
SUBMISSION TO THE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE DEPARTMENT OF THE SENATE

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

25 September 2020

Introduction

We provide this submission on behalf of Technical and Further Education (TAFE) institutes across Australia, which enter into an array of agreements with foreign governments and their related entities in support of Australia's national interest. TAFE Directors Australia (TDA) represents TAFEs across Australia plus the formal TAFE Divisions of Dual Sector Universities.

As TAFEs are established and administered under state and territory statute, it appears they fall under cover of *Australia's Foreign Relations (State and Territory Arrangements) Bill 2020* (the Bill).

This submission describes the nature of TAFEs' establishment and outlines the range and purpose of agreements with overseas government entities. This submission also suggests approaches to streamline the administration of the scheme, if it is passed into legislation, and puts forward what is seen (from a limited understanding of the operational aspects of the scheme) as the impacts on TAFEs as well free trade agreements and trade generally.

TDA sees that the proposals in the Bill will divert existing Commonwealth resources otherwise dedicated to promoting foreign relations and development of trade opportunities (through the Department of Foreign Affairs and Trade and Austrade). The number of international linkages would be expected to reduce as the process and regulation cost in needing approval of agreements will factor into feasibility considerations. At a point where global geo-political tensions appear to be rising, the scheme may be interpreted by the Australian community that an international outlook is not important.

Submissions from state and territory governments take precedence over views expressed within this submission where views in this submission are in conflict.

The Bill

We understand that the Bill intends to implement a federalised government approval and reporting regime for all forms of agreements, including memoranda of understanding, with foreign governments and their subsidiary entities. The nature of each agreement – in terms of the nature of its elements and the reciprocal body – will determine handling, as follows:

- **Core foreign arrangements** which requires the approval of the Foreign Affairs Minister prior to negotiation and throughout its duration; and
- **Non-core foreign arrangements** which requires approval of the Foreign Affairs Minister prior to the agreement being formalised.

All arrangements will be subject to public reporting.

TAFEs

For your information there are 23 stand-alone TAFEs operating across Australia. TAFEs are recognised as government entities in Commonwealth law. For example, in Section 45 of the [VET Student Loans Rules 2016](#)¹ under the [VET Student Loans Act 2016](#)² (the Act) registered training organisation owned by the Commonwealth, a State or a Territory; or established to provide vocational education or training under specified state or territory acts of their parliaments are recognised as Government entities.

Depending upon covering legislation and policies each state and territory has different approaches for TAFEs to enter arrangements with foreign governments and related entities. Some are entered into at the Institute level while others may be entered into by a government department with TAFEs as the lead agent for delivery.

There are also 6 formal dual sector universities with formal TAFE divisions. It is assumed that their TAFE operations fall under the provisions applying to public universities which are explicitly covered in the Bill.

As would be expected, agreements are usually subjected to legal counsel and tight risk management to mitigate financial, diplomatic and reputational harm. TAFEs have at least thirty years' experience in entering such agreements reflecting the standing TAFEs hold internationally for industry aligned skills development. TAFE Queensland, for example, is the operational lead for the Australia Pacific Technical College operating out of Fiji.

The nature of exchange arrangements

Many countries in Asia, the Pacific, and increasingly across Latin America, are looking to improve their VET systems and provide their workforce with industry-relevant skills to drive productivity, enhance economic growth and increase their global competitiveness. The demand for skills is growing due to economic challenges arising from population demographics, technological advances, structural adjustment of labour markets and the rapidly evolving needs of industry.

Australian TAFEs are well placed to meet these requirements, however, there is considerable global competition from Canada, Germany and the United Kingdom, for example. These countries use development in education and training to prepare the local workforce for their own industries to operate more effectively in these countries, but more strategically to grow the middle-class of these countries which opens up trade opportunities for their industries.

The majority of Australian TAFEs are active offshore delivering vocational and higher technical education to meet these skills development needs. The exchange normally entails formal accredited qualifications, part-qualifications or the Australian approach blended into courses of overseas institutes.

Arrangements also include professional advice for skills development, organisational capability development and trainer professional development. These programs often form part of state and territory trade development strategies.

TDA estimates that there would be over 300 individual agreements in place. In Victoria alone, in 2019 there were over 90 agreements with overseas entities.

¹ <https://www.legislation.gov.au/Details/F2020C00233/Download>

² <https://www.legislation.gov.au/Details/C2020C00047/Download>

These engagements and agreements are all undertaken with the Australian national interest at the centre of their development and implementation.

Regulation and Coordination Costs

The model outlined in the Bill is anticipated to be a drag on the responsiveness, and therefore, effectiveness of TAFE services offshore, especially considering the scope of the scheme. While there is an undertaking for decisions on core agreements to be made within 30 days, lack of specificity for turnaround of non-core arrangements risks lengthy waiting times, simply due to volume of arrangements that will need to be processed.

These arrangements, especially the potential for Ministerial over-ride, may result in some TAFEs and other entities reducing international cooperation and trade. This has the potential to dampen otherwise strong ties between countries and peoples.

Many agreements, and MoUs in particular, are often reached at the point of a visit as this is accepted practice in many countries. In this regard a principles, rather than an in-process and post event approval process, may be worthy of consideration. That is, the principles of engagement are agreed and established at the on-set.

Confidence to Engage with Australian Entities

These arrangements will impact on ease of trade. Long held trade principles require stability and transparency in regulatory arrangements as the basis of trust which underpins exchange. Overseas entities may choose other partners if they perceive heightened risks, ambiguity and costs in engaging with Australian TAFEs.

In the context of uneasy foreign relations and uncertainty in the movement of persons in needing to protect populations from the threat of COVID, the prior approval of each arrangement as proposed in the Bill, plus the power of the Minister to overturned them, adds to uncertainty.

International Education

The arrangements will also impact on international education, which represents a major source of export that also leverages other economic activity in Australia. The flow of international students to Australian TAFEs (and other education entities) is often based on agreements with offshore colleges and institutes (which are also public entities). Delays in reaching agreements in some cases will give advantage to our competitor countries which also seek out students and could slow down the rebuilding of this export industry.

In addition, the oversight over all forms of agreements envisioned under the Bill risks creating a sense that Australia is cautious about international education.

In foreign markets the TAFE brand is well recognised and highly respected as representative of quality education and training. Many South East Asian countries also prefer to deal with a government backed entity as a basis for quality and probity. The lack of certainty due to the approval process of the scheme may diminish the ability of TAFEs to engage in these countries.

Impacts on the International Education Strategy

There are also broad market issues at stake. As stated previously, the bulk of TAFE arrangements relate to delivery of formal VET qualifications or part-qualifications. Under national policy arrangements for vocational education and training these qualifications are endorsed centrally as national qualifications for delivery by registered training organisations (RTOs). To the extent that this element of TAFE offshore arrangements triggers the need for approval under the scheme calls

into question whether non-TAFE RTOs arrangements offshore also need approval. Otherwise, a two track process – a reporting and approval process for TAFEs and no oversight of other RTOs - distorts competition arrangements for international trade.

The Government has indicated that it is reviewing the current [National Strategy for International Education](#). The strategy covers transnational education in broad terms. As such, any new strategy will need to address the implications arising from this Bill.

Free Trade Agreements

Many Free Trade Agreements and other government-to-government economic agreements often entail cooperation in areas of skills and education and mutual recognition arrangements. The scheme could consider whether arrangements under cover of these agreements are exempt. For example, the Indonesia-Australia Comprehensive Economic Partnership Agreement entails close cooperation on vocational education and training, showing the centrality of VET to Australia's national interest and its regional engagement.

Principles Based Exemptions

TDA considers that principles-based exemptions to the scheme could be put in place without compromising the national sovereignty and foreign affairs objects of the Bill. This would streamline its operation by reducing the scope of agreements to be handled and minimise regulatory impost.

Principles which could be considered, include:

- using pre-approved templates for similar agreements - such as establishing model agreements TAFEs may replicate with surety;
- thresholds on the financial value of the agreement;
- excluding less-formal arrangements which do not entail fiscal consideration between the signatories such as MoUs;
- exemption for education and training services and associated professional services; or
- exemption of countries where there are key diplomatic and security alliances.

Medium-term Impacts

Of equal concern is the potential dampening of international cooperation and trade which acts as an important input to lifting the quality and relevance of Australia's education and training output.

Australia has a long history in supporting open trade. International trade creates an incentive for domestic supplies and services to innovate to compete in global markets. This also applies to the skills and knowledge of citizens as countries seek to develop their own workforce talent to help maintain the competitive advantage of their industries. The same applies to the Australian workforce. It is imperative that knowledge and skills in Australia are at the forefront of world standards.

International data indicates that the output of vocational education in Australia is falling behind competitor countries³. The international cooperation of TAFEs not only help pass on technical

³ A recent index comparing education systems and labour market outcomes across 80 countries ranked Australia's VET system, once the envy of the world, as 20th. For mid-level skills capability, the ranking was even lower: 38th in the world. *An Investment in Productivity and Inclusion: The Economic and Social Benefits of the TAFE System* By Alison Pennington Centre for Future Work at the Australia Institute August 2020

skills and vocational knowledge to other countries but also allows TAFEs to observe and take on leading approaches from countries. This enables TAFEs, in turn, to enhance their training products and vocational education services. This dynamism is what will increase Australia's workforce capability and to help Australian industry innovate and keep up with developments in production and service technologies.

While the approach in the Bill could be portrayed as a low impact process to protect Australia's foreign interests it is not too difficult to see a decline in engagements over time. This will have a deleterious effect on the development of talent in the Australian workforce that ultimately compromises Australia's competitive advantages in many industry areas.

The staff of TDA is available to provide further views if required by the Committee.