can empowering actors to understand if influence comes with a degree of reciprocity, and whether they are engaging in an open two-way relationship. Depending on the sector in question (e.g. parliament, the university sector, a particular industry) it may be necessary to understand the corresponding sector in the foreign country – including its structure and relationship with government – to better appreciate and assess foreign influence risk. This is particularly important given the way in which grey zone influence campaigns are increasingly integrated and draw on actors outside of government to achieve their objectives.

Protect democratic political rights and social cohesion

Foreign influence plays out in the domestic sphere – and many of the key actors involved are private citizens who enjoy civil and political rights in Australia. Moreover, as discussed in Part 2 above, foreign influence strategies increasingly target diaspora and minority groups, or explicitly target social cohesion to achieve their objectives. To this end, any step-up in Australia’s response to foreign influence risks will need to carefully anticipate and manage unintended consequences. In particular, there will be a need to mitigate the risk that increased public discourse about foreign influence – anticipated by the ‘active transparency model’ – does not result in xenophobia, polarisation or distrust in Australian political processes or institutions.

While it is likely that civil society has so far *underestimated* the impact of foreign influence activities, it is possible that as awareness grows their influence may be *overestimated*. This could have equally corrosive impacts on democracy and social cohesion, weaken public support for action against genuine foreign influence risks, and divert resources away from addressing other threats to Australia's interests, values and sovereignty.⁸⁶

Empower democracy's decentralised, integrated response mechanisms

A key insight of the grey zone analysis in Part 3 is that top-down law enforcement solutions are often inadequate. This is particularly the case for activities that fall short of foreign interference. Moreover, to fully address the integrated and immersive nature of modern authoritarian influence strategies, democracies need to mirror this with their own, whole-of-society decentralised approach. Australian citizens are arguably prepared to take on more of the burden of identifying and responding to foreign influence risk themselves. For example, the 2020 Lowy Institute Poll found that the majority of Australians support dealing with international problems in line with Australia's democratic values, even when this is inconsistent with Australia's economic interests. Government measures should focus on information-sharing that mobilises civil society, and – recalling the break-down of measures described in *Figure 2* – instead of focusing on direct and active monitoring measures, should increase efforts involving indirect measures that bolster the ecosystem of laws, norms and institutions which build resilience to foreign influence.

Establish an independent Australian Sovereignty Commissioner

Currently, Australia has no coordinated effort to assess and manage foreign influence risk. Indeed, elements of its response remain siloed (for example, broadly speaking, foreign disinformation is the purview of the Department of Foreign Affairs and Trade; cyber interference sits with the Department of Home Affairs and the Defence Department; and human-centred interference is covered by ASIO). Further, the NCFIC currently lacks the kind of public profile required to engage in 'active transparency'. Moreover, while one purpose of FITS was to increase transparency, awareness and datasets in relation to foreign influence, FITS has largely been unsuccessful in this objective.

An Australian Sovereignty Commissioner would be an independent statutory officer who can lead public engagement on foreign influence, while eliding bureaucratic divides. They would play a key role in implementing the principle of 'active transparency' by assembling and disseminating a baseline of information to help decision-makers and broader public understand the context of individual acts of foreign influence.

There is significant merit in creating such a new, independent office. While coordinating Australia's response foreign *interference* is appropriately an intelligence and law enforcement priority, these functions of government are arguably not best placed to coordinate Australia's whole-of-society response to foreign influence risk more broadly. Further, while simply increasing the public profile of the NCFIC is an option, it would arguably be inappropriate, since regulating foreign influence within a democracy is an ongoing political question rather than a defensive, security issue.⁸⁷ Moreover, as the trends discussed in Part 2 continue to advance and influence becomes even more citizen-centric (for example, as more influence occurs via consumer platforms like social media) deliberation and debate about how to respond will need to be open and inclusive.

Key responsibilities for a Commissioner could include:

- Publishing annual reports on levels of foreign influence in Australia, on a country-by-country and sector-by-sector basis.
- Curating a new national portal for foreign influence, including standard guidance for identifying and assessing foreign influence and clearer and more responsive mechanisms for reporting concerning foreign influence and suspected precursor activity.
- Administering FITS.
- Regular and visible outreach and consultation with communities and sectors at risk from foreign influence activities.

Additional actions could include:

- Broadening knowledge of the incentives and objectives of actors from authoritarian regimes – such as how the CCP operates and engages with private actors and civil society, and the motivations for China's foreign policy and external actions.⁸⁸
- Information-sharing that helps people 'join the dots' to identify ecosystems of influence (e.g. by mapping networks and organisations commonly involved in

influence activities) and integrated influence campaigns (e.g. publishing 'narrative tracker' tools that track official state narratives from major Indo-Pacific powers, so that decision-makers can better contextualise individual acts of foreign influence as part of the greater whole they are part of). Both types of work would directly build capacity to identify, understand, and respond to integrated and / or incremental grey-zone influence activities.

- Disseminating relatable case studies of foreign interference, other forms of problematic foreign influence, and of effective *counter*-foreign influence responses taken by the private sector or civil society. A significant body of cognitive and social research establishes that people identify with stories (which address the 'five Ws' of journalism) rather than statistics or general threat assessments. Repeated warnings from security chiefs that Australia faces an "unprecedented" threat of foreign interference are an important high-level step, but are not a powerful communications device likely to spark awareness of the precise contours of the threat, or empower civil society and industry actions in response.

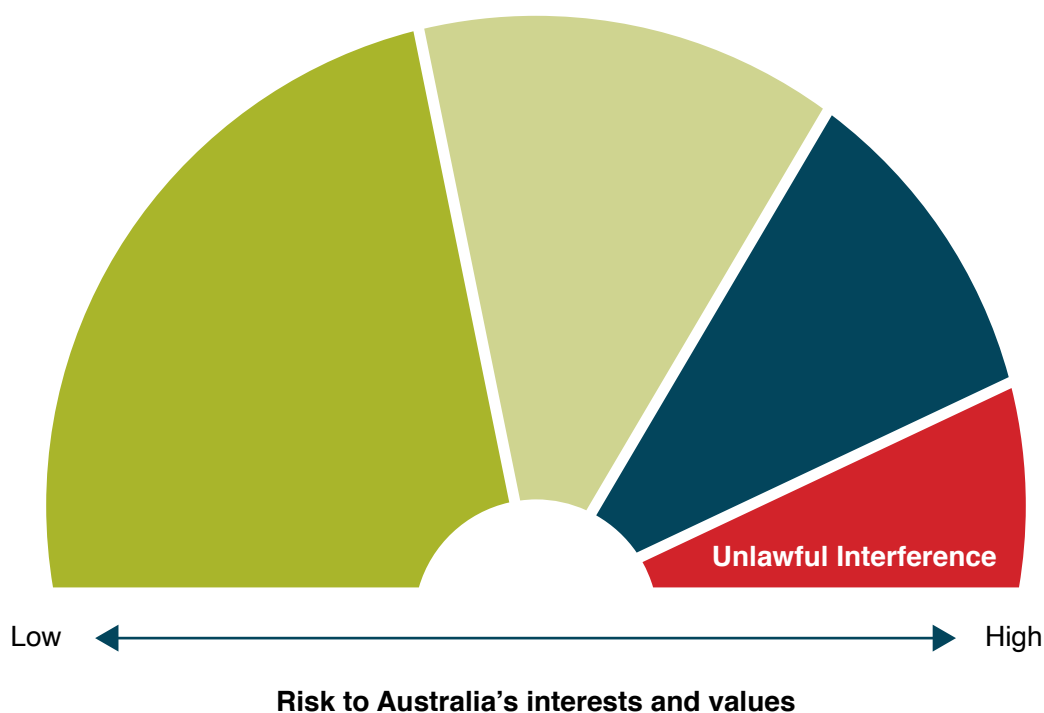
Update concepts framing public debate

There is a need to develop new mental models to frame debate and inform risk assessments about foreign influence. This will help to address the problem of grey zone influence falling short of established legal thresholds. First, foreign influence should be framed as a 'risk management' assessment, based on considering a range of contextual factors. *Appendix 1* provides an example of a risk framework that organisations could use in considering foreign influence risk. Second, there is a need to move past binary characterisations between 'influence' and 'interference'. A better mental model would present the problem space in terms of a dynamic continuum. *Figure 5* presents one approach to such a continuum. This is informed by responses to the military-strategic grey zone; military doctrine now emphasises a dynamic movement between cooperation, competition, contest and conflict is preferable to war/peace binaries.⁸⁹

Strengthen 'indirect' risk mitigations

There is a need to ensure Australia's responses to foreign influence risk include measures other than law enforcement approaches and 'active monitoring' of at-risk sectors by government.

Figure 5: Foreign influence risk – a continuum approach



Update legislation for precursor and enabling activities

Where possible, laws should be updated to capture aspects of foreign influence which carry risk, but currently are not clearly covered in legislation. This can help diminish the opportunity for, and risk of, unwelcome activity, and provide alternative avenues for prosecuting agents of foreign interference. It can also help to address known 'precursors' to problematic influence, such as data collection and surveillance, and concentrated media ownership. As Part 1 demonstrated, laws which improve Australia's ability to regulate foreign influence need not be primarily targeted at addressing foreign influence risk. For example, steps could include bolstering laws related to social media disinformation (which would also reduce the opportunity for using consumer platforms for problematic influence), improving data protection and privacy laws (which would also reduce the ability of foreign actors to target and surveil citizens), and tightening restrictions on foreign political donations (which would further reduce the opportunity and means for problematic foreign influence).⁹⁰

Empower media to contribute to a decentralised, non-government response

There is a need to protect Australian media freedom and plug gaps in the ecosystem. Key lines of effort should be: ensuring independent, diverse and well-funded foreign language media, and addressing regional 'news droughts' including additional support for local reporting. Further consideration should be given to enacting uniform secrecy provisions in relation to national security offences, to reduce the associated 'chilling effect' on national security journalism. Finally, consideration should be given to deepening support for media independence in the Indo-Pacific region, especially via diplomatic and declaratory means. Foreign interference and influence tools and tactics are often honed in other countries, and then deployed to Australia. Moreover, in a globalised information environment, influence tactics in one country inevitably affect others.

Recalibrate and possibly expand FITS

Consideration should be given to transitioning administration of FITS from AGD to an independent office (such as the proposed independent commissioner).

This could help address perceptions that FITS is a 'blacklist' rather than a value-neutral source of public information. Further, the compliance burden should be shifted from the government to potential registrants. Currently, the approach of FITS – moving from issuing non-binding notices, to criminal prosecution – is ill-suited to responding to grey-zone influence activities. The FITS regime should include civil penalties. Further, the body administering FITS should engage in outreach to inform sectors of their obligations, and be empowered to issue guidance, statutory instruments, or rulings in particular cases and in respect of particular entities to clarify the circumstances for registration, and incentivise compliance. This is similar to the approach taken by corporate regulators such as the Australian Securities and Investments Commission.

Finally, there may be merit in considering modifying FITS. For example, more fine-grained information (about the nature of the registrable activity, purposes and funding attached) could be collected, and more clearly presented, aggregated and visualised on the publicly-available register. The types of activity that are registrable could also be expanded – this could include reporting information about funding arrangements and the quantum of foreign government affiliated funding involved in certain transactions and relationships. Consideration could also be given to lowering thresholds for registration in key sectors such as the media and research / university sectors – where, given the nature of the sector, there need not be a 'purpose' of influence in order for an activity to have influence. Consideration should also be given to how FITS interacts with the new public register – of state and local government and public university agreements with foreign governments – which is required to be kept under the new *Foreign Relations Act 2020*. In the spirit of active transparency, there may be merit in collating or interpreting data collected under both registers, to provide the public with a better picture of the nature and origin of foreign influence in Australia – not simply to manage its risks, but also to understand and take advantages of its opportunities.

APPENDIX – EXAMPLE RISK ASSESSMENT TOOL

Identifying high-risk foreign influence in your organisation

Country agnostic, context-aware

1. Are you involved in a sensitive sector?

- Do your organisation's activities affect Australia's critical infrastructure, core strategic policy areas, or the development and use of critical technologies? (*Example: a supplier to hospitals; a creator of a new dating app using advanced machine learning*)
 - What personal information, intellectual property or other information do you hold that could be strategically sensitive, or affect vulnerable minority groups? (*Information could be sensitive because of its nature or scale, or once combined with datasets outside of your control*)
 - What relationships, networks, or access do you have that might be of interest to foreign governments?
-

2. Is the proposed relationship characterised by reciprocity and fairness?

- Taking into account the sector you are in, could a similar relationship or transaction occur in the partner's domestic environment? (*For example, consider market access restrictions, foreign investment rules, limits on political speech and media access*)
 - Does the relationship or transaction affect how you can deal with other people or groups? Does it come with requirements that are unrelated to the proposed collaboration? (*Example: requirement to change content on your website*)
-

3. Do you know who you're dealing with?

- Has your partner been transparent about whether it's acting in its name or on behalf of someone else? Are there persons or organisations involved that you haven't met?
 - Do you understand your partner's corporate structure? (*Example: shareholding, directors, official/political advisers, parent and related companies*)
-

4. Do you know the foreign government's political system and national priorities?

- What is your partner's mission and industry sector, and how does this align with the foreign country's government priorities?
 - What level of control does the foreign government exercise over its domestic sphere? (*Example: does it protect its citizens' human rights? What level of free speech, political contestation and media independence is allowed?*)
-

5. Are you upholding your own values and ethics?

- What kinds of information are being generated or collected as part of this relationship or transaction? How could it be used? What protections do you have in place?
- Is the relationship in accordance with any code of ethics governing your sector and your professional principles? (*Example: academic independence, journalistic freedom*)

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