



The University of Melbourne

Submission to the Parliamentary Joint Committee on Intelligence and Security review into the *Foreign Influence Transparency Scheme Act 2018*.

29 November 2021

Executive Summary

The University of Melbourne welcomes the opportunity to provide comment to the Parliamentary Joint Committee on Intelligence and Security's review into *the Foreign Influence Transparency Scheme Act 2018* (the *FITS Act*).

The University acknowledges the importance of protecting national security through raised awareness and comprehensive management of foreign interference and undisclosed foreign influence risks within our institution and sector. The University is continuing to strengthen its internal processes, disclosure, and oversight tools, and staff and researcher training on foreign influence, foreign interference, and transparency requirements. This work aligns with university-wide workstreams on national security risk management more broadly, including ongoing implementation of the UFIT Guidelines, foreign arrangements assessments and notifications, and cybersecurity enhancements.

The Foreign Influence Transparency Scheme (FITS) was introduced in 2018 with the purpose of bringing transparency to activities undertaken on behalf of foreign principals, particularly where those activities are intended to influence Australian political and governmental systems and processes.

To date, the University of Melbourne has not identified any activities registrable to the FITS. In our assessment and experience, the likelihood that a material number of our University activities and arrangements will fall within the scope of the FITS is remote. As outlined in this submission, this is fundamentally because the scheme is not closely targeted to the higher education and research sectors. Comparatively, the operation of the Foreign Arrangements Scheme has had a more significant impact on university administration.

Regardless, the University has taken appropriate actions to assess existing activities and ensure we have sufficient mechanisms in place for identifying potentially registrable activities under the FITS. The University conducts assessments of investments, agreements and engagements that could be registrable. Over the past three years, the University has also focused considerable resources on implementing training and awareness amongst the university community about the FITS and undue influence risks; embedded FITS triggers in contracts and grants processes; and expanded capacity and oversight for managing compliance with FITS.

This submission outlines: the University's institutional response to FITS; the impact of the scheme on operations and activities; and areas of uncertainty or challenge, with recommendations that would improve clarity and efficiency of FITS implementation. This submission also includes a case study of the Confucius Institute at Melbourne in light of the FITS, and outlines our experience earlier this year as recipient of a 'Notice requiring information' under s46 of the *FITS Act*.

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Recommendations

1. The Government should adopt a collaborative approach with the university sector in developing future changes to the *FITS Act* and scheme.
2. Australia's research sector, which relies crucially on global research collaborations, can maintain confidence in its research engagements, risk management and transparency through more streamlined and coordinated national security regulations, with reduced overlap and clearer definitions and application between schemes.
3. Narrower, simplified, and clearer criteria for assessing matters under the FITS would assist universities' compliance with the scheme and focus attention and resources on the sorts of matters the FITS aims to make publicly visible.
4. In view of universities' diverse research, teaching and learning, and engagement activities, universities' compliance with the FITS would be assisted by the provision of further case studies or worked examples highlighting how to interpret and apply key terms and factors under the FITS.
5. For clarity of compliance and raising risk literacy, terminology and processes across foreign interference and national security schemes should be aligned as far as possible.
6. Clarification should be provided on the reasonable extent of investigatory process required of reporting entities under FITS, given the numerous and nuanced ways political objectives can be obscured.
7. Further clarification of the registered charities exemption, and application to university events, publications, and honorary roles, would assist compliance.
8. Noting the UFIT Taskforce plays an important collaborative and convening function in this policy and regulatory space, the University recommends that a central government interface be designated to streamline initiatives and assist universities with compliance and troubleshooting across all aspects of foreign risk management.
9. A statement of context and specific concerns should accompany notices requiring information, to enable recipients to efficiently and effectively produce the types of documents sought.

Comments on the operation of the FITS

Foreign influence risk management and FITS compliance at the University

Since the FITS commenced on 10 December 2018, the University has implemented training and awareness on the FITS, embedded FITS triggers in relevant institutional processes, and expanded capacity and oversight on managing compliance in this area.

Education and communication to staff and researchers

Given the University's diverse and numerous global activities and collaborations, and the individualised and specific nature of activities or engagements that might meet the highly context-dependent definitions of FITS applicability, the University has two key levers for implementing FITS awareness and compliance at scale. These are: raising staff awareness and training about foreign influence risks and transparency obligations; and ensuring we have robust institutional support and capability to assess potential registration through our Legal and Risk services, and other points of oversight.

Since the commencement of the scheme, the University's compliance team has developed a FITS training module that was rolled out to professional and academic staff, prioritising those in higher-risk areas who work with foreign parties and in senior positions. The FITS training was subsequently expanded for provision to a broader audience, including graduate students. The University is also putting substantial effort into graduate supervisor training on FITS and focusing our educative programs on the senior research and professional staff who act as an informed conduit to the Faculty/Divisional level. This network provides oversight within the academy and, as such, informing and upskilling them was a priority.

The FITS training module explains: the types of activities that must be registered; the concept and definition under the scheme of a 'foreign principal' and other key elements; and the penalties and risks of non-compliance under the *FITS Act*. The enhanced version of the training module is soon to be delivered. This will supplement training in development to raise awareness of foreign interference through the Know Your Partner program.

The University has also reflected compliance with the FITS in its workplace expectations policy (*Appropriate Workplace Behaviour Policy*), which applies to all professional and research employees at the University. These educative and policy requirements are supported by communication strategies through university leadership channels and governance committees, as well as online resources that all staff can access such as 'FITS FAQs' and compliance checklists. Staff are directed to online resources and explainers about FITS through numerous channels, including training modules, research contracts and grants due diligence processes, the university's Foreign Engagement online hub, and other knowledge-based articles in research resources.

Gifts and donations assessments

The University's internal processes have been updated so that specific questions regarding foreign influence and foreign arrangements form part of the initial philanthropic gift acceptance checks that University staff, including development (fundraising) staff, must consider before proposed gift discussions are able to proceed (in line with the University's *Gift Policy - MPF 1348*). These matters also form part of the considerations for the University Council Gift Committee's due diligence process for gifts at AUD \$250,000 or above, or at lower levels of contribution where the Vice-President Advancement or Vice-Chancellor recommend review by the Gift Committee because they consider the proposed gift creates a potential, perceived or an actual conflict with the Gift Policy, or other University policies.

Due diligence in grants and contracts

The University has incorporated a FITS test into the sign-off process for research agreements that are reviewed by the research office, which covers most the University's research agreements. This ensures research agreements are overseen by the Deputy Vice-Chancellor Research's delegate, working in collaboration with the relevant researcher. In addition, a FITS test is currently being embedded in the research office's contract automation tools. Through committee channels and outreach, senior Faculty members are encouraged to raise ad hoc enquiries with compliance staff about activities where the FITS is potentially relevant.

The University is well advanced in the development of a disclosures platform to be built into annual professional development discussions, which will serve as a centralised tool for capturing a wide range of disclosures including FITS, conflict of interests and others, and form the base for improved central management and visibility of risks and affiliations.

Implementing FITS at the University

Application to university activities

The *FITS Act* should be clarified to clearly articulate its application to university settings, reflect and explain the government's expectations, and remove areas of activity that are clearly out of scope. With the proliferation of national security regulation and disclosure schemes since the promulgation of the *FITS Act*, there is a growing degree of uncertainty amongst the academy and research sector due to the perceived lack of coherence across Government initiatives and the subsequent impact on entering foreign engagements.

This uncertainty underpins a higher level of caution about collaborative research, which is positive in the sense of showing raised risk awareness in our sector, but negative in the sense of discouraging intellectual endeavour, research productivity, and discovery. Introduction of new controls and initiatives like the FITS, FAS, UFIT Guidelines and the Critical Technologies List, in addition to existing Defence Exports Controls and sanctions, have occurred concurrently with changes in Australian Research Council's requirements for declarations of researchers' personal interests and demonstrated national interest tests in the context of grant applications. The overlapping expansion of due diligence on interests, affiliations and security, and overcomplicated processes within and between schemes, have fostered trepidation and over-

caution in the research community, inhibiting confidence in important global collaboration and working counterproductively against the positive outcomes of risk management.

As demonstrated by the University Foreign Interference Taskforce and UFIT Guidelines, the most effective way to uplift security, risk management and preparedness is through strong collaboration and partnership with the university sector, to ensure regulation and interventions are fit-for-purpose, supportive of universities' core activities, and proportionate to risk. The Australian Government's objective of protecting against interference and improving transparency of influence activities would be better achieved by streamlining and coordinating schemes including FITS, FAS and UFIT and giving assurance through clarity to the research sector that they are encouraged to partner and collaborate openly with the world.

Recommendation 1: The Government should adopt a collaborative approach with the university sector in developing future changes to the FITS Act and scheme.

Recommendation 2: Australia's research sector, which relies crucially on global research collaborations, can maintain confidence in its research engagements, risk management and transparency through more streamlined and coordinated national-security regulations, with reduced overlap and clearer definitions and application between schemes.

Implementation challenges in the university context

Application of the FITS to university activities has presented other specific challenges. As a new field of compliance introduced at a time of regulatory proliferation in the national security space, implementation of the FITS has attracted considerable University resources despite no registrable activity having been identified.

For the University, application of the broad categories of the FITS has proven more ambiguous (in a compliance sense) than assessment of agreements under the FAS. This is because FITS registrability hinges on not just what type of entity is involved with the University, but also the unique interpretation of the activity, the intent of the activity, and the very specific features of the 'foreign principal' involved. Prima facie, the University of Melbourne receives research funding and grants from foreign governments for a wide range of activities, bringing a high number of engagements in scope for assessment against FITS. However, to date none have been assessed as meeting the various criteria set out in the *FITS Act* for registration.

Narrower, simplified, and clearer criteria for assessing matters under the FITS would assist universities' compliance with the scheme and focus attention and resources on the sorts of matters the FITS aims to make publicly visible. For instance, the Foreign Arrangements Scheme legislation provides explicit definitions of 'institutional autonomy' and guidance on its assessment.

Recommendation 3: Narrower, simplified, and clearer criteria for assessing matters under the FITS would assist universities' compliance with the scheme and focus attention and resources on the sorts of matters the FITS aims to make publicly visible.

Broad definitions

The University liaised extensively with the Attorney-General's Department about application of the scheme in relation to global research collaboration, receiving the following formal clarification by letter in February 2020:

it is not the department's view that all and any applications for Australian Government grants or funding for research involving a foreign collaborator would attract registration obligations... [T]here are a number of criteria and exemptions that need to be considered in determining whether a registration obligation may arise.

While it is affirming that the presence of foreign collaboration is in itself not registrable, the wide scope and definitions of the FITS – such as the definitions of 'foreign principals', 'acting on behalf of', 'registrable activities' – do not have clear and evident application that enables universal application within the university context of teaching, learning and research activities. 'Foreign government', being one stated example of a foreign principal in the *FITS Act*, is broad enough to encapsulate not merely the national government of another country or the instrumentalities of that government, but also governments of parts of foreign countries, or their instrumentalities, together with foreign local or regional government bodies. The term 'foreign government related entity' as used in the definition of 'foreign principal', is also widely defined and vague in application.

As further examples, the University's compliance team has encountered uncertainty about how the University would meet the tests of:

- (i) ensuring the foreign principal's identity and involvement in an activity;
- (ii) is made reasonably apparent to the public;
- (iii) at the time the activity is undertaken, particularly in the research context.

University compliance with the FITS would be assisted by differentiation of application to research or sensitive research, and teaching and learning activities. For instance, clarification that 'all competitive Australian grants and their sub-awards' (which are already reviewed by Australian Research Council processes) or 'all research contracts with commercial entities' (as are exempt from the Foreign Arrangements Scheme) are deemed not to be registrable activities would enable universities to focus risk management and compliance resources towards higher-risk activities and engagements with potential foreign principals.

Examples to support FITS compliance in universities

Noting that the Attorney-General's Department already publishes some online explanatory materials, further case studies or worked examples would be helpful to highlight how a university should identify whether a foreign party is a foreign principal, or risk factors that suggest a foreign party is a foreign principal under the *FITS Act*. As only a few university-based matters have been registered on the FITS to date, there is not currently a publicly accessible accumulation of precedent for university compliance and legal teams to refer to in formulating and improving institutional risk management processes.

Recommendation 4: In view of universities' diverse research, teaching and learning, and engagement activities, universities' compliance with the FITS would be assisted by the provision

of further case studies or worked examples highlighting how to interpret and apply key terms and factors under the FITS.

Divergent terminology across risk management schemes

Alignment between legislative terminology used in the FITS (which uses 'registrations' and 'foreign principal') with that in the Foreign Arrangements Scheme (which uses 'notifications' to the scheme and 'foreign entity lacking institutional autonomy') would reduce confusion amongst the research and professional communities who are the focus of the schemes.

Recommendation 5: For clarity of compliance and raising risk literacy, terminology and processes across foreign interference and national security schemes should be aligned as far as possible.

Lack of certainty on the extent of Universities' investigatory obligations

Universities would benefit from specific advice on *FITS Act* definitions and the extent of investigation required into foreign principals, considering the burden of expectation is on reporting entities to undertake due diligence. The Attorney-General Department's Fact Sheets state broadly, 'an organisation is a foreign political organisation under the *FITS Act* if its primary purpose is to pursue the political objectives associated with governing a foreign country, even if the foreign country does not have a system of registration for political parties'. The obligation falls on the University as reporting entity to conduct extensive and bespoke investigations into whether potential partners could be deemed as foreign principals.

Recommendation 6: Clarification should be provided on the reasonable extent of investigatory process required of reporting entities under FITS, given the numerous and nuanced ways political objectives can be obscured.

Clarification of the use of the 'registered charity' exemption

The University anticipates uncertainty in approaching use of the registered charities exemptions in the *FITS Act*. It would be helpful to have clarification of the circumstances under which we can apply the charities exemption to our research, and teaching and learning, activities.

Events and engagement

It is unclear how the FITS applies to university events and publications, and particularly media engagement that seeks to influence Australian politics and policy. University academic and research activities generally do not seek to directly influence Australian politics (as opposed to public policy) as their primary purpose, although research outputs may be used by other actors and organisations to do so.

The University has former politicians as staff (paid or honorary), but lacks clarity on their status under the FITS. For instance, if honorary staff with political backgrounds are affiliated with an international organisation, would they need to register as a University staff member or in their former (private) capacity? It is not clear how the *FITS Act* registration treats the line between a person's personal politics and history, and their professional, academic or research engagement.

Recommendation 7: Further clarification of the registered charities exemption, and application to university events, publications, and honorary roles, would assist compliance.

Coordination of government measures and schemes on national security

The University's view is that there should be much greater coordination and cohesion of policies, schemes, regulation, and initiatives relating to national security and foreign interference/influence. It is important that the Australian Government's interventions to identify and manage risk do not have a chilling effect on global collaborations, or through overlap and lack of clarity, create confusion and undermine the outcomes sought.

As part of this, greater clarity around the interaction between FITS and FAS would streamline compliance for universities. There is observable overlap and duplication across the schemes including with schemes that were legislated before and after FITS, such as the Defence Trade Controls, the Foreign Arrangements scheme and the UFIT Guidelines. Any revision or amendment of the *FITS Act* should be linked and aligned to the full suite of legislative and policy changes – in train and ahead – that are relevant to protecting Australia's national interests.

A central government interface for the suite of recent initiatives would be of great utility to remove the overlap and uncertainty and streamline the connectivity between the various measures.

Recommendation 8: Noting the UFIT Taskforce plays an important collaborative and convening function in this policy and regulatory space, the University recommends that a central government interface be designated to streamline initiatives and assist universities with compliance and troubleshooting across all aspects of foreign risk management.

The Confucius Institute at Melbourne: FITS perspective case study

Background to the CI at Melbourne

As with hundreds of Australian and international universities, the University of Melbourne hosts a Confucius Institute (CI). In 2006, the University signed a Memorandum of Understanding (MOU) with the global Confucius Centre Headquarters (the "Hanban", a division of the Chinese Ministry of Education) for the establishment and operation of a Confucius Institute (CI or "the Institute") in partnership with Nanjing University.

The MOUs and then agreements with the Hanban and Nanjing University were renewed over several years, most recently in 2019 to reflect new obligations of the University of Melbourne including under the FITS Act. The 2019 amendments reiterated the autonomy and control of the University of Melbourne in operating the Confucius Institute at our institution and removed any ambiguity as to the extent of the input of the Chinese parties. In mid-2019, following briefings on the University's risk assessment, due diligence, and compliance with the *FITS Act*, the assessment that the CI is not registrable was confirmed by relevant Australian Government agencies.

In 2020, the Chinese government reorganised the management of Confucius Institutes globally, passing responsibility from the Hanban to the Centre for Language Education and Cooperation

(CLEC) and the Chinese International Education Foundation (Foundation) as well as expanding the role played by the university partner. The University concluded successor agreements governing the operation of our CI with those organisations and updated our agreement with Nanjing University. At the time, the University provided draft and final agreements to the Attorney-General's Department and had consultations, including discussion about foreign interference risk, with Attorney-General's Department, Department of Home Affairs, Department of Foreign Affairs and Department of Prime Minister & Cabinet.

Governance

At Melbourne, there are clear boundaries between the University's academic and research activities and the current activities of the Confucius Institute. There is effective day-to-day management of the CI by the University (Deputy Vice-Chancellor, International; the Assistant Deputy Vice-Chancellor International (China); and the CEO of Asialink).

A University Executive Management Committee, which provides oversight of the CI, includes representatives of three faculties, meets biannually and is chaired by the Assistant Deputy Vice Chancellor International (China). A Joint Management Committee with representation from the University and Nanjing University meets annually to discuss broad directions for the Institute. Limited funding is provided by the University of Melbourne and Nanjing University, with equivalent, reciprocal annual grants.

The CI complies with Australian laws, education quality standards and principles of academic freedom. The agreements and management of the CI at Melbourne are premised on the need for the University to ensure:

- The University's institutional autonomy and control of curriculum and standards in the University of Melbourne CI.
- Transparency of all CI agreements and programs, particularly to government agencies with regulatory oversight under the FITS Act and other Commonwealth legislation.
- Control by the University over finances, decision-making, programs and their evaluation, and staff activities.
- Full compliance with all relevant Australian Government legislation, policy, and procedures.

Taken together, these measures give us a high degree of confidence that the CI at Melbourne operates in a way that is both appropriate and delivers value to the University and our community.

Risk management and oversight

In addition to ensuring full compliance with the *FITS Act*, the University has established a comprehensive approach to monitoring, managing and evaluating CI activities, and ensuring ongoing legal compliance and addressing foreign interference considerations.

Ongoing risk management measures taken by the University include the following:

- All CI personnel have received training on the FITS Act obligations and have been provided with guidance for consistently assessing whether CI activities may require registration.
- All CI employees must comply with University policies, including the Appropriate Workplace behaviour and the Academic Freedom and Freedom of Speech policies, and all Australian Government legislation and policies at all times.
- The University has commissioned three independent reviews of Chinese language teaching materials used by the CI to ensure materials are balanced and appropriate for an apolitical language course. Every time there is a new text it is reviewed for this purpose.
- The University conducts training on the *FITS Act* for schools participating in the Confucius Classroom program attended by principals, heads of Chinese teaching and teaching assistants provided through Hanban.
- The University hosts regular Confucius Institute Network meetings to share best practice around the *FITS Act*. These have been attended in some cases by relevant Australian government officials from the federal Department of Education and Attorney-General's Department.
- The University has undertaken to (and does) provide the terms of its agreements with CI partners to any interested party on request.
- The University Executive Management Committee with oversight of the CI undertakes a biannual comprehensive risk review of the CI and its operations.

Application of the FITS Act

When the *FITS Act* came into force in 2018, the agreements between the University and Hanban, and with the Nanjing University, gave rise to relationships that could *prima facie* appear as potentially registrable under the FITS.

The University had already undertaken a recent review of the CI agreement prior to the commencement of the *FITS Act*. Subsequently in 2019, the University conducted another review to look at applicability of the *FITS Act*. This included an internal analysis conducted by the University and the provision of formal external legal advice, as well as assessment of all activities conducted by the CI, visits to Confucius Classrooms and further review of teaching materials. Both reviews found that the activities of the CI at Melbourne do not fall within the type of activities that are registerable under the *FITS Act*.

Notice requiring information relevant to scheme

On 13 January 2021, the University received a written notice from the Attorney-General's Department under subsection 46(2) to produce documents and copies of information relevant to the Confucius Institute at Melbourne. The notice included 17 categories of documents, covering an extremely broad range of requested information that encompassed almost all

aspects of the CI's history, governance, and arrangements. From the University's perspective as respondent, the notice was imprecise and did not articulate the basis for concern. The nature of the potential penalties for 'failing' to comply – as set out in the notice – included prison terms of up to three years.

The breadth and force of the notice necessitated the production of a very high volume of documents relating to the CI, after an extensive and resource-heavy due diligence exercise. The University adopted a conservative and transparent approach to disclosure, producing approximately 125 documents and files. Our response to the notice required the full-time work of at least three staff over three to four weeks, and substantial input from many others.

The University's view is that the objectives of the FITS, and the purpose of notices under it, would be better met if the government department were more specific in the notice and rationale, i.e. by providing information about the concerns that they are seeking to address in issuing the notice. Through increased transparency and genuine partnership with universities – bearing in mind the willingness of the University to co-operate where national interests are concerned – the objectives of the FITS can be more reasonably met.

The University of Melbourne has not had any further resolution or communication from the Department since our response to the s46(2) notice.

Recommendation 9: A statement of context and specific concerns should accompany notices requiring information, to enable recipients to efficiently and effectively produce the types of documents sought.