

Australia's Foreign Arrangement Scheme

Arrangements are written commitments – whether or not legally binding[^] made by a State/Territory Entity (which includes all Australian public university with a foreign entity). A foreign arrangement may be in the form of an agreement/contract, a MOU, an exchange of email or a variation to an existing agreement made.

[^]Legally binding means it can be enforced under Australia law or the law of another country

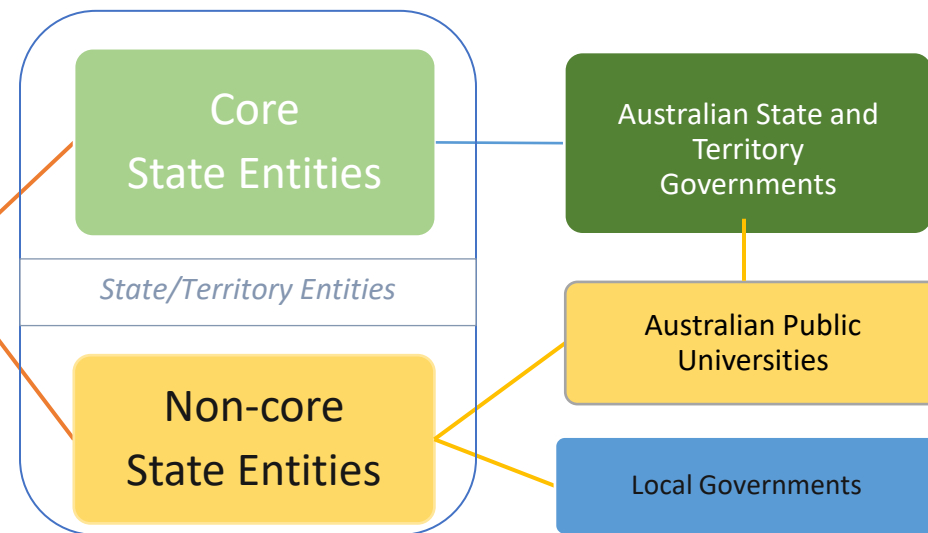
Subsidiary Arrangements are arrangements that are not of themselves 'foreign arrangements' made under the auspices of a foreign arrangement. Subsidiary arrangements may involve other parties not otherwise involved in the foreign arrangement or subject to the Scheme in the same way as core and non-core entities. The Minister may declare a subsidiary arrangement be terminated or varied if: 1) a Ministerial declaration applies to the foreign arrangement, or 2) non-compliance with the Scheme and the "adversity/inconsistency" criteria applies.

The **Minister for Foreign Affairs**, with reference to Australia's interests and foreign policy:

- Must be notified of all foreign **Arrangements** – whether they are core (State to State) or non-core (non-core State entity to a core or a non-core foreign entity) or subsidiary
- Must assess the **Arrangement** to determine if it would *adversely* affect Australia's foreign relations or be *inconsistent* with Australia's foreign policy.
- May declare an existing foreign Arrangement (including one which pre-dates the Act) invalid and unenforceable or require that it be varied or terminated. This declaration may be applied to any subsidiary arrangements made under the auspices of a "head" foreign **Arrangement**.
- May declare that an **Arrangement** does not proceed
- May seek a court injunction to enforce a declaration
- May delegate powers to a senior DFAT officer [except certain declarations about core Arrangements and authorisation of Rules]
- Must ensure an annual report is prepared for Parliament

Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (Cth)

<https://www.legislation.gov.au/Details/C2020A00116>



Core State Entities must notify and wait for Ministerial approval (or for 30 days) before negotiating or entering into any Core Foreign **Arrangements**

Core State Entities must notify a non-core foreign **Arrangement** within 14 days. The Minister has the discretion to declare that a Core State Entity must not proceed.

Arrangement with

- a foreign government (as above),
- a foreign university that lacks institutional autonomy because it is subject to substantial government control (as below)
- a foreign local/municipal council

Non-core Foreign Arrangements#

Notify of a "proposal to enter" and again when "entering" into Arrangement

Refer Fact Sheets:
#4: Public Universities
#7: Grant Applications
<https://www.foreignarrangements.gov.au/resources/fact-sheets>

Non-core entities must notify proposed foreign arrangements and foreign **Arrangements** within 14 days of execution. The Minister has the discretion to declare that a non-core **Arrangement** is invalid and unenforceable/must be altered or terminated

From **10 March 2021**, all non-core foreign Arrangements (including subsidiary arrangements) must be notified under the Scheme. Each Arrangement will be issued a "notification number" and the names of the parties, the date and the title of the agreement will be published on a public register.*

Failure to notify may mean that a foreign Arrangement will be deemed invalid and unenforceable and subject to termination under the Act.

*Confidential information (e.g. commercial in confidence) will be excluded from the public register.

What is government control?

A university is subject to substantial government control if under the relevant laws and/or governing documents:

- The majority of appointments to any governing body must be representatives of government or of the party that forms government
- Education or research activity must conform with certain political principles or doctrines
- Academic staff are required to adhere to political principles or doctrines in the conduct of tuition or research and in their published work and commentary.

Refer section 8(4) of the Act

Exemptions to registration obligations includes:

- Minor administrative or logistical matters, such as **Arrangements** that deal only with matters such as flight and accommodation arrangement, submission of paperwork, visa applications, or the timing of conference sessions.
- Variations to existing **Arrangements** that do not alter the substance of the arrangement.
- An **Arrangement** for the purpose of sharing information or resources to manage a declared emergency situation.
- Other Arrangement types as determined by the Minister.

- To make a Notification, a user will need the following:
- Name of the Arrangement
 - Parties to the Arrangement
 - Summary of the subject and effect of the Arrangement (purpose of the Arrangement)
 - Date the Arrangement was, or is proposed to be, entered into and the duration
 - Copies of any agreements/contracts and any other supporting documentation
 - Whether the Arrangement is legally binding under Australian law, a foreign law, or not binding.
 - The original notification number when notifying of a subsidiary arrangement or of variations to be made to an existing foreign Arrangement
 - Be able to declare the information provided is accurate and confirm that they have been authorised by the entity to lodge the notification.