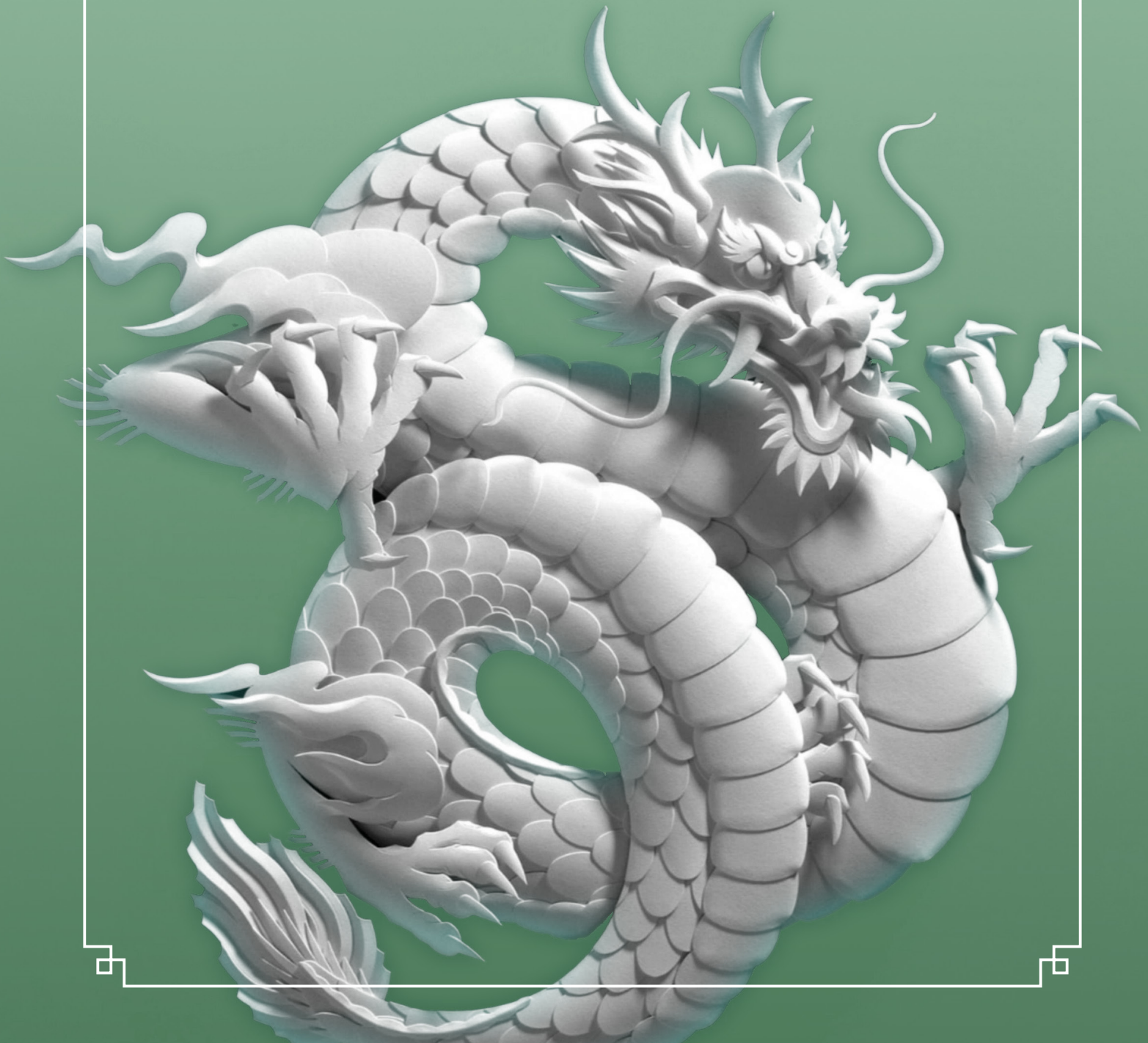


A House Divided: The AFRB and China's Subnational Diplomacy in Australia

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Analysis Paper 17

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Executive Summary

Australia is an open society awash in Chinese foreign influence operations, which at times may cross the lines to constitute foreign interference in Australia's domestic politics. Some of the most nefarious of these operations take the form of 'subnational diplomacy': attempts by China to circumvent traditional international diplomacy by building relationships directly with Australian state, territory, and local governments and associated governmental entities (including state-chartered universities). On August 27, Prime Minister Scott Morrison announced that the government would introduce new legislation to restore Commonwealth control over Australia's international relationships at all levels. In the ensuing press conference, he explained how his proposed Australia's Foreign Relations Bill (AFRB) would help the Commonwealth keep tabs on subnational diplomacy that already involved "more than 130 agreements, from 30 countries".

In fact, these represent only the tip of the iceberg of Australian governments' subnational links to foreign governments, which range from grand programs like Victoria's Belt and Road agreement with China to workaday commercial relationships like Hobart's role as a logistics hub for Chinese Antarctic expeditions. This paper places Australia's many subnational relationships with China in international perspective before focusing on Victoria's highly controversial China diplomacy and other states' and universities' educational and scientific collaboration with China, including their support for university-based Confucius Institutes. Reviewing the fitness of the AFRB as a tool for countering Chinese influence and interference operations, the paper presents recommendations for improving its targeting and efficacy.

The Australian government draws a fuzzy line between 'foreign influence' and 'foreign interference', accepting the legitimacy of some influence operations (but not others) while consistently condemning political interference, which it defines as activities that are:

- carried out by, or on behalf of a foreign actor
- coercive, corrupting, deceptive, clandestine
- contrary to Australia's sovereignty, values and national interests¹

It is not clear whether an action must tick one, several, or all of the items on this list to be considered foreign interference by the Australian government. Speaking in 2017 as prime minister, Malcolm Turnbull proclaimed that Australia "will not tolerate foreign

influence activities that are in any way covert, coercive or corrupt. That is the line that separates legitimate influence from unacceptable interference".² The Attorney-General's Department actually praises foreign influence operations that are "conducted in an open, lawful and transparent manner", saying that they contribute to Australia's "vibrant and robust democracy".³ It takes a very narrow view of foreign interference as "covert, deceptive and coercive activities intended to affect an Australian political or governmental process". Such a strict construction of the difference between influence and interference, while perhaps necessary for legal purposes, is rather less helpful as a guide to policy. Even when they are conducted in a lawful manner, China's influence operations are never open or transparent, and it is doubtful that they ever contribute to a more "vibrant and robust democracy".

This paper thus examines China's subnational diplomacy as an attempt to exert influence over Australian politics and society, without attempting to make a legal distinction between influence and interference. The AFRB serves as a focal point for the exercise. The paper's first recommendation is that the AFRB should be amended to require the publication of subnational government and government entity agreements with foreign entities, except in a limited number of cases when the filing party convincingly argues that secrecy is in the public interest. Allowing subnational governments and government entities to continue to do business in the dark is a recipe for ensuring they continue to be vulnerable to foreign influence and interference. The paper's second recommendation is that the AFRB should be amended to establish a 'trusted partners' list of countries with which arrangements can be made without any need for ministerial approval. Such arrangements might still require registration, but they should not be tied up in uncertain and potentially time-consuming bureaucratic processes. Excessive regulation should also not be used as a blunt instrument that prevents universities from cooperating internationally.

In principle, the AFRB is all about protecting Australian sovereignty, without prejudice to any particular foreign country. In practice, as nearly every commentator has recognised, the AFRB is 'all about China'. For Australia, China is too important to ignore but too dangerous for complacency. Australia has no choice but to deal with China, but it must do so with its eyes open, and its values intact.

Introduction: China, Victoria, and the AFRB

Prime Minister Scott Morrison announced on August 27 that the government would “introduce new legislation to ensure the arrangements states, territories, councils and universities have with foreign governments are consistent with Australian foreign policy”.⁴ The new legislation would give the foreign minister “the power to review any existing and prospective arrangements between state and territory governments and all foreign governments”, under which any arrangements that are “inconsistent with our foreign policy could be prevented from proceeding or terminated”. In the ensuing press conference, Morrison explained how his proposed Australia’s Foreign Relations Bill (AFRB) would help the Commonwealth keep tabs on subnational diplomacy, which already involved “more than 130 agreements, from 30 countries”.⁵

At that press conference, a journalist challenged the Prime Minister to name the target or at least the concerns that prompted the bill, but Morrison refused to take the bait, answering repeatedly that the laws, and his biggest concern, are about “Australia’s national sovereign interests”.

Of course, the AFRB is all about China, as are a panoply of other Commonwealth mechanisms that have been recently set up to counter potential malign foreign influences on, and interference with, Australian institutions:

- Australia’s Foreign Relations Bill (AFRB) — under consideration
- Foreign Investment Review Board (FIRB) overhaul — announced June, 2020
- Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry into foreign interference in Australia’s universities — under consideration
- University Foreign Interference Taskforce (UFIT) — met August-November, 2019
- Foreign Influence Transparency Scheme (FITS) — in effect since 2018

These mechanisms collectively represent an assertion of Commonwealth control over Australia’s international relations in the face of state, territory, and even university forays into autonomous deal-making with China. The AFRB in particular seems almost certain to have been prompted by the state of Victoria’s decision under Premier Dan Andrews to sign up to China’s Belt and Road Initiative (BRI). The BRI is Xi Jinping’s signature foreign policy initiative, a master plan for

placing China at the center of the economic and trade networks of the Afro-Eurasian landmass. Launched in late 2013, it theoretically comprises the overland Silk Road Economic Belt and the seaborne 21st Century Maritime Silk Road, but in practice it operates as a single overarching narrative for nearly all of China’s geoeconomic diplomacy, spawning a Polar Silk Road, a Pacific Silk Road, and even a Latin American Silk Road. The Memorandum of Understanding (MOU) that Andrews signed with China’s National Development and Reform Commission (NDRC) chairman He Lifeng in 2018 commits Victoria to both branches of the BRI, though in such vague language as to represent a broad commitment to supporting China and its global foreign policies, whatever they may be.

The contents of the October 8, 2018 MOU were initially kept secret, until public and political pressure forced their release more than a month later.⁶ The English version of the MOU⁷ is so poorly written that it must have been drafted in China, or else by a non-native English speaker working without official oversight in Victoria. It provides for exchanges, dialogues, “joint researches”, and the like. One provision suggests that the parties may “discuss cooperation with a third Party on jointly building the Belt and Road, and provide convenience to such cooperation”, whatever that means. Interestingly, the termination provisions specify that “one Party should give the other party a written notice through diplomatic channels at least three months in advance”, implying that Victoria has appropriate standing to communicate via diplomatic channels. Given the amateurism that is characteristic of Chinese diplomacy, it is likely that this language is a holdover from the standard provisions it uses in its conventional sovereign-level agreements, but the implication that Victoria has the sovereign standing to conduct diplomacy is nonetheless telling.

The China-Victoria MOU was followed in 2019 by a framework agreement signed October 23 in Beijing.⁸ The framework is full of boilerplate Chinese diplomatic language about fostering “the silk road spirit of peace, cooperation, openness, inclusiveness, mutual learning and mutual benefit”. Like the MOU, the framework seems to have been drafted in Beijing, without input from native English speakers. For example, one stated principle is:

Comply with international rules, and respect laws of opposite country, with highlighting the importance of procedure open, transparent, and non-discriminatory.

As would be expected, the framework agreement provides at least some additional detail about just what Victoria's BRI agreement involves. The areas of cooperation to be pursued under the framework agreement include:

- Infrastructure development
- Research, innovation, and industrial development
- Public services (with a focus on population aging)
- Trade development (focused on food, agriculture, nutraceuticals, and cosmetics)

However, the framework emphasises that infrastructure is the key concern, with a full article devoted to establishing the terms for infrastructure development (but no further elaboration offered on any of the other areas). In the awkward phraseology that characterises the entire document, the infrastructure article opens:

Both sides acknowledge that infrastructure is a key area of jointly promoting the Belt and Road Initiative. In this area, both sides have good cooperation foundation, great potential and prospect. Both sides agree to further enhance cooperation of relevant companies.

The infrastructure article goes on to detail four undertakings on each side, which mainly involve promises to share information on tenders and encourage firms to bid for projects. The two sides also undertook to explore the establishment of a joint 'Infrastructure Accelerator'. However, it should be noted that both the MOU and the framework agreement contain clauses explicitly stating they are not legally binding.

Of course, if Victoria's BRI agreement is not legally binding, then what's the point? Ironically, it is precisely the lack of enforceable clauses that is most troubling about Victoria's MOU and framework agreement. It underscores the fact that these are political accords being entered into for political purposes, which are left unspecified (and thus unverifiable). The lack of contractual obligations implies that Victoria has either voluntarily endorsed the foreign policy doctrine of a potentially hostile

Communist dictatorship as its own, or even worse, endorsed Chinese rhetoric in exchange for shadowy political favors that can only be guessed at. Reflecting the potential for such favors, it has been noted that "Victoria's primary producers have escaped China's trade bans and tariffs relatively unscathed, as the state pushes ahead with its Belt and Road Initiative agreement".⁹ Was this a coincidence? Neither the Australian public nor its elected representatives can know for sure.

The proposed AFRB would give the Commonwealth government the authority to invalidate Victoria's BRI agreements, as well as many other subnational agreements between Australian government entities (including state-chartered universities) and foreign government entities. Such a broad remit would force all Australian governments to speak with one voice in international affairs, preventing foreign governments from playing Australian governments against each other. But it also represents a potentially illiberal overreach, especially when applied to universities; which although government entities, are not governments.

This paper lays out the context in which the AFRB (and related mechanisms) will have to operate in dealing with China, focusing on the case of Victoria's BRI diplomacy but also drawing implications for the rest of the country. Section 2 puts China's subnational diplomatic offensive in global perspective, drawing parallels between China's subnational diplomacy in Australia and its actions in other countries along the BRI and beyond. Section 3 focuses on Victoria's highly controversial relationship with China, which dates from the beginning of Dan Andrews's premiership. Section 4 examines educational and scientific cooperation with China, with a special focus on the China-funded Confucius Institutes program. The concluding Section 5 evaluates the dangers posed by China's subnational diplomacy and recommends appropriate ways to address it while still engaging with China. For Australia, China is too important to ignore but too dangerous for complacency. Australia has no choice but to deal with China, but it must do so with its eyes open, and its values intact.

China's global subnational diplomacy

Ever since the 1648 Peace of Westphalia that ended the Thirty Years' War, it has been a bedrock axiom of international relations that diplomacy is conducted at the national level. The word 'nation' is incorporated into the very term 'international relations'. This hasn't prevented the rise of efforts to build cross-national friendships or influence foreign populations through what is called 'public diplomacy', but for most countries, public diplomacy efforts are clearly distinguished from official diplomacy. Sister city programs, foreign aid spending, and the BBC World Service are all very nice, but they don't involve the negotiation of international agreements. By definition, they can't, since an international agreement can only be negotiated between nations.

Subnational governments in the United States,¹⁰ the United Kingdom,¹¹ China,¹² and other countries routinely pitch for international investment, engage in global brand-building exercises, and sign friendship agreements with similar regions in other countries, but they typically do not pursue peer-to-peer relationships with foreign national governments. Most national governments, in their turn, typically do not seek relationships with subnational units in foreign countries. This is partly a matter of diplomatic courtesy, partly an issue of sovereign self-regard. Neither the 1961 Vienna Convention on Diplomatic Relations — to which nearly every country in the world is a party — nor the 1963 follow-up Convention on Consular Relations, which covers "the development of commercial, economic, cultural and scientific relations", envisage scenarios in which a national government might engage in diplomatic relations with a subnational government in another country.

One country now seeks to change all that. That country is, of course, China. Its subnational diplomacy does not technically fall foul of international conventions because it is not officially conducted out of embassies or consulates. In the case of Victoria's BRI agreement, the Chinese counterparty is the NDRC, a central government economic planning agency that formally reports to Premier Li Keqiang, not to President Xi Jinping or the Communist Party of China (CPC). The NDRC is not, in itself, an important power base in China, and it has arguably become less important in recent years. However, in China such fine distinctions hardly matter: the only power structure that matters, both practically and constitutionally, is the CPC power structure. By assigning the NDRC to deal with Victoria, the Chinese state nominally removed the agreement from the purview of diplomacy. Nonetheless, by having its ambassador to Australia, Cheng Jingye, attend the signing ceremony for the MOU in 2018, China clearly signaled that

the deal was diplomatic in intention, if not in formal status.

Such strategic ambiguity is endemic to China's subnational diplomacy practices. In China's party-state amalgam, there are no meaningfully autonomous institutions. The national government, provincial governments, local governments, universities, state-owned enterprises (SOEs), and even (to a large extent) shareholder-owned companies are all subject to the authority of the CPC leadership. As David Kelly points out, although "private enterprises have emerged [in China], 'private' is a formal category of ownership that can be summed up as 'less state'".¹³ China's leaders can effectively order cities to engage in sister city relationships with targeted foreign cities, order universities to participate in research cooperation with specific international partners, and even order private companies to make uneconomic investments in pursuit of national policy goals. This strategic ambiguity is also characteristic of a small number of other countries (for example: North Korea, Iran, Ethiopia, and Eritrea), but it makes China unique among major global trading economies. When subnational actors deal with Chinese entities of any kind, they can never be certain to what extent they are actually dealing with the national party-state.

In the case of Victoria's BRI agreement, the connection is unambiguously direct. A parallel example can be found in Scotland, another subnational region that is chronically at odds with its national government over foreign policy. Like many places around the world, Scotland hosts Chinese government-sponsored Confucius Institutes (at the university level) and Confucius Classrooms (at the schools level). However, unlike most other subnational jurisdictions, Scotland negotiated these at a government-to-government level, with Scotland's government signing MOUs with China's education ministry in 2005 and 2008 to establish a framework for these institutions.¹⁴ By contrast, the MOUs governing Scotland's educational cooperation with India and South Korea were signed by Universities Scotland, an independent membership organisation representing Scotland's 19 higher education institutions, not by the Scottish government itself.¹⁵ The government of Scotland also signed an MOU covering cultural exchange with China in 2011, again pairing the government of Scotland with a Chinese ministry.¹⁶

Illustrating the ambiguity inherent in dealing with the Chinese party-state, in 2016 the government of Scotland signed a confidential £10 billion infrastructure MOU with two China-linked corporate

entities, the China Railway No. 3 Engineering Group (CR3) and SinoFortone (UK).¹⁷ The MOU included an intriguing clause:

The whole MOU may be subject to release in the event of a request for information made under the Freedom of Information (Scotland) Act 2002.

In fact, the MOU was released, but only after SinoFortone published a photo on its website showing Scotland's first minister Nicola Sturgeon meeting with company executives — and China's Consul General Pan Xinchun.¹⁸ It took only a few days for critics to reveal disturbing details about the Scottish government's China-linked counterparties. The CR3 group is owned by a Chinese SOE that has been accused of gross corruption and human rights violations in Africa.¹⁹ SinoFortone is a mysterious UK investment company that is reported to be a joint venture between a trading company called Sinolinks Group and the Liaoning Fortone Group, a Chinese construction contractor.²⁰ It has been associated with a string of collapsed deals, although it was able to purchase the pub where Xi Jinping met David Cameron in 2015.²¹ It is unknown to what extent the Chinese government may have been behind Scotland's disastrous involvement with CR3 and SinoFortone, but the MOU did open with the clause:

The President and the People's Republic of China have created an international strategy, "One Belt One Road" that seeks to deepen understanding and commercial relationships between countries lying between China and Europe.

In other countries, China's subnational diplomacy has operated through peer-to-peer channels connecting provinces, cities, and universities. Across the European Union (EU), nearly every subnational region of France, Germany, and Poland has a cooperation agreement with at least one province of China, as do most regions of Italy and Spain. A major report from the Polish Institute of International Affairs covering these five EU countries plus the UK found that for subnational regions, the "main task in this context is to implement the policy of the central government".²² The report continues:

In other words, Chinese regions are part of the 'division of labour' with the central government or a kind of 'transmission belt' for the policy of the authorities in Beijing. [emphasis in original]

The authors of the report, Tomasz Kamiński, Adriana Skorupska, and Justyna Szczudlik, explain how the central government assigns "specialisations to particular regions". For example, Sichuan and Chongqing have been assigned to conduct subnational diplomacy with partner regions in eastern Europe, while Liaoning and Sichuan focus on transportation technology. In some regions of the world, China has adopted a 'One Country, One Province' strategy,

with individual provinces of China being assigned to conduct economic diplomacy with particular countries, for example Gansu partnering with Iran while, across the Gulf, Ningxia partners with Oman.²³ Geography-based and industry-based specialisations interact in Jiangsu province's traditional Chinese medicine partnership with Malta, which has been leveraged by China as an entry point into the broader EU market.²⁴ China also uses provinces as conduits for the delivery of foreign aid, with (for example) Sichuan province taking responsibility for Uganda.²⁵

In the United States, China's subnational diplomacy has become increasingly controversial. Earlier this year, Secretary of State Mike Pompeo urged state governors not to "make separate individual deals and agreements with China that undermine our national policy".²⁶ In the early years of city-to-city and state-to-province pairing, 'sister' jurisdiction programs were understood on the American side as playing a generous capacity-building role, in which the American partner helped the Chinese partner cope with the transition from state planning to a free market economy. Although American jurisdictions tend to undertake peer-to-peer relationships in a spirit of inter-community solidarity, "city diplomacy in China is understood as an extension of the nation-state's interests and power".²⁷ A bipartisan bill to regulate subnational diplomacy, the City and State Diplomacy Act, is currently working its way through both houses of Congress. It would create an Office of Subnational Diplomacy in the State Department and mandate the creation of a database of subnational engagements that is accessible to the public.²⁸

Chinese foreign policy doctrine has evolved under Xi Jinping from a broad but vague criticism of historical colonialism, imperialism, and the 'unequal treaties' of the nineteenth century toward an aggressive program of outright expansionism. This shift has been evident in formal diplomatic conflicts like those connected with China's revisionist territorial claims in the South China Sea and arbitrary detentions of foreign nationals. Leading Chinese international relations theorists now write of Confucian 'relationality' as a substitute for formal treaties in international relations, with at least one explicitly linking the BRI to the transition to a post-Westphalian world.²⁹ As then foreign minister Yang Jiechi bluntly put it at a 2010 ASEAN meeting, "China is a big country and other countries are small countries, and that is just a fact".³⁰ China figures it is big enough to impose its own unique rules for the conduct of international relations, and when it comes to the shaping of norms for the conduct of subnational diplomacy, China just might be right. Subnational jurisdictions around the world have shown themselves so eager to do business with China that they accede to forms of behavior that would be rebuffed out of hand if coming from any other country.

Victoria's journey onto the 'Belt and Road'

Australia's proposed AFRB would go much farther than equivalent US legislation, giving the Commonwealth government not only notification of subnational foreign government agreements, but the power to invalidate existing agreements, veto future agreements, and prohibit Australian governments and universities from even opening negotiations about agreements. In his August 27 press conference announcing the AFRB, Scott Morrison cited a figure of "more than 130 agreements", and that same day *The Australian* newspaper published a list of 30 existing state and local government agreements and 12 university agreements that could be affected by the proposed AFRB.³¹ But these represent only the tip of the iceberg. For example, according to the umbrella organisation Sister Cities Australia, there are at least 560 sister city relationships connecting foreign cities with Australian partners, plus a host of lower-level 'friendship city' relationships.³² There are also nine international 'sister port' relationships and 27 international sister state relationships. Tellingly, the country with the most sister city relationships is China (with 99), and China is also making the recent running. Of 19 foreign cities currently advertising for a partner in Australia, ten are Chinese.³³

There is nothing necessarily nefarious about Chinese cities seeking sisters in Australia. The example only serves to illustrate just how common subnational government agreements are. Agreements between state governments and foreign national governments (as such) are much rarer. The most important precedent for Victoria's BRI diplomacy is the 2011 MOU between the state of Western Australia and China's NDRC, covering the facilitation of Chinese investment in WA's natural resources sector. Even here, the agreement itself delegated implementation to the Western Australia Department of State Development and the Chinese Department of Foreign Capital and Overseas Investment.³⁴ These are the appropriate administrative organs bureaucracies within the respective countries for coordinating international investment flows. In any case, the China-WA MOU seems to have prompted little, if any, practical follow-up.³⁵ Hailed at the time by WA premier Colin Barnett as allowing the state to establish a "separate identity" that "raises the relationship between Western Australia and China to a new level", it seems never to have been taken as seriously in Beijing as it was by Barnett, and seems never to have even been reported by China's English-language state media.³⁶ The change in power in Beijing at the end of 2012 seems to have put paid to Barnett's attempts at subnational diplomacy.

Victoria's BRI diplomacy has been conducted on another scale entirely. Australia's commentariat is unanimous in anticipating that foreign minister Marise Payne would use powers granted under AFRB legislation to void Victoria's BRI agreement with China's NDRC, but this agreement is only the most extreme tip of a long tail of Chinese subnational diplomacy with Victoria. Soon after taking office as Victoria's premier in December, 2014, Dan Andrews was talking up China. If China really does have a 'one province, one country' policy, then Victoria was assigned to Sichuan, a key BRI hub in southwestern China. Victoria already had an official sister state relationship with eastern China's Jiangsu province that dated from the beginning of China's reform era in 1979, a time when jurisdictions in Western countries volunteered to help poor Chinese provinces with capacity building for the transition to a market economy. Today, Jiangsu has an economy roughly the size of Australia's and is home to many of China's leading high-technology companies, including e-commerce giant Alibaba. Sichuan has more modest economic aspirations.

When Andrews publicly launched his government's China strategy in a June, 2015 speech to the Melbourne Press Club, he didn't even mention Jiangsu.³⁷ He unveiled a new Victorian relationship with Sichuan and announced that he would appoint a new Deputy Trade Commissioner to "focus on — and be based in — the Western Provinces". He also announced that would be making his first official overseas trip to China and returning to China every year. On that first trip — in September, 2015 — he announced the signing of a Letter of Intent to establish a sister state relationship with Sichuan, in the process revealing that Victoria had already (on April 21) signed an MOU for the relationship, which does not seem to have been made public at the time.³⁸ The apparent secrecy with which Victoria negotiated its sister state relationship with Sichuan set the tone for the Andrews' government's approach to China.

Andrews' first formal China strategy document, published in April 2016, promised to increase "Victoria's total share of Chinese investment to Australia ... from 8 per cent to 20 per cent" and "to attract and facilitate \$2 billion of Chinese investment into the State" within 10 years.³⁹ The document was surprisingly frank in explaining in a section on "Opening Doors in China" that:

The Victorian Government will pave the way for enhanced engagement with China. This is particularly important in China, where

government plays a critical role in business, and influences trade and investment outcomes.⁴⁰

In May, 2018, the Victorian government released a China strategy 'progress report' that highlighted the fact that the state had met its 10-year China inward investment targets in just two years.⁴¹ In his introduction to the report, Andrews emphasised his burgeoning personal ties to the Chinese leadership:

Representing the reciprocity of our relationship, I've also been proud to meet some of the most senior figures in the Chinese Government, like Premier Li Keqiang, and welcome many to our state. In 2017, I was honoured to be the only leader of an Australian state invited to the prestigious Belt and Road Forum for International Cooperation, held in Beijing and based on President Xi Jinping's vision for stronger economic and social ties with partner states.⁴²

The report also revealed the existence of previously unreported MOU that Andrews had signed directly with the NDRC, the Chinese agency responsible for implementing the BRI:

In a world first, the Victorian Government signed an agreement with China's National Development and Reform Commission (NDRC) on public private partnerships (PPPs) in March 2017. The occasion marked the first time the NDRC has entered into an agreement with a sub-national government on this subject, recognising Victoria as a valued partner.

The only prior public acknowledgement of such a relationship seems to have been an obscure mention in a June, 2017 speech by China's Melbourne consul general Zhao Jian.⁴³

Reiterating that "The Victorian Government Is Engaging with China at the Highest Levels", the progress report reminded readers that:

Victoria's commitment [to China] was recognised when the Premier was the only state leader invited to the prestigious Belt and Road Forum in May 2017. Joining more than 90 world leaders in Beijing, the Premier delivered a speech on opportunities to collaborate with China on major infrastructure projects. The Premier has also met the most senior national leaders from China during their visits to Australia, including Premier Li Keqiang, Foreign Minister Wang Yi, and Chairman He Lifeng of the NDRC.⁴⁴

All of this networking seems to have paid off for Andrews — and for Victoria. In less than three years of networking at the highest levels in China, Andrews was able to attract "big investments" (in the words of the progress report) from nine Chinese companies.⁴⁵

Two of the nine were a property developer (FuWah) and a hotels operator (Hind Group), both of which likely would have invested in Melbourne real estate whether or not Victoria had a China strategy. The other seven were all SOEs or quasi-SOEs under state control. And while SOEs do not report directly to the NDRC, all their foreign investments (and large foreign investments for quasi-SOEs) are subject to approval by the NDRC:

- Bank of China — state-owned bank (SOE)
- CITIC — state-owned investment company (SOE)
- CRRC — state-owned railcar manufacturer (SOE)
- Hisense — state-owned appliance manufacturer (SOE)
- Huawei — state-linked technology company (quasi-SOE)
- Power China — state-owned power plant developer (SOE)
- Qenos — subsidiary of China National Chemical Corp (SOE)

An even closer connection between Victoria and the NDRC can be seen in the participation of the China Investment Corporation (CIC) in a 50-year lease on the port of Melbourne. The CIC is not an SOE; it is an actual arm of the Chinese government. The CIC is China's sovereign wealth fund, established in 2007 "as a vehicle to diversify China's foreign exchange holdings".⁴⁶ It is, in effect, a vehicle through which China can put its official foreign exchange reserves (equivalent to roughly AU\$4 trillion) to work in the service of the government's political goals. Initially, China was careful to assuage international concerns that this would be the case, promising not to invest in strategic industries like "airlines, telecommunications or oil companies".⁴⁷ It quickly became apparent, however, that "the CIC is in fact tightly controlled by the Chinese political leadership, and often applied to specific political tasks".⁴⁸ Uncharacteristically for a sovereign wealth fund, the CIC operates independently of China's central bank and finance ministry, being "insulated from both parties in the formal hierarchy of the central government", instead having close ties to the NDRC, a situation that is "actually quite unique".⁴⁹ The CIC is actually China's "only financial SOE which reports directly to the State Council", parent of the NDRC.⁵⁰

Victoria's 2018 China strategy progress report credits the CIC for purchasing 20% of the Melbourne port lease.⁵¹ In fact, the CIC owned what was effectively a controlling 50% stake in a private equity fund (Global Infrastructure Partners) that itself owns 40% of the port lease.⁵² The 50-year port deal generated nearly \$4 billion more than the estimated price, and far

more than a 99-year lease for Sydney's somewhat larger ports had generated just three years earlier.⁵³ Interestingly, in their initial press releases trumpeting the port deal, neither the Victorian government nor the Lonsdale Consortium that purchased the lease mentioned the involvement of Chinese capital in the consortium.⁵⁴ It has been suggested (although this cannot be proved) that "the handy billion dollars or so from Beijing probably just made the difference in the bids" between the China-backed Lonsdale Consortium and a rival Australian group.⁵⁵

Judged by both its stated intentions and its proclaimed results, the essence of Victoria's China strategy seems to be a quid pro quo in which Victoria offers China political support in exchange for Chinese state-directed investments in Victoria. Seen from this perspective, the otherwise bizarre decision by Victorian premier Dan Andrews to defy Commonwealth advice by officially signing onto China's BRI with a framework agreement in 2019 starts to make sense: the Chinese government directed billions of dollars of state-linked (and, indeed, state) investment toward Victoria in 2017-2018, while Andrews helped China meet its BRI political goals in 2018-2019. Whether or not the two sets of actions are explicitly linked is impossible to say with certainty. But it is certainly

reasonable to ask how it is that the premier of a subnational region with a GDP of a little over US\$300 billion has been able to attract the attention of China's NDRC, which is responsible for managing an economy of over US\$14 trillion.

Initially fobbed off on Sichuan in 2016, Dan Andrews' Victoria quickly gained the attention of the Chinese central government in Beijing, which by 2017 seems to have been directing massive flows of state-linked investment to Victoria. Andrews appears to be the only subnational leader in the world to have been invited to address China's 2017 and 2019 Belt and Road Forums, and Victoria seems to be the only subnational entity in the world to have signed a BRI agreement with China's NDRC. Commentators are always constrained to hedge with the word 'seems' because China offers little official information about its flagship economic diplomacy program. That in itself should be cause for alarm. The extraordinary level of attention lavished by China on a single Australian state is even more troubling. It is either — as Dan Andrews himself claims⁵⁶ — a testament to his "close personal relations with some of China's most influential government representatives", or a sign that Victoria's Icarus may be flying dangerously close to China's sun.

When educational and scientific cooperation become collaboration

Most of the agreements connecting Australian subnational governments with China identified by *The Australian* and other media outlets focus on educational and scientific cooperation. For example, in 2013 Tasmania signed an MOU with the Chinese State Oceanic Administration to cover operations in support of China's Antarctic research missions, followed up by a 2014 schedule of activities.⁵⁷ At the time, Hobart had already served as China's base of operations for Antarctic research for some 30 years, as well as servicing French, American, South Korean, Italian, and Japanese operations.⁵⁸ In light of rising tensions with China and then proposed AFRB, "concerns" have naturally been raised about Tasmania potentially renewing the arrangement, which seems to have lapsed in 2018.⁵⁹ In fact, the Chinese State Oceanic Administration itself no longer exists, though its former functions are "perceived" by experts to have been taken on by the Ministry of Natural Resources (even Chinese environmental law professors are unsure).⁶⁰ Yet in 2019 and 2020, Chinese Antarctic research vessels continued to operate from Hobart.⁶¹

Even were Tasmania to be prevented under AFRB legislation from negotiating a new MOU to support

China's Antarctic research missions, China would be free to continue to use Hobart as a logistics support base. It would be unprecedented in time of peace to bar a friendly country's ships from purchasing fuel and supplies for a scientific expedition, and humane assistance might be provided to a distressed research vessel even in time of war. As China's use of Hobart as a support base before 2013 and after 2018 demonstrates, the China-Tasmania Antarctic MOU is completely superfluous. Its purpose is entirely political. The same might be said for most of China's agreements with Australian subnational governments, which is why (from China's perspective) they fall under the general heading of 'subnational diplomacy'. Australian state, territorial, and local governments have little practical business to do with foreign governments *per se*, and even a blanket Commonwealth prohibition on their making agreements with foreign government entities would hardly affect them. It would, however, frustrate China.

China is almost (but not quite) unique in seeking government-to-government MOUs to back up even the most routine types of engagement. The Tasmanian Department of State Growth helpfully provides a list

of all of its current and expired foreign MOUs on its website.⁶² Twelve are with Chinese counterparties, one with a Japanese one, and one with a French one. Of all the other countries that do business in Tasmania, use Hobart as an Antarctic logistics hub, partner with Tasmanian agriculture, or cooperate with the University of Tasmania, not a single one apparently requires the comfort blanket of a state government MOU. Other states and territories are in a similar situation of signing agreements with state ministries in China that are roughly similar in terms to the agreements that they sign with institutes, universities, or corporations in other countries. To some extent, this merely reflects that the kind of work done by independent institutions in Western democracies tends instead to be done by government departments in China. More broadly, it also reflects that China prefers to unnecessarily push agreements up to the intergovernmental level in order to better leverage them for political purposes.

International agreements for educational and scientific cooperation with countries other than China are rarely politicised. When it comes to dealing with other countries, Australian subnational governments simply focus on the practical business at hand: a research cooperation agreement is concerned only with research cooperation; a student exchange agreement is concerned only with student exchange. China, however, dangles the prospect of educational and scientific cooperation as an incentive for subnational governments (and their leaders) to fall into line with China's broad world-view. These links are difficult to trace empirically, but it is well-understood among international relations experts that China makes its official cooperation conditional on counterparties' acceptance of Chinese political positions on such issues as the status of Taiwan, sovereignty over the South China Sea, the legitimacy of CPC rule, and silence over human rights abuses. By negotiating cooperation agreements at a political level (instead of leaving them to the relevant cooperating institutions), China can ensure that its political priorities are enforced.

China's practice of leveraging commercial agreements into institutional influence is not limited to governments. China uses the same practice in dealing with universities. The Confucius Institutes are a prominent case in point. There are thirteen Confucius Institutes hosted by Australia's 37 public universities, a per-university concentration that is exceeded only in New Zealand. Individual Confucius Institutes have historically been constituted as partnerships involving an individual university in Australia, a sister university in China, and the Chinese government. In a typical Confucius Institute contract, the host university provides the physical facilities (office and classroom space) and pays for a director, while the Chinese partners provide a start-up grant on the order of US \$150,000, an annual subsidy on the order of US\$100,000, a Chinese associate director,

teaching staff, books, and materials.⁶³ Interestingly, an extensive search turned up no information whatsoever about who keeps the tuition paid by the students who take Confucius Institute courses. It can only be assumed that course tuition represents almost pure profit for the host universities. It has also been suggested the hosting of Confucius Institutes is instrumental in securing additional China-related grant funding.⁶⁴

University-based Confucius Institutes in Australia typically do not teach for-credit classes to ordinary university students, although some Confucius Institutes in other countries do, and the University of Queensland has been criticised for allowing Confucius Institute involvement in some of its undergraduate classes.⁶⁵ Australia's Confucius Institutes focus instead on offering Chinese language and culture courses to members of the community. This raises two obvious questions: why does China choose to base Confucius Institutes at universities, and why are universities so keen to host them? The cynical answers to these questions would be: "to gain influence over universities" and "for the money". Yet it has been made impossible — by design — for outside analysts to ascertain whether or not this really is the case. It seems that not one of the hundreds of Confucius Institutes around the world publishes separate accounts, and it has proven impossible to discover any accounting of Confucius Institute proceeds in university accounts from Australia or abroad. Even the publication of Confucius Institute MOUs, such as the 2019 agreement published by the University of Queensland, provides little or no insight into the motives (or rewards) universities have in hosting Confucius Institutes.⁶⁶

Much of the criticism of Confucius Institutes has focused on their potential to spread Chinese values and propaganda through their teaching activities. China expert David Shambaugh maintains that "the accusations against CIs for spreading communist propaganda is hogwash".⁶⁷ A deeper but less easily demonstrated threat posed by Confucius Institutes is that they may discourage universities from taking positions that might upset the Chinese government, or in extremis that they may lead universities to actively pursue the agenda of the Chinese government.⁶⁸ That is the essence of accusations leveled at the University of Queensland by student activist Drew Pavlou.⁶⁹ When universities adopt policies that fall in line with Chinese government priorities, it is of course impossible to determine whether they are doing so under the influence of Chinese contracts, which may or may not bring them increased resources. Such strategic ambiguity is at the heart of the unease generated by university dealings with China.

Australian universities have also become deeply entwined in Chinese scientific research networks. The proportion of scientific papers published by Australian universities that included a coauthor from

a Chinese university has risen from less than 1% in 1998 to 16.2% in 2018, according to research from the Australia-China Relations Institute (ACRI).⁷⁰ An unknown number of the Australia-based authors of those papers would themselves have been Chinese citizens. The link is strongest in materials science and chemical engineering, where more than a third of all Australian university publications were coauthored by scholars based at Chinese universities.⁷¹ In both these areas, more than three-quarters of Australia's "most-cited" publications had China-based coauthors.⁷² Given the centrality of such publications in universities' performance in international rankings, access to Chinese research laboratories may be as important as access to Chinese money for Australian university administrators.

The scientific research ties that connect Australia-based academics to Chinese universities may be even closer than their employers realise. Alex Joske of the Australian Strategic Policy Institute (ASPI) has shone a light on China's global network of scientific talent recruitment, which seems to be most focused on the United States, Germany, and Australia — with Australia leading the way in per-capita terms.⁷³ An investigation by *The Australian* revealed that Australian universities were often unaware that many of their academics were receiving "second salaries" of \$100,000 or more for their work in China.⁷⁴ The "Thousand Talents Plan" at the heart of these investigations was hardly secret (Chinese universities routinely advertise for Thousand Talents recruits),

but it is, as *The Australian* reports, "secretive".⁷⁵ And although there is no hard evidence that Australian universities intentionally looked the other way, the structure of their scientific cooperation with China encourages them to do so. The research cooperation success story touted by ACRI is simply the reverse side of the foreign collaboration scandal uncovered by ASPI and *The Australian*.

To an extent unparalleled in Australia's dealings with other countries, the relationships that connect Chinese universities and their Australian peers are centrally funded and organised by the Chinese government itself. Moreover, the role of the party secretary at Chinese universities, once a moribund survival from an earlier era, has been revitalised in recent years in a successful effort to reassert direct party control over university governance. China's grooming of Australian universities is thus in effect an extension of the subnational diplomacy China conducts with Australian states, territories, and localities. Although Australia may treat intergovernmental relations and academic research cooperation as two entirely separate things, from China's standpoint they are merely different aspects of a single, unified foreign policy. China does not limit its public diplomacy to the kinds of broad cultural outreach practiced by other countries. It also seeks to influence foreign institutions directly, and often in a blatantly transactional way. What's truly remarkable about this is the extent to which foreign institutions, even in Australia, often seem perfectly amenable to such an approach.

Conclusions and policy recommendations

Anyone who has read Clive Hamilton's *Silent Invasion* will be aware of the prodigious scale of China's influence and interference operations in Australia.⁷⁶ Hamilton's book has been criticised as a "McCarthyist manifesto"⁷⁷ that "smacks of The Yellow Peril"⁷⁸ and "misrepresents" alternative, "far more balanced"⁷⁹ approaches to China. In fact, we now know that Hamilton did not go far enough. What outspoken critic of *Silent Invasion* could have imagined that, within eight months of the book's publication, an Australian state premier would have signed a secret policy accord with the Chinese government, in defiance of his own country's national government? And then go to Beijing to seal the deal? Or that an Australian university would retain external counsel to pursue action against a student activist? Or that dozens of top scientists at Australian universities (and CSIRO!) would be found to be secretly working lucrative

second jobs at Chinese institutions — paid for by the Chinese government?

It turns out Hamilton's revelations were just the tip of the iceberg. Given the culture of secrecy that surrounds contracts with China, that's not surprising. Hamilton could only report what he could discover. The same is true here. If suggestion and innuendo must often take the place of hard facts, it is only because those against whom the suggestions and innuendos are directed have worked very hard to ensure that the relevant hard facts are not available for analysis. Was Dan Andrews offered a *quid pro quo* for his BRI support? Did the CIC make a politically-motivated investment in the Port of Melbourne? How much money do 13 Australian universities make from their Confucius Institutes? Does China make research cooperation contingent on hosting these programs? Have Australian institutions internalised China's point

of view to such an extent that they reflexively toe the CPC party line even in the absence of any specific threat from China? We simply don't know, and given Australian public institutions' relatively low levels of transparency, we can't know.

The proposed AFRB would address some of the most serious concerns raised by China's subnational diplomacy offensive, but it leaves substantial gaps, and introduces some problems of its own. On the plus side, it would give the Commonwealth government unambiguous control over the country's official foreign policy. The Commonwealth could invalidate Victoria's BRI agreement. That would put an official end to an embarrassing episode and help Australia save face in its future relations with China. But given that Victoria's BRI agreement is in any case vague, aspirational, and explicitly "not legally binding", invalidating it is likely to have little practical effect. When it comes to practical implementation, what does it mean to invalidate a non-binding agreement? It's angels dancing on pins.

Even after the AFRB comes into force, an Australian state premier could travel to Beijing, speak at a Belt and Road forum, meet top Chinese leaders, endorse China's foreign policy initiatives, praise China using standard Chinese foreign policy tropes, and pitch for investments from Chinese state-linked firms. Moreover, since the draft AFRB explicitly excludes from consideration any "corporation that operates on a commercial basis", China could simply redirect its subnational diplomacy to a supposedly 'commercial' SOE. In fact, the explanatory memorandum for the AFRB explicitly states that "commercial corporations, including those that are wholly or partly owned or controlled by a foreign government, are not covered by the Act".⁸⁰ It has been pointed out that the AFRB would not cover the Darwin port lease because the lessor, Landbridge Group, is nominally a shareholder-owned company.⁸¹ In fact, that is irrelevant. The port could be operated by the China State Construction Engineering Corporation; it still wouldn't come under the purview of the AFRB.

Such investments would still, however, be subject to review by FIRB — a mechanism that failed spectacularly in 2015 when the Northern Territory controversially sold a 99-year lease on the Port of Darwin to a relatively opaque Chinese firm, Landbridge. To its credit, Landbridge submitted an FIRB application (actually, two related applications) for its bid, in an apparently good-faith attempt to comply with all relevant Australian laws and regulations. But the FIRB informed the company that no such application was required, since the port was government-owned.⁸² The framers of the Foreign Acquisitions and Takeovers Act 1975 apparently did not envisage a scenario in which an Australian government would lease critical national security infrastructure to a Chinese firm with links to the CPC and the People's Liberation Army.⁸³

The Darwin port fiasco prompted a Senate inquiry and a tightening of the rules in 2016 to close the loophole that excluded the deal from being considered by the FIRB. More recently, the government has announced a complete overhaul of the foreign investment review system, which is expected to be implemented at the beginning of 2021.⁸⁴ While these reforms are welcome, the fundamental challenge of dealing with China remains: all deals with China are ultimately deals with its government — and its ruling party. That's why gaps in the coverage of the AFRB cannot be filled simply by referring international investments to a revamped FIRB: the interwoven structure of the Chinese party-state means that the key challenges to be solved are political, not technical. Returning to the Victoria BRI example, there is no *a priori* reason to believe that any one of the eight state-linked investments that Dan Andrews credits to the success of Victoria's China strategy would run afoul of the beefed-up FIRB. The problem isn't the investments. The problem is the strategy.

The under-reach of the proposed AFRB is also evident in one area where it over-reaches: the supervision of university agreements with foreign partners. The AFRB would classify Australian public universities as 'non-core state/territory entities' (as opposed to 'core entities' like state and territory governments). As non-core entities, universities would be required to notify Australia's foreign minister before entering into arrangements with foreign entities, over which the minister would have veto power. An 'arrangement' is defined in the draft AFRB as "any written arrangement, agreement, contract, understanding or undertaking", a definition so broad that it would seemingly cover everything from Confucius Institutes to cohosting a webinar. It would impose massive compliance burdens on universities, but it still would not address China's university-related subnational diplomacy. China can, after all, exert massive influence over Australian universities simply by threatening to withdraw international students.

The Australian government seems not to have been much troubled about the success of Victoria (and other states and territories) in attracting Chinese state-linked investment, or about the Darwin port deal (at the time it was concluded), or about Australia's top universities looking to China for up to a quarter of their total revenues. It only seems to have become concerned when it came time to pay the piper. That was naïve, to say the least. Now that the piper has come calling, the measures that Australia is putting in place to protect itself in the future are equally naïve. As Clive Hamilton has so amply documented, the most serious challenges posed by Chinese operations are moral. More than anything else, China's subnational diplomacy threatens Australia's moral fibre.

Thus, although the proposed AFRB and related reforms to foreign investment and university governance are steps in the right direction, they

are largely symbolic, and insufficient to change the behaviours that compromise Australia's national security. The AFRB would do more to help the Commonwealth avoid political embarrassment than it would do to quash untoward foreign influence over Australian subnational governments and public universities.

A better approach to managing foreign influence and interference, particularly from China, would be to expose subnational foreign government agreements to proper public oversight through much higher levels of mandatory public disclosure. Although it may be appropriate for private industry to do business in private, there is much less justification for democratically-elected, taxpayer-supported governments and government entities to shield themselves from scrutiny through the use of commercial-in-confidence provisions.

Recommendation 1: transparency

The AFRB should be amended to require the publication of subnational government and government entity agreements with foreign entities, except in a limited number of cases when the filing party convincingly argues that secrecy is in the public interest. The draft AFRB currently provides for a public register of arrangements submitted under the act, but the public register will include only:

- the title of the arrangement
- the parties to the arrangement
- whether any decisions were made by the Minister in relation to the arrangement
- any information prescribed by the rules [at the discretion of the Minister]

Explicitly prohibited from inclusion in the public register is any information that is 'commercially sensitive' — in essence, everything that would allow the public to evaluate the propriety of an arrangement and hold public officials accountable for its contents. Such information should be published. It is the business of government to serve the public, not to succeed in business. Allowing subnational governments and government entities to continue to do business in the dark is a recipe for ensuring that they continue to be vulnerable to foreign influence.

Recommendation 2: trusted partners list

The AFRB should be amended to establish a 'trusted partners' list of countries with which arrangements can be made without any need for ministerial approval. Such arrangements might still require registration, but they should not be tied up in uncertain and potentially time-consuming bureaucratic processes. Subnational government and university agreements with counterparties in New Zealand, Canada, the United Kingdom, the United States, the member countries of the European Union, and many other liberal democratic countries are, frankly, unproblematic, and should not be covered by the AFRB. In practice, the AFRB is, as nearly every commentator has recognised, 'all about China'. Obviously, it would be inappropriate and grossly undiplomatic to name China explicitly in the bill, but the bill could give the foreign minister the authority to establish a trusted partners list, to which the minister could immediately add all of Australia's closest allies. China would be left off the trusted partner list, but so too would (presumably) Russia, Iran, North Korea, and many other countries besides China. Such a procedure would not be unprecedented, but would operate similarly to (for example) the selective Electronic Travel Authority (ETA) visa-free travel regime.

China's subnational diplomacy is an 'all of country' effort that can only be countered effectively by an all of society effort in Australia. It is neither sufficient, nor indeed necessary, for all of the responsibility for countering Chinese influence and interference operations to be vested in the foreign minister, or even in the Commonwealth government as a whole. Not sufficient, because the China challenge is ultimately a moral challenge, and it is impossible to legislate good behaviour. Not necessary, because society can do the job more effectively than the government can — given the tools to do so. Australia is not the only country in China's sights, and it has protected itself better than many. Much of the pushback has come from investigative journalists and public intellectuals, whose revelations and criticisms have prompted the Australian government to belatedly intervene to preserve the independence of the country's institutions. Greater disclosure would give those guardians access to the information they need to inform public debates about engagement with China. The Australian public doesn't need government to protect them from China. It needs information to use in protecting itself.

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