

WATCHING BRIEF 20-9: FOREIGN RELATIONS BILL

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

September 2020

This Brief refers to current legislation before Parliament to ensure that arrangements between states, territories, councils and universities and foreign governments are consistent with Australian foreign policy. The responses of various groups are given, and suggestions for action.

Government Statement

On 27 August 2020, the Prime Minister issued a media release which made the following points:

- The Commonwealth Government has exclusive responsibility for conducting Australia's foreign affairs. However, state and territory governments also enter arrangements with foreign governments (e.g. trade, cultural links, university partnerships) without having to inform the Commonwealth.
- The legislation will enable the Foreign Minister to review any existing or prospective arrangement, and prevent or terminate them if they are inconsistent with our foreign policy. It will also give states confidence to enter into arrangements that are consistent, by giving them greater understanding of the risks and opportunities involved.

The Foreign Relations Bill (State and Territory Arrangements) Bill 2020 was tabled in Parliament on 3 September 2020. The explanatory memorandum starts with this: "The Act establishes a legislative scheme for Commonwealth engagement with arrangements between State and Territory governments and foreign governments. The scheme will also cover entities that are associated with State or Territory governments (such as councils and Australian public universities) and foreign governments (such as municipal or provincial governments)". The main provisions are:

1. The Commonwealth welcomes such arrangements but needs a role to ensure they do not adversely affect Australia's foreign relations.
2. The Act applies to both legal and non-legal arrangements and includes contracts, memoranda of understanding, and other forms of commitment.

3. States and Territories must notify the Foreign Minister about any proposed arrangement. The Minister can decide within 30 days whether it is approved.
4. Existing arrangements can be terminated or varied by the Minister.

Responses

Luke Beck (Monash University) indicated in an article in *The Conversation* (27 August) that there could be 130 existing deals that could come under review. He said that, while the federal government has exclusive power to enter into international treaties, the states and territories, councils, universities and private companies can enter into contracts with foreign governments. These agreements cover economic cooperation and development and cultural exchanges. The new legislation will set up a public register of agreements. The powers in the constitution are already used to override state and territory autonomy (e.g. racial discrimination act, minimum wages for state employees), but the High Court has placed limits on how far this can go (e.g. the federal government cannot prevent states from having royalties schemes with mining companies).

Michelle Grattan (*The Conversation*, 27 August) said that the Opposition was unlikely to object, as “Anthony Albanese doesn’t want to fight over anything involving national security”. The government approach is to apply two tests – does the arrangement adversely affect Australia’s foreign relations, and is the arrangement inconsistent with foreign policy. It is clearly aimed at China and in particular at the Victorian Government’s agreement to sign up to the Belt and Road Initiative. From a constitutional point of view, the federal government is on strong ground in relation to states and territories, but less so regarding local government and universities.

According to reports in *The Guardian* (9 September) the Opposition will generally support the Bill but seek amendments to enable examination of the 2015 Port Of Darwin agreement between the NT government and a Chinese company. The Bill as presently drafted does not cover that agreement, which is commercial. In addition, the Minister for Defence (Senator Linda Reynolds) has said the arrangement does not pose a security risk for Australia. Local governments also regard their agreements (e.g. sister city links) as ‘non-core’ and unlikely to be affected.

The Group of Eight Universities (representing Australia’s leading research universities) made a statement on 2 September that the Bill “may not be proportionate to risk, may lead to over regulation, and could undermine the good work that has been undertaken between universities and the Government in this area to date”. They point out that their research is already subject to a range of government and legislative controls such as the Defence Trade Controls Act, the Foreign Influence Transparency Bill, and Autonomous Sanctions Act. The universities affirm that they have worked collaboratively with government to develop guidelines to counter foreign interference. They are concerned that, in the name of security, Australia may threaten the democratic principles it values.

Colin Barnett, former WA Premier, said (Q&A, *ABC TV*, 31 August) that the legislation was ‘patronising’ and ‘complete overkill’. He said it was clearly aimed at China, but would stymie relations with China. He predicted that formal agreements with foreign governments would be replaced by informal ones, to avoid the extra bureaucracy of having to inform the federal government.

David Speers (*ABC TV Insiders*, 30 August) contrasted the increased importance of trade with China with the deteriorating diplomatic relationship since Xi Jinping visited Australia six years ago to celebrate the new Free Trade Deal. Three years ago the Coalition Government signed a MOU to participate in Belt and Road Initiative projects in third countries, but now it sees BRI has a threat. The Labor Party has also hardened its position.

Andrew Korybko, an American political analyst based in Moscow, wrote (*China Global TV Network* on 29 August) that ‘national interest’ means different things to different political parties. He sees the Australian Prime Minister as creating an environment where people may be fearful of being seen as ‘treasonous’ for making agreements with China.

Melissa Conley Tyler (Asia Institute, Melbourne University) has made a detailed analysis of the Bill (*The Canberra Times*, 9 September 2020) and offers the following comments:

- The Bill rests on a fundamental misunderstanding of the nature of modern diplomacy. Research into the wide range of links between Australia and other countries shows that there are 87 state trade and investment offices overseas, and 500 sister cities, including over 100 with China. Universities have hundreds of research and student agreements.
- The legislation rests on the supposed advantage of ‘one voice’ in foreign policy, whereas diplomacy embraces broad engagement. There is a balance between official relations and the engagement of many actors.
- The test for vetoing a foreign arrangement is far too wide, and covers any legal or non-legal arrangements. There is no clarity about what is considered to have ‘adverse’ effects on foreign policy.
- The Bill is unnecessary – there are already provisions to deal with issues of espionage or foreign interference. If passed, the legislation will dampen initiatives for international linkages, and divert DFAT resources from more pressing tasks within its reduced budget.
- There are better ways to go – more information sharing between different levels of government.

A Quaker Perspective

- The term ‘national interest’ covers both domestic and international aspects. It is not to be seen as a narrow focus on vested or partisan interests, but rather should allow for a wider vision that takes into account the many international agreements to which Australia and Australians are party.
- Foreign policy must also reflect Australia’s role in the international community as a country committed to democratic values.
- There should be scope for a partnership between the Commonwealth and the States/Territories in promoting a foreign policy that gives benefits to our citizens and corporate bodies and contributes to a fairer world.
- If the relevant Minister is to decide on the appropriateness of agreements, the criteria for such decisions should be widely known and understood. This can best emerge from a negotiation between the Commonwealth and the States/Territories, and oversight by the Federal Parliament.

- Since it appears that it is our relationship with China that is the main reason for this legislation, there needs to be further analysis and discussion about whether this Bill is really suitable for wider application to all our relations with other countries.
- The relationship with China needs a different approach that deals with the nuances of history, big power rivalry, the Chinese diaspora in our region, the trade and development aspects, and the values involved on both sides.
- It is hard to justify including university research centres in this legislation, given that their activities are usually well regulated by their own charters and by various education policies of the governments that are connected with them. There needs to be much further conversation between the federal government and universities about the legislation.

Possible Action

The Parliament will resume in the first week of October, and the Bill will then proceed. It is before the Senate Foreign Affairs, Defence and Trade Legislation Committee for examination and hearings, before returning to Parliament in November. Although the opportunity for submissions has now passed, there is time for contacting Senators to raise questions or concerns.

The members of the Senate Committee are – Eric Abetz (Chair - Liberal), Kimberley Kitching (Dep Chair – Labor), Tom Ayres (Labor), David Fawcett (Liberal), Concetta Fierravanti-Wells (Liberal), and Jacquie Lambie (Independent).

Canberra

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