



## AUSTRALIA'S FOREIGN RELATIONS (STATE AND TERRITORY ARRANGEMENTS) ACT 2020

### GUIDANCE – CONSIDERATIONS FOR NEGOTIATING AND ENTERING FOREIGN ARRANGEMENTS<sup>i</sup>

State and Territory entities play an important role in advancing Australia's interests globally. The Foreign Arrangements Scheme, established by *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*, fosters a systematic and consistent approach to foreign engagement across all levels of Australian government. It ensures that arrangements between State or Territory entities and foreign government entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

This Guidance Note should be read together with 'Fact Sheet 6—Comparative Schemes'.

#### Purpose

International engagement by States, Territories, universities and local government supports Australia's economic and social interests, promoting innovation and building people-to-people links.

Under the Foreign Arrangements Scheme (the Scheme), the Minister for Foreign Affairs has the power to vary or cancel a foreign arrangement if satisfied the arrangement:

- would adversely affect, or would be likely to adversely affect, Australia's foreign relations; or
- would be, or would be likely to be, inconsistent with Australia's foreign policy.

This Guidance Note outlines general principles that State and Territory entities should consider when negotiating or entering into foreign arrangements to help avoid, and mitigate against, risk to Australia's foreign policy and foreign relations interests.

#### Comparative schemes

This Guidance Note should be read alongside guidance issued in the context of comparable Australian Government schemes that ensure international engagement is undertaken consistent with Australia's national interests.

For example, the *Guidelines to Counter Foreign Interference in the Australian University Sector*, developed by the University Foreign Interference Taskforce (available [here](#)), provide principles-based guidance for universities to mitigate against the risk of foreign interference in the university sector.

Fact Sheet 6 has more information on comparable schemes.

#### Principles

State and Territory entities should apply the following general principles in negotiating or entering foreign arrangements.

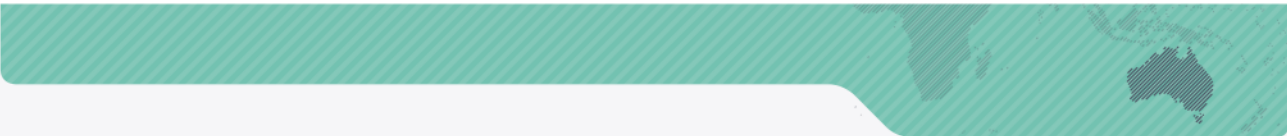
##### Due diligence

All State and Territory entities subject to the Scheme are expected to know their foreign partners.

State and Territory entities should undertake due diligence to understand foreign entities *prior to* negotiating and entering foreign arrangements with those entities. This includes understanding the nature of the foreign entity and its role within a foreign government. For foreign universities, it is important to determine if they have 'institutional autonomy' from a foreign government and therefore fall within scope of the Scheme.

##### Language

It is important that foreign arrangements are negotiated carefully, and that the commitments and



obligations in foreign arrangements are clear, able to be easily understood, and not open to different interpretation. It should be clear whether the arrangement intends to create legally binding obligations, and under which jurisdiction.

Where foreign arrangements are negotiated in multiple languages, each language version of the arrangement should be specified in the text. Generally, the text of the foreign arrangement should make clear that all language versions have the same effect, but it is also acceptable - in an Australian context - that the English language version prevails.

It is important to ensure that each language version faithfully corresponds with others, including by seeking comparative translations where necessary. This ensures all parties have the same understanding of their commitments and obligations, and are clear about the relationship they are creating.

### **Foreign laws**

State and Territory entities should very carefully consider provisions in a foreign arrangement that incorporate by reference or otherwise assert the application of a foreign law, particularly where the subject of the arrangement is activity occurring in Australia. Depending on the specific foreign law, subject matter and context, this could give rise to foreign policy or foreign relations risk.

### **Governance**

Foreign arrangements should provide for clear and transparent governance, including specifying the roles and responsibilities of parties with respect to decision-making. State and Territory entities should be wary of 'unbalanced' governance arrangements; for example, provisions that establish boards of management that give a majority membership or right of veto in decision-making to the foreign entity. Ceding control of decision-making to a foreign entity has the potential to create foreign policy or foreign relations risk.

### **Dispute resolution**

Dispute resolution provisions should not provide undue control over disputes to the foreign party. If there is external dispute resolution, it should be provided by a neutral third party, such as a specified court or tribunal for legally binding arrangements.

### **Termination/variation provisions**

Generally speaking, foreign arrangements should include termination and variation provisions that allow for the Australian entity to terminate a foreign arrangement by written notice to the foreign entity or vary by mutual consent. This provides the Australian entity with the flexibility to manage the arrangement, including in the event of a shift in Australia's foreign policy or foreign relations interests.

A provision which allows for termination if required under Australian law, without penalty, may also assist to manage the financial consequences of any declaration of the Minister for Foreign Affairs under the Scheme.

### **Academic freedom**

The Australian Government is committed to protecting academic freedom and freedom of speech in Australian education. This ensures that Australia's educational institutions remain critical institutions where ideas are debated and challenged.

Provisions in foreign arrangements that do not compromise academic freedom and freedom of speech and that ensure Australian entities retain control over the delivery of educational courses, including curriculum and course content, help to mitigate foreign policy and foreign relations risk.

### **Foreign policy and foreign relations risk**

Overall, entities should be cognisant of the international environment in which they operate and potential for foreign policy or foreign relations risk. Avoid language that endorses or could be perceived to endorse (directly or indirectly) policies of foreign governments to which Australia does not subscribe.

If in doubt, seek advice from the Department of Foreign Affairs and Trade:  
[foreignarrangements@dfat.gov.au](mailto:foreignarrangements@dfat.gov.au) .

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<sup>i</sup> This guidance sets out some of the requirements of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*. It is not comprehensive and should not be relied on as a definitive interpretation of the Act. It is also not intended as legal advice. Readers should rely on the substantive provisions of the Act and any applicable rules in assessing their obligations and seek independent legal advice.