

December 2020

Inquiry into national security risks affecting the Australian higher education and research sector

ENQUIRIES

Head of Office
Office of Vice Chancellor

INTRODUCTION AND EXECUTIVE SUMMARY

La Trobe University welcomes the opportunity to respond to this inquiry, which is the latest in what is now a long list of Government processes to manage the national security risks affecting the Australian higher education and research sector.

La Trobe notes the intent of each of these processes to safeguard Australia's national security, an objective we wholeheartedly share. We also acknowledge the serious threat that foreign interference and undisclosed foreign influence poses to Australia. This is why Universities participate as equal partners with government agencies in the Universities Foreign Interference Taskforce (UFIT), which has established guidelines that will help keep Australia's institutions and intellectual property secure. The UFIT guidelines are considered world-leading and are being emulated by other countries. Even so, some of the latest government initiatives, such as the recent Foreign Relations legislation, seemingly ignore the UFIT process. This is part of a pattern of proliferation of government-imposed legislative requirements that are uncoordinated with each other or with the UFIT guidelines. This undermines the likelihood that this now significant edifice of legislative regulation will achieve its objective.

We urge the Committee to consider the possibility that the increasing complexity of compliance obligations could not only undermine the objective of promoting national security but could also pose a threat to the free exchange of ideas and to Australia's contribution to open science. The risk that legitimate international cooperation could be hampered or delayed could cause hundreds of thousands of dollars to be lost, opportunities to lapse and inflict immeasurable harm to Australia's world-renowned universities and global research reputation. This would have ripple effects on the attraction of the nation to international students, researchers, industry and foreign investment.

This Inquiry is an opportunity to take stock of existing and prospective policies and programs, and to recommend a more streamlined and proportionate approach to the management of foreign interference risk for Australian universities.

La Trobe supports the submissions of Universities Australia (UA) and the Innovative Research Universities (IRU) to this Inquiry.

Key Recommendations:

- **The Australian Government should adopt a streamlined approach to the management of foreign interference risk for Australian universities. This approach should:**
 - **consider the existing obligations that universities are required to undertake and ensure that any additional requirements are aligned;**
 - **work with the higher education sector through the University Foreign Interference Taskforce (UFIT);**
 - **consider the impact and obligations arising from:**
 - **the Foreign Relations Bills;**
 - **draft legislation such as the Critical Infrastructure Bill and the bill underpinning the new Commonwealth Integrity Commission, which include universities within their scope; and**
- seek to strike a balance between the need to safeguard Australia's national security interest and the priceless benefits associated with universities' international cooperation.**

DETAILED CONSIDERATION

A. Foreign Interference Risk Management Approach for the Higher Education sector

This submission focuses on two of the Terms of Reference of this Inquiry namely Term of Reference B relating to “the Sector’s awareness of foreign interference, undisclosed foreign influence, data theft and espionage, and its capacity to identify and respond to these threats” and Term of Reference C relating to “the adequacy and effectiveness of Australian Government policies and programs in identifying and responding to foreign interference, undisclosed foreign influence, data theft and espionage in the Sector.”

Term of Reference B: the Sector’s awareness of foreign interference, undisclosed foreign influence, data theft and espionage, and its capacity to identify and respond to these threats”

Sector-wide response

Given the numerous requests to comply with Foreign Interference guidelines and legislation over the past two years, the awareness in the sector about the risks of foreign interference has arguably never been more acute. Universities currently comply with the following foreign interference and national security related requirements:

- University Foreign Interference Taskforce (UFIT) Guidelines
- Foreign Influence Transparency Scheme (FITS) Act
- Autonomous Sanctions Act
- Defence Trades Control Act
- Membership of Defence Industry Security Program (DISP) in order to be eligible for Defence-related research funding. Membership requires security clearances and intensive internal security and risk procedures to be adhered to.
- Inclusion of questions relating to Foreign Interference and a requirement to state how the proposed research (including international collaborations) meets the National Interest Test in all Australian Research Council (ARC) grant applications
- Establishment of an Integrity Unit within TEQSA to manage UFIT recommendations and their implementation
- Australia’s Foreign Relations (State and Territory Arrangements) Bill 2020
- Inclusion of new sections relating to ‘Mitigating the Risk of Foreign Interference and Foreign Influence’ and ‘Mitigation of Risk of Cyber Attack’ in the annual Mission-based Compacts signed between the Commonwealth and universities.

In addition to the above requirements already in place, the Government has released other pieces of draft legislation, which, as currently drafted, include universities within their scope. These include:

- draft legislation designed to establish a Commonwealth Integrity Commission (CIC), which, according to a [government fact sheet](#) “would have jurisdiction over higher education and research bodies that receive commonwealth funding” with the draft legislation appearing to enable investigations into universities in matters such as foreign influence. It is worth recalling that public universities, including La Trobe, are already subject to state-based anti-corruption bodies.
- an exposure draft of the Security Legislation Amendment (Critical Infrastructure Bill) 2020 [SOCI] which proposes to expand coverage of the SOCI Act to several new sectors including higher education and research.

La Trobe response

Since the introduction of the Foreign Influence Transparency Scheme in December 2018, La Trobe has instituted a number of procedures to ensure ongoing compliance with all issues relating to foreign interference and foreign influence. In 2020, we strengthened our response by allocating responsibility to a

member of the University's Senior Executive Group (SEG) to ensure that the University is compliant with all legislative and other regulatory requirements. In addition, our compliance in this field is overseen by our Council through the Corporate Governance, Audit and Risk Committee (CGARC).

Foreign Influence, Interference and Sanctions Risk Management Tool: All La Trobe employees have access to a Foreign Influence, Interference and Sanctions Risk Management tool, which must be completed before any international agreement is executed. The tool helps to identify potential risks with the agreement and if the agreement is flagged as higher risk, users are guided to the Risk Management Office for independent risk assessment and further due diligence. In addition, the tool assesses compliance against current sanctions regimes being implemented by Australia and specific foreign interference-related legislation such as the Foreign Influence Transparency Scheme. Any compliance concerns are then further explored via due diligence and risk assessments and unless they are resolved, proceedings are terminated. As a result, there have been instances where the university did not proceed with proposed international partnerships because these rigorous tests were not satisfactorily met. La Trobe can provide further information on these examples on a deidentified basis upon request.

Legal protections: In response to the new foreign interference-related legislative requirements, La Trobe is currently in the process of making changes to existing standard contract clauses. For instance, Intellectual Property (IP) clauses are being amended to ensure that parties are prohibited from exploiting any IP rights that are in any way connected with defence or military application, racial profiling or security surveillance. Similarly, new clauses have been introduced to our standard contracts to meet the requirements emanating from the Foreign Influence Transparency Scheme (2018).

Needless to say, implementing these and prospective legislative requirements involves significant resources for universities including staff training.

Term of Reference C: "the adequacy and effectiveness of Australian Government policies and programs in identifying and responding to foreign interference, undisclosed foreign influence, data theft and espionage in the Sector."

We recognise that with regard to foreign interference and foreign influence, the Australian Government and relevant agencies and departments are responding to moving and evolving targets. However, the sector's perspective is that there are many overlapping and disjointed processes without any apparent central coordination. At best, this is an increased regulatory burden and resourcing issue for universities. At worst, it risks diverging interest and creating confusion on an issue of critical national importance. This Inquiry is therefore an opportunity to take stock of all existing processes and to ensure there is alignment and central coordination with a key Government agency or department in the lead. To cite some examples of the lack of coordination, the draft Foreign Agreements legislation foresaw no role for the University Foreign Interference Taskforce (UFIT) while universities have been included in the scope of draft legislation such as the Critical Infrastructure Bill without any form of consultation. We therefore strongly recommend that all processes are aligned, and that better use is made of the UFIT.

B. The need to safeguard universities' international cooperation

International co-operation is at the heart of universities' raison d'être. La Trobe is party to more than 600 agreements including research co-operation agreements, international course articulation agreements, academic exchanges, international PhD and Work-Integrated-Learning agreements amounting to millions of dollars of revenue. In addition to the actual monetary value, some of these arrangements are priceless in terms of knowledge generation, opportunities and Australia's reputation as a leading global research nation. Quantified across the breadth of Australian universities, that value is extraordinary, and Australia simply cannot afford to forego it.

We strongly recommend that this Inquiry acknowledges the crucial importance of safeguarding Australian universities' international co-operation. This Inquiry should provide recommendations to the Australian Government to work with the sector to strike a balance between the need to safeguard Australia's national security interest and the priceless benefits of universities' international cooperation.

In addition, the Inquiry should take into account the unintended consequences associated with the adoption of an overly-restrictive approach to international cooperation. These include an increase in the number of agreements between universities and private sector entities/organisations to develop business opportunities, that may still pose a risk to Australia's national security, but which are not captured by existing processes. In addition, these restrictions may lead to an increase in the number of informal arrangements between individual academics, particularly in research. This was quite commonplace in Australian universities in the past and led to many universities formalising international partnerships. An increase in informal arrangements will limit Australian universities' ability to be strategic in building international partnerships, which may have a significant impact on important external indicators of excellence, such as rankings and accreditations. Informal arrangements – by their very nature - are also more likely to be brokered without the benefit of or involvement from university risk offices, lack appropriate oversight and as a consequence are more vulnerable to interference or unacceptable levels of risk.