



Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 and Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020

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To the Senate Standing Committee on Foreign Affairs and Trade, Department of Education, Skills, and Employment,

Thank you for this opportunity to provide feedback on Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.

Science & Technology Australia (STA) is the peak body for the science and technology sectors, representing more than 80,000 scientists and technologists. Our member organisations include scientific societies, research institutes, and research leaders such as councils of deans.

Under the Australian constitution, the Commonwealth has powers to manage the nation's external affairs. The bill's [Explanatory Memorandum](#) says the aim of this legislation is to create a "consistent approach to foreign engagement across *all levels of Australian government*".

Given this stated aim, the inclusion in the Bill of Australia's public universities - as education and research institutions of civil society rather than agencies of Government - is unwarranted.

Australia's universities deliver much of Australia's income-generating science and research program. This work creates new jobs, industries, technologies and breakthroughs for our country. The success of this endeavour - along with the size of the returns to Australia - depends heavily on a nimble culture of global collaboration. The collaborations are enabled by a vast array of agreements and relationships between researchers, research centres, and universities. There are now more than 10,000 such agreements between Australia's universities and their global counterparts,

This legislation would create sweeping new powers for Australia's Minister for Foreign Affairs Minister to scrutinise and veto agreements forged by Australian universities with foreign universities. The proposed powers would be retrospective, enabling the cancellation of agreements forged in the past. In addition, the definitions of institutional autonomy of foreign universities are very broadly cast, and could potentially apply to any foreign university. The legislation also sets no time limit for approvals, creating new uncertainty and risks in time-sensitive competitive negotiations.

We are concerned this legislation has the potential to impede Australia's science and technology research and relationships, which would impede both economic and soft power benefits to the nation. With our small population, Australia relies heavily on global research infrastructure, collaborations, partnerships and expertise to enable our own breakthroughs, discoveries and technological development.

We note that agreements forged by Australian companies would not be covered by this legislation. In a similar vein to private sector agreement-making, international collaboration in research requires a fleetness of foot to seize competitive opportunities for our nation. Australian universities and research institutions compete in global races to be first to develop new knowledge and technology. The ability to forge global collaborations swiftly and with confidence enables us to win races, securing more intellectual property ownership and income for Australia.

Australia's university research is already subject to comprehensive legislative oversights. These include the [Defence Trade Controls Act](#), the [Foreign Influence Transparency Scheme Act](#) and the [Autonomous Sanctions Act](#). Last year, the university sector and Australian Government national security agencies also established a [University Foreign Interference Taskforce](#), and developed [Guidelines to Counter Foreign Interference in the University Sector](#). There are already strong consultative mechanisms between universities and Government agencies to advise on risks.

STA recommends universities and university agreements be removed from the legislation.

An alternative approach, if deemed necessary, could be for the Australian Government to specify a narrower range of areas of research – potentially mirroring the existing [Defence and Strategic Goods List](#) - or countries – potentially mirroring the existing [Australian sanctions list](#) - to be covered by the legislation.

This would align with the approach of the existing Defence Trade Controls Act and Autonomous Sanctions Act.

STA has four specific concerns with the legislation as currently drafted:

1. Retrospective approvals of agreements would require analysis of over 10,000 individual agreements, imposing a substantial compliance cost on universities and Government;
2. There are no maximum time limits on the approval of 'non-core' agreements;
3. Potential changes in foreign policy could put past agreements at risk even when there is a strong benefit to Australia to maintain civil society ties between countries; and
4. A lack of transparency and capacity for appeal in the proposed process.

We thank the committee in advance for its careful consideration of these aspects of the legislation, and to amendments that could ameliorate these concerns.

We would be happy to give evidence if hearings are held.

We thank you for your attentive consideration to our feedback on behalf of the nation's science and technology sectors.

Yours sincerely,



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Introduction

In preparing this submission, STA sought information and case studies from our members about the breadth and benefits of Australia's international collaborations in science and research.

This exercise was a powerful reminder of the vast benefits that Australia derives from strong global engagement with scientists and research teams from all around the world.

A healthy culture of global engagement and strong personal connections between researchers not only enables Australia's scientists to work at the very forefront of their fields.

It also opens the door to international investment in Australian research and development - and helps Australia to secure intellectual property and income from world class research.

In this submission, we highlight a small sample of the breadth of collaborative projects that advance Australia's interests in the world.

The committee should note there are well over 10,000 such agreements between Australia's universities and their global counterparts in a vast array of countries.

Requiring every university agreement to be reviewed and approved by the Australian Government would create a significant extra burden of red tape and regulation.

Such an approach would make global science and research collaboration less certain.

The Australian Government's own work promoting international collaborations is very clear about the benefits from collaborating with the Australian research sector including:

- Strong education and research sectors
- World-leading public research agencies
- Research infrastructure
- Innovative businesses expanding their impact globally
- Trade and investment base for international companies doing business in our region
- Sound governance, solid democratic institutions and transparent regulatory systems. ¹

This legislation would hamper these benefits and make it more onerous for Australian institutions to collaborate with world-leading counterparts around the world.

There are already detailed mechanisms to identify areas of risk in which universities and research institutions do not collaborate with foreign powers that act counter to Australia's national interest. These existing requirements are sufficient to regulate international agreements. STA does not consider universities and their research and education agreements need to be included in this legislation.

STA has four specific concerns with the legislation as currently drafted:

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3. Potential changes in foreign policy could put past agreements at risk even when there is a strong benefit to Australia to maintain civil society ties between countries; and
4. A lack of transparency and capacity for appeal in the proposed process.

STA strongly recommends universities and university agreements be removed from this legislation.

Global collaboration strengthens Australian research and education

Research

The success of Australia's research is enabled by strong international collaborations. These collaborations are extensive. They include many of the largest economies in the world. As just one example, from 2011-2015, Australian collaborations with European Union researchers resulted in 13,000 co-authored publications per year.² This made Australia the EU's fifth highest non-EU collaborator in the world.²

According to the Australian Government, international collaborations benefit Australian researchers by enabling them to:

- ensure industrial relevance, application and commercialisation of their research;
- produce high-quality research that translates directly into real world outcomes—social, economic and environmental;
- access specialised research infrastructure (for example, beam lines in physics, telescopes for astronomy, or medical facilities for viral or genome samples);
- improve their employability and professional standing;
- build valuable contacts and networks; and
- build a reputation as a world-class research institution open to business.

Such collaboration benefits are not achievable without flexibility to create international agreements as needed.

Typically, Australian university legal and contracts teams are stringent with protecting their interests and intellectual property. Hence such agreements are already typically structured to be 'risk averse'.

Among projects funded by the Australian Research Council (ARC) there were a total of 2211 projects with international collaborators between the Discovery and Linkage programs alone.³ This is on top of the 71 agreements associated with the ARC Centres of Excellence.³

ARC International Collaborations	Discovery Program	Linkage Programs	Total
Total with international collaborations	654	137	791
Total projects approved	1949	262	2211

This data highlights that while around one in three Discovery programs have international partners, this rises to one in two for ARC Linkages Programs. This program is where projects often advance to the mature or translation stage - and start producing strong economic and social benefits. Looking at it through that prism highlights that this legislation could disproportionately slow down translation projects which are often time critical for international competitiveness.

Should Australia no longer participate in such extensive international collaborations, there is a real risk that instead of protecting our sovereign interests, we isolate Australia from the development of important future technologies. In the case study below, if Australia were to exit our international agreements, the research and its benefits would still occur - but Australia would miss out on the benefits of these types of collaborations. In this case, it would mean promising new material to manufacture low-cost, lightweight solar panel materials would not be as easily accessible to Australian researchers, and ultimately to Australian consumers.

CASE STUDY: Centre of Excellence in Exciton Science (<https://excitonscience.com/>)

Purpose of the project: The Centre is a collaboration between Australian universities and global partners to research better ways to manipulate the way light energy is absorbed, transported and transformed in advanced materials. It puts Australia at the forefront of work globally to develop new materials to use in renewable energy technology such as:

- solar energy conversion
- energy-efficient lighting and displays
- security labelling and optical sensor platforms for defence

International collaborators: The Centre made 16 new international linkages in 2019. This included 45 international visitors and 52 visits by Australian-based researchers to international laboratories to countries such as Belgium, Canada, China, France, Germany, Japan, Switzerland, Taiwan, and USA.

Major benefits: Since it was established, the Centre's breakthrough research has resulted in 100 major publications. In 2019, the centre and its international partners made significant contributions in:

- [Luminescent Solar Concentrators](#)
- [Self-Assembly of renewable research technology](#)
- [Next Generation Solar Cells](#)
- [PhotoLuminescent Chemical Sensors](#)

Education and Training

Agreements between universities and other countries are not just research based. They also include staff and student exchange agreements and arrangements that enable the delivery of education services by Australian universities either onshore or abroad - with the capacity to generate income for Australia. The COVID-19 pandemic has highlighted not only how important our international education industry is to our own economy - but also to our research efforts.

Australia's international education sector did not spring up overnight. It is the product of six decades of careful strategic effort - starting with the Menzies Government's support for the original Colombo Plan - to attract brilliant students from overseas, often through agreements with other countries or international universities.

The importance of this work has also been highlighted in the Australian Government's own National Strategy for International Education 2025.⁴

The proposed legislation would directly hinder six of the actions in the National Strategy for International Education by potentially delaying the signing of future international agreements and increasing the risk of agreements being cancelled in the future.

International collaboration boosts Australian industry and research

The boundaries between industry and research are not all cut and dried. In fact, wherever possible, the boundaries between the two sectors should be as porous as possible to aid research translation and investment.

In Australia, 15.2% of our nation's economic activity comes from the highly skilled sectors including scientific and technical services, education and training, and media and telecommunications.⁵

On top of these benefits to the whole Australian economy, there are specific extra benefits to be gained by international businesses collaborating with Australian researchers. They:

- get a fast foothold into new markets;
- develop new ideas, products and services for the market, boosting exports;
- get expert advice and access to the latest knowledge, process expertise, technology and equipment;
- access to skilled and work-ready researchers; and
- achieve lower costs throughout operations, from labour to materials and infrastructure.¹

While the proposed legislation exempts commercial agreements, it would include agreements that involve universities or publicly funded research that might, in part, be supported by international industry engagement.

CASE STUDY: Risk Assessment Tools for Nickel in SE Asia, Melanesia and Australasia

Purpose of the project: Australian Researchers have led a multi-national collaboration for 5 years on developing risk assessment tools to support the sustainable development of nickel deposits in Southeast Asia and Melanesia. These deposits are becoming an increasingly important source of nickel, a metal essential for batteries and electric vehicles. The project aims to develop water quality guidelines that can be used to monitor nickel in freshwater not just in Southeast Asia but in Australasia.

International collaborators: This project involves collaborations with Australia, New Zealand, USA, UK, China, New Caledonia, and Belgium. Not only are six universities involved (including University of Wollongong, Southern Cross University, and Macquarie University) but 6 consultants and companies .

Major benefits:

- World-first model to predict nickel toxicity to freshwater plants and animals.
- Revised water quality guidelines for nickel in Australia and New Zealand (currently under consideration by the Australian Department of Agriculture, Water and Environment.

Research collaborations bolster Australia's soft-power diplomacy

Limiting international research relationships risks hampering our ability to undertake world class research. It would also impair the ability for science to be used as a tool of diplomacy, especially with countries with weak diplomatic ties to Australia.

Research shows us the benefits of science diplomacy extend well beyond the research itself - and can also have a positive impact on:

- National security and emergency responses
- Economic dimensions
- Science, technology and innovation on the national level
- Shared challenges across borders
- Ungoverned spaces (international waters)⁶

These strong positive diplomatic benefits extend beyond what Australia might otherwise be able to achieve in its foreign relationships.

Case Study: The World Harbour Project (<https://www.worldharbourproject.org/>)

Purpose of the project: in 2014, the Sydney Institute of Marine Science launched the World Harbour Project. The vision was “to help build resilient and productive global ports and harbours, through innovation, and increased understanding of shared values and threats”. It boosts both commercial and conservation benefits from healthy, vibrant harbours, and understanding multiple use conflicts for these resources.

International Collaborators: The project initially started with 14 partners and has grown to 36 partners covering every continent except Antarctica.

Major Benefits: This project had produced major research findings to enhance::

- Water and sediment quality
- Green engineering
- Education and outreach on harbour management
- Multiple uses and users

The project has collaborated with 36 partner cities, generating 35 major research publications.

Specific concerns with the proposed legislation

Examining over 10,000 already established agreements

At last count by Universities Australia, there are now 10,392 formal agreements between Australian universities and their international counterparts. These agreements enable mutually-beneficial programs such as research collaborations and staff and student exchanges.

The legislation, if passed unamended, would require the Department of Foreign Affairs and Trade to review all 10,392 agreements. This is not only a substantial regulatory burden for universities, but also a considerable impost on public finances.

There is also a significant sovereign risk to Australia's university system if the Government decided to use the sweeping new powers in the proposed legislation to void university agreements. As just one example, if the Australian Government were to decide that an agreement between Brazil and Australia was not aligned with Australia's foreign policy, at least two of our current ARC Centres of Excellence would lose collaborative support.³

The proposed legislation has no time limit on 'non-core' agreement approvals

In its current form, the legislation mandates a 30-day period for scrutiny of agreements between “core partners”. After this period, there is assumed approval. This at least gives certainty to State Governments about the basis on which they are able to operate.

By contrast, the proposed legislation does not stipulate a timeframe for assessment of agreements made by universities, potentially creating long delays and lingering uncertainty.

STA is very concerned that delays in the proposed approval process for these agreements could seriously crimp the ability of Australia's science and research sector to collaborate on an international scale. This is especially the case for research that involves overseas grant application deadlines and research income that funds employment of early-career researchers.

Visa processing for researchers and potential research students is already a challenge for the science and research sector. Postgraduate research visas applications already take up 9 months to process - a timeframe which has resulted in real research funding and talent losses.⁷ An international agreement review system that adds further to that timeframe could see Australia miss out on more brilliant scientists to swifter competitor nations.

Case Study: Preventing emergence and spillover of bat pathogens in high-risk global hotspots.

Purpose of the Project: The project develops ways to limit viruses such as COVID-19 spreading from bats to humans. This project focuses on how to protect people and the environment from viruses that jump between species.

International Collaborators: International collaborators across 15 institutions in the United States (including UCLA, Cornell, Johns Hopkins, Penn State), United Kingdom (U. Cambridge), Bangladesh, Ghana and Madagascar.

Major Benefits: This project has allowed for a rapid pivot to a focus on coronaviruses including solutions to COVID-19. This work has attracted \$USD 11.25 million in support from international sources. Direct benefits include:

- Predictions of virus transmission from bats to other species
- Globally standard data for Covid-19 survival on surfaces
- Predictions on the risk from other Coronavirus variations

Risks to Competitiveness, Investment, and Collaboration from Future Foreign Policy Changes

In the development of this legislation, the Australian Government has not included commercial agreements. This decision recognises that overseas entities will be less likely to invest in Australia if their agreements can be voided due to shifting geopolitical landscapes. In this regard, the research sector is no different. Especially when that research also includes international commercial entities.

Research collaborations are not typically short-term separate projects. More often they are the product of long-term investment and collaboration. Quite often they also include more than one country, in the case of large projects can include thousands of researchers across multiple countries. The extent of these projects are such that the benefits are also not realised for a number of years.

The Department of Foreign Affairs and Trade has already highlighted that changing foreign policy would affect agreements entered into by Australian universities and research institutes.⁸ If Australian researchers and research institutes cannot guarantee their long-term participation in such collaborations because foreign policy might change, we risk missing out on opportunities that are in Australia's interests. This would hamper our research capabilities as well as our ability to attract foreign investment in Australian research.

CASE STUDY: LSST Collaboration (<https://www.lsst.org/>)

Purpose of the project: This is a US-led, international collaboration gearing up to use an 8 metre telescope being constructed in Chile. This telescope will allow for the widest, and deepest survey of the Southern Hemisphere sky and will run from 2023 to 2033. Approximately 40 Australian astronomers are currently preparing a proposal to participate in this extensive project.

International collaborators: UK, US, Italy, Spain, Chile, France, Germany, China and Japan

Major benefits: This project is still in development but is expected to yield major understanding of the universe from 2023 and beyond. As a decade-long project potentially involving thousands of researchers worldwide, it could be at risk if changing foreign policy resulted in the cancellation of agreements.

No capacity to appeal decisions

Many foreign policy decisions are confidential with the reasons behind such decisions rarely publicly acknowledged. However, one of the benefits of partnering with Australian research under the current settings are the transparent systems and democratic institutions. The implementation of this legislation will put an end to these benefits.

Without clear reasons and transparency for the rejection of agreements by the Department of Foreign Affairs and Trade, a great deal of effort and resources in the Australian research sector would be wasted. In the same way that Australian businesses should be supported when seeking international partnerships with information on foreign policy, the research sector would be better serviced by the provision of information.

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