

## Foreign engagement activities – collaborating within the national interest

Over recent decades, Australia's economy and the higher education sector have benefited from an expansion in global engagement opportunities. As the world became increasingly connected through travel and technology, international student numbers grew, and collaborative research projects thrived.

More recently, the positive benefits to Australia have been qualified by defence and security agencies, which see a downside to global connectivity.

### What does this mean for the higher education sector?

Australia's Director-General of Security has warned of an "unprecedented scale of foreign interference activity against Australian interests" and identified increased efforts to influence decision-makers across society, including university and research sectors. In 2019, a task force comprised of government and higher education representatives released [Guidelines to Counter Foreign Interference in the Australian University Sector](#).

The *Guidelines* recommend the following broad institutional strategies:

- **Know your engagement partner** - conduct the necessary **due diligence** before committing – be aware of the risks, particularly if the activity involves sensitive research, dual-use technologies, critical technologies or valuable intellectual property – consider whether the arrangement meets the legislative criteria for notification as set out in the schemes noted below.
- **Communicate** with colleagues about managing foreign interference risks even when those risks may be considered low – be aware and seek guidance on how to deal with [undue influence](#) - inform early career researchers and HDR students about these risks.
- **Share knowledge** about known and emerging risk factors across the higher education sector – be aware of information issued by government agencies and advisory services and recognise common issues and threats.
- **Protect information and data** by promoting a robust cybersecurity culture and best practice security strategies – understand the potential threats and cultivate protective behaviours across the institution.

The Australian Government has also responded to this heightened "threat environment" by:

- Strengthening the criminal laws to deal with [foreign interference](#), and
- Establishing two new [foreign engagement compliance schemes](#) (the Foreign Arrangement Scheme and the Foreign Influence Transparency Scheme) to help protect the national interest in the conduct of foreign engagement activities.

[Foreign interference](#) refers to **covert or deceptive conduct** by, or on behalf of, a foreign actor that undermines Australia's sovereignty, security or national interests. In 2018, the criminal offences and penalties for crimes against Australia, such as foreign interference, espionage and theft of intellectual property, were significantly strengthened. The scope of these offences was extended to include reckless conduct that may, by failing to manage potential risks, facilitate acts of foreign interference adequately. For instance, an employee whose reckless conduct resulted in a foreign actor gaining unauthorised access to sensitive or classified information could face a term of imprisonment for facilitating a foreign interference crime.

[Foreign engagement compliance schemes](#) were established by legislation to improve transparency and government oversight of a range of international engagement activities, including those involving public universities.

The schemes, as they apply to public universities, are briefly described below. If you believe an arrangement should be notified under either scheme, refer to the linked university web pages for further information and assistance.

### Foreign Influence Transparency Scheme (FITS)

Australians and Australian entities must register with the [Attorney-General's Department](#) certain activities undertaken on behalf of Foreign Principals, being foreign governments, foreign political parties (or their related agencies and individuals).

- The obligation to register is triggered when an activity or arrangement with a foreign principal involves a process that will, directly or implicitly, exert some form of influence over a government decision-making process (broadly defined) on behalf of a foreign principal.
- Understood in a university context, influence that will benefit a foreign principal may include routine activities such as making applications or submissions to government decision-makers.
- Foreign influence will not prevent an activity or arrangement from proceeding - rather, the purpose is to ensure that any foreign influence is visible to Australian decision-makers and the general public.
- Transparency is achieved by publishing key relationship details on a public register.

Further information about FITS and access to a due diligence template can be found on the [Legal Services website](#).

## **Australia's Foreign Arrangement Scheme (AFAS)**

From 10 March 2021, Australian State and Territory entities, including public universities, must notify the [Minister for Foreign Affairs](#) of any written arrangements made with foreign governments, their agencies and related entities.

- A foreign entity includes a university located in a foreign country that does not have institutional autonomy because it is subject to substantial control by a foreign government.
- Indicators of substantial government control may be evident in the laws of the foreign country, the institution's governance arrangements, laws or rules that require academics to conform to specific political ideas in their teaching and research.
- An obligation to notify applies to any written arrangement, whether legally binding or not and may include contracts and MOUs or formal proposals set out in emails.
- Notification is required twice, firstly when there is a proposal to enter into the foreign arrangement and again within 14 days of entering into the foreign arrangement.
- Once an arrangement has been notified, any variation to that arrangement or any subsidiary arrangements made (including when different parties are involved) must be added to the notification.
- The Minister has the authority to modify or declare invalid an arrangement considered to be contrary to Australia's foreign policy or national interest.
- Failure to notify an arrangement may result in the arrangement being declared invalid under Australian law.

If notification is required, seek advice from the [Legal Services Branch](#) about including additional clauses in contracts.

## **Why does the University have to comply with these schemes?**

Non-compliance with these schemes may result in additional scrutiny from the administering agencies (Attorney-General's Department and Department of Foreign Affairs and Trade). The higher education regulator, TEQSA, may also seek clarification on the University's oversight of specific international arrangements. Failing to meet foreign engagement compliance obligations may be construed as contrary to the national interest and adversely impact the University's reputation. Non-compliance will also prejudice Australian Government funded or research activities through the AR and NHMRC. A high level of media commentary may follow, and other partner organisation may withdraw support for critical projects.

The University of Adelaide is committed to supporting the Australian Government's national security agenda and understands that these obligations must be prioritised before any international engagements proceed. Notification requirements will add a layer of complexity to some carefully planned university activities, but the unequivocal message from the Government is that the context in which these activities are conducted has fundamentally changed.

## **Other laws to consider**

**Defence Trade Controls laws** prohibit the export of certain goods and technologies without a permit issued by the Australian Government. This restriction applies to the transfer of technologies specified on the Defence and Strategic Goods List (DSGL) because they have potential dual-use application in strategic or military contexts. Dual-use technologies are identified and restricted by international trade agreements, which also prohibit the unregulated transfer of military or nuclear weaponry between nations. [Further information](#)

**International Sanctions** impose restrictions on certain activities such as the trade in goods and services (including research, education, training or intellectual property), financial transactions or travel. The scope of the restriction will vary depending on what is being sanctioned. The [Department of Foreign Affairs and Trade](#) (DFAT) provides a searchable database called the [Consolidated List](#), which contains all persons and entities subject to targeted financial sanctions or travel bans under sanctions laws. DFAT also publishes details of the current [Sanctions Regimes](#) (listing countries, entities and the sanctions applied). [Further information](#)

The Office of Research Ethics, Compliance and Integrity can assist with [export control processes](#).