



Queensland University of Technology

Submission to the Department of Home Affairs in response to the University Foreign Interference Taskforce's draft refreshed *Guidelines to Counter Foreign Interference in the Australian University Sector*

QUT welcomes the opportunity to comment on the consultation draft of the refreshed *Guidelines to Counter Foreign Interference in the Australian University Sector*.

As an activity, the refresh of the 2019 Guidelines is welcomed by the sector as a timely update, in light of the rapid developments of late in this arena.

The Guidelines do not and cannot function as a stand-alone raft of measures: they augment and complement existing, long-standing, rigorous, and effective governance frameworks in the university sector, which are regularly audited under our various legislative arrangements and are subject to close regulation at both State and Federal levels.

We note the draft's explicit confirmation that the Guidelines are designed to support and build resilience within universities, while recognising their autonomy.

QUT affirms that the national interest is best served by close cooperation and the sharing of experience between the tertiary sector and Commonwealth agencies. Specifically, we acknowledge the spirit of cooperation and coordination that was demonstrated in the drafting process of the Refresh, particularly by the responsible security agencies.

That collaborative spirit is manifest in the consultation draft's **Introduction** (pp. 4-7), with the original tone and language agreed throughout the consultation that embodies the positive engagement necessary for the Guidelines to be effective.

Summary of Guidelines

Regrettably, however, the consultation draft's **Summary of Guidelines** section (pp. 8-9) adopts a new and unnecessary tone of instruction and direction that is inconsistent with the text produced in the collaborative phase, and that is more appropriate to a legislative instrument than a set of guidelines.

QUT recommends that this section be edited to moderate the tenor of the section; for example, by removing instances of words such as 'will' and 'require', and restoring the earlier, more cooperative language and tone.

1. Governance and risk frameworks

This section is also framed in an unnecessary and unhelpful register of statutory command that is at odds with both the collaborative development process conducted up to this point and the intended application of the Guidelines in practice.

QUT recommends that this section be edited to restore a tone more consistent with the character of a set of guidelines (for example, replacing ‘universities will have’ with ‘universities should consider’). This moderation of tone will more effectively align the Guidelines with their intent, to be a practical supporting resource to assist universities.

2. Communication, awareness and education

This section is effective as drafted.

3. Due diligence, risk assessments and management

This section as currently drafted has measures that fall into two categories: those universities who undertake as a matter of good institutional management and academic governance already; and recent additions that are both impractical or completely inconsistent with principles of privacy and academic freedom which are fundamental to our organisations. Moreover, the approach in this section differs from the practical orientation of those other chapters that are designed to build resilience while augmenting the legislative instruments. The new measures defined here appear also to be entirely inconsistent with the principle of proportionality that has underwritten the development of the UFIT Guidelines since their original inception.

QUT recommends the withdrawal of this section and its replacement with the previous work negotiated collaboratively prior to the release of the present consultation draft.

3.1: This subsection is not only overly authoritarian in tone, but its recommended actions are both impractical and potentially in conflict with other legal obligations and instruments.

First, it is not clear that universities have the right to collect such declarations from all academic staff. Indeed, there is a sound argument that attempts to do so would conflict with the spirit of the academic freedom and freedom of expression reforms all universities have recently undertaken at the behest of the Commonwealth Government (let alone our own principles of good management framed to respect staff privacy and well-being). Considering the backgrounds of those staff who have found refuge in Australia’s liberal democracy, it is likely that there will be some staff and students who will interpret any demand for this kind of detailed disclosure as the very harassment and intimidation that the corresponding Guidance Note is concerned to avoid.

Such disclosure obligations would undoubtedly be subject to legal and industrial challenge.

The annual collection and appropriate storage of declaration data would also be logistically difficult, with considerable privacy and resource implications.

QUT recommends that this unworkable suggestion be replaced by the more nuanced earlier draft which was worked out in collaboration with the sector and calibrated on the level of risk related to the individual.

3.2.1: These business factors are subject to standard due diligence practices as part of normal university business. All sound corporate governance and management processes already conduct these checks as a routine matter. They are not specific to foreign interference concerns, being generic business considerations, and do not belong in the Guidelines.

QUT recommends the removal of this subsection.

3.2.2: These considerations are already part of the usual practices of universities, in fulfilment of our statutory obligations under a variety of regulatory regimes (including but not limited to the *Defence Trade Controls Act 2012*). These measures are therefore also redundant, but as they are at least directed specifically at foreign interference, we do not necessarily seek their removal.

QUT recommends, instead, that the Guidelines explicitly signify that these recommended measures reflect and summarise the chief measures required under related instruments within the overall foreign interference regulatory regime, and are not additional to them.

3.3: The first set of recommendations again reproduce standard practices and concerns, such as the protection of IP, reputation and ethical conduct. They could be removed from the Guidelines and would still be attended to – out of concern for considerations including but not limited to foreign interference – as a matter of course in any well-run university.

The second dot-point, envisaging that universities *'have a clear point of contact within specialist government security agencies or departments when additional advice or information is required'*, entails the provision by Government of a higher level of resource commitment by security agencies and departments than has ever been available to the sector. If this recommendation (or requirement? – the phrasing of opening clause preceding this list renders the burden ambiguous) is applied to universities without a corresponding resource allocation to the relevant security agencies, it will obviously fail. If these resources are to be made available (which, to be clear, QUT would welcome), the bounds of uptake should be clarified, as to whether advice provision would be confined strictly to the Guidelines or would be extended to other existing arrangements beneath the broad foreign interference / sovereign protection umbrella, such as the Defence Trade Controls Act, the various Sanctions regimes (UN and autonomous), the Foreign Arrangements Scheme, the Defence and Strategic Goods List, the Defence contact registry, etc.

The other list of measures, on agreements with international partners, is profoundly impractical and self-defeating. These measures do not reflect how international agreements are constructed or used, and their application would render most agreements void if requested in the text. It is unrealistic to propose that the agreements could feature these clauses and still be actionable. The likely outcome of an obligation upon Australian universities to attempt to negotiate agreements on this basis is that Australia would simply be bypassed in favour of jurisdictions with more equitable and practical negotiating principles. QUT recommends the removal of this second half of subsection 3.3.

4. Cyber-security

This section is effective as drafted.

5. Knowledge-sharing

This section is effective as drafted.

Appendix 1

This elucidation of the thinking behind subsection 3.1 only confirms the problems with that subsection, outlined above, and indeed the whole of section 3, **Due diligence, risk assessments and management**. Some of these questions constitute administrative over-reach of doubtful legality; the rest are either covered in standard disclosure of interest processes that all staff engaged in a level of international activity are required to complete.

Most of these issues are already addressed as standard good corporate governance: indeed, at QUT processes have been adjusted precisely to take account of the FITS legislation. Conflict of interest records are already a core part of the governance of QUT and includes researchers and supervisors.

As discussed above, the request for a declaration of political associations for the past 10 years would very likely breach all types of statutory privacy provisions, even if putting aside considerations of disrespect and industrial dissonance. It is also impractical: where would an institution store such data? How would they be protected? How could staff be assured their answers would be used for no other purpose? What level of security would be applied to these data, given their sensitivity?

Has the Department considered the likelihood that, by mandating (or encouraging) universities to collect and store foreign affiliation data, the Government would be considerably increasing the likelihood that universities' personnel databases would be targeted by foreign governments seeking private background information on both their expatriates and Australian research partners, encouraging precisely the kind of attack that section 4 of the exposure draft, **Cyber-security**, seeks to prevent?

QUT recommends that this appendix be deleted in its entirety when section 3 **Due diligence, risk assessments and management** is replaced with the previous collaborative draft.

Guidance material

The concerns outlined above with the substantive sections of the draft refreshed Guidelines have application to the corresponding Guidance material. Remarks and recommendations concerning specific sections and subsections above should therefore be read to embrace any particular item of the Guidance material that applies.