



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

### FACT SHEET 9 – PUBLIC REGISTER

Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the Act) fosters a systematic and consistent approach to foreign engagement across all levels of Australian government. It creates a scheme to ensure that arrangements between State or Territory governments and foreign government entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

#### This Fact Sheet should be read together with 'Fact Sheet 1 – Overview'

This Fact Sheet sets out some of the requirements of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*. It is not intended to be 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 as enacted by Parliament, and any applicable rules, in assessing their obligations and seek independent legal advice.

#### The Minister must keep a Public Register

The Minister must keep a **Public Register** of certain information relating to all foreign arrangements or subsidiary arrangements which are subject to, and may be affected by, the operation of the Act, including whether a decision has been made by the Minister in relation to the arrangement.

The Public Register is a public record containing details of the arrangements within scope of the Foreign Arrangements Scheme (the Scheme) and any Ministerial decisions made in relation to an arrangement. The Public Register enhances transparency provided by the Scheme. It also helps to build an understanding of foreign arrangements and the depth and breadth of Australia's international collaboration. The Minister's obligation to publish information on the Public Register applies only to the extent the State/Territory entity has provided the requisite notice to the Minister, or the Minister has made a decision under the Act.

The Public Register is accessible at: [www.foreignarrangements.gov.au/public-register](http://www.foreignarrangements.gov.au/public-register).

#### What information is available on the Public Register?

The Minister must include the following items of information on the Public Register:

- the title of the arrangement
- the parties to the arrangement
- whether any decisions were made by the Minister in relation to the arrangement and the date of any such decision, and
- if the arrangement has been entered – the date the arrangement was entered/commenced.

The information is displayed on the Public Register in the following format:

Date arrangement commenced: 1 April 2022

#### Memorandum of Understanding on Academic Research Cooperation

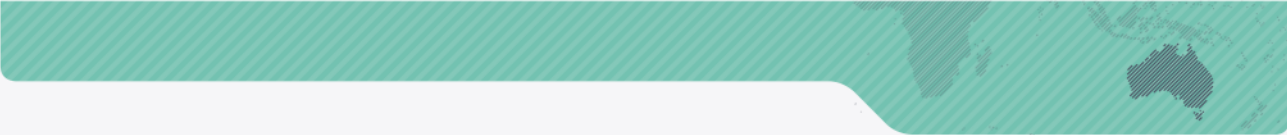
Australian partners

- [NAME OF AUSTRALIAN ENTITY]

Foreign partners

- [NAME OF FOREIGN ENTITY]

Decisions (if any)



The Act does not require the arrangement itself or the terms of arrangements to be published.

Information that must be included on the Public Register about notifications of proposals to enter foreign arrangements and subsidiary arrangements will be included on the Public Register with the 'date arrangement commenced' field left blank. The commencement date will be updated once notification of entry into the arrangement is received. If a State/Territory entity wishes for information about these proposals to be excluded from the Public Register, the entity will need to request an exclusion as per the process outlined below.

## What information is excluded from the Public Register?

Under the Act, the Public Register must not include information about:

- a State/Territory entity's notification proposing to negotiate a core foreign arrangement, or
- certain of the Minister's recommended changes to a foreign arrangement.

In addition, the Act provides that the Minister must not include on the Public Register information that the Minister is **satisfied**:

- is commercially sensitive
- would disclose Cabinet documents or deliberations
- is the subject of legal professional privilege
- is protected by public interest immunity, or
- affects national security.

If the Minister is satisfied that each item of information meets the criteria above, all items of information will be excluded from the Public Register.

Any items of information that do not meet the criteria above will be published on the Public Register. For example, if the Minister is satisfied that the title of the arrangement is commercially sensitive, but the other items of information (e.g. parties to the arrangement and date the arrangement was entered into) are not, only the title will be excluded. All other items of information will be published on the Public Register in the following format:


Date arrangement commenced: 1 April 2022		
<b>Not included (s 53(3) of the Act)</b>		
Australian partners	Foreign partners	Decisions (if any)
• [NAME OF FOREIGN ENTITY]	• [NAME OF FOREIGN ENTITY]	

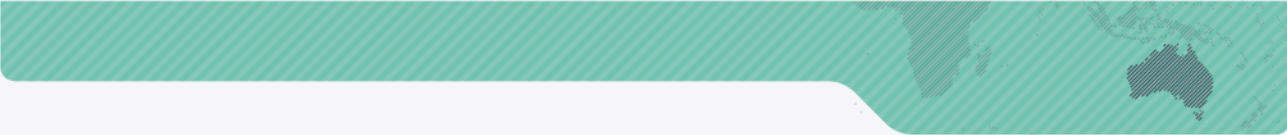
## How do I request exclusion of information about my arrangements from the Public Register?

Foreign arrangements notified through the Portal will not automatically be uploaded onto the Public Register. In preparing an arrangement for publication, the Department and the Minister will consider any requests for exclusion of information from the Public Register.

A State/Territory entity can make a request to the Minister for information to not be included on the Public Register if it falls under any of the above grounds for exclusion. This request should be made as part of the notification processes for foreign arrangements or subsidiary arrangements. Exclusion requests sought after notification can be made by email to [foreignarrangements@dfat.gov.au](mailto:foreignarrangements@dfat.gov.au).

To request an exclusion, the State/Territory entity should provide all details of the arrangement, including the full title (arrangement titles should not be redacted) and a copy of the arrangement. Any requests for exclusion should specify the legislative basis for exclusion and be supported by detailed information.





For further information on how to request an exclusion through the notification process please refer to 'Additional information – Public Register Details' at Part 6.5 of the *Foreign Arrangements Scheme Online Portal User Guide for State and Territory Entities* ([Foreign Arrangements Scheme Online Portal - User Guide](#)).

### **What information should I provide to support an exclusion request?**

The State/Territory entity should provide detailed reasons as to why each item of information (rather than the arrangement generally) meets the relevant threshold for exclusion.

It is not sufficient to merely assert that information is sensitive or provide only brief statements about the contents of an arrangement (for example, that 'the agreement relates to commercial negotiations'). The State/Territory entity must show that the sensitivity attaches to each item of information sought to be excluded from the Public Register. Where relevant to the ground of exclusion claimed, the State/Territory entity must show that the relevant detriment is real, actual or of substance, and must state the circumstances in which it may arise.

### **How will my exclusion request be assessed?**

Each request will be assessed on its merits and on a case-by-case basis. In doing so, the Minister must be satisfied that the information provided meets the relevant threshold for exclusion. For example, that each item of information sought to be excluded is information that if publicly released would be detrimental to the parties' commercial operations or would disclose confidential commercial information.

The Minister cannot assess the sensitivity of information relating to any decision made by the Minister on an arrangement until such decision is made.

**Table A** provides a list of non-exhaustive factors that may be considered holistically in assessing claims for exclusion from the Public Register. The Minister may consider any other factors which might be relevant in a given case.

<p><b>Where can I get further information?</b> Contact the Department of Foreign Affairs and Trade at <a href="mailto:foreignarrangements@dfat.gov.au">foreignarrangements@dfat.gov.au</a>.</p>
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**Table A:** Grounds for excluding information from the Public Register - factors that may be considered

Ground for exclusion	Scope	Factors that may be considered
Information that is <b>commercially sensitive</b>	Information which would be detrimental to the parties' commercial operations, or disclose confidential commercial information, such as sensitive or confidential information relating to the parties' commercial operations, expenditure or employees or other sensitive information that could cause detriment if released.	<ul style="list-style-type: none"> <li>• Is the information already in the public domain?</li> <li>• Is any term of the arrangement directed to the protection of the information?</li> <li>• Have any measures been taken to protect the sensitivity or secrecy of the information?</li> <li>• Is the information used in the trade or business of the entity?</li> <li>• What is the value of the information to the entity and any business or corporate competitor?</li> <li>• Could the information be used by competitors to damage the parties?</li> </ul>
Information that would disclose <b>Cabinet documents or deliberations</b>	Information that would disclose the contents of a document prepared for or discussed in Cabinet meetings or information that would disclose the deliberations of Cabinet meetings.	<ul style="list-style-type: none"> <li>• Is the arrangement marked with confidentiality markers identifying it as confidential Cabinet information?</li> </ul>
Information that is the subject of <b>legal professional privilege</b>	Information that would reveal communications between a client and their lawyer, made for the dominant purpose of giving or obtaining legal advice or services.	<ul style="list-style-type: none"> <li>• Is the document or information marked as being subject to legal professional privilege, or are there other indicia indicating it is subject to legal professional privilege?</li> </ul>
Information that is protected by <b>public interest immunity</b>	Information that would be prejudicial to the public interest, including where the public interest in disclosing the information is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information.	<ul style="list-style-type: none"> <li>• Is there a real risk that disclosing the information would, for example: <ul style="list-style-type: none"> <li>▪ prejudice Australia's security, defence or international relations?</li> <li>▪ damage relations between the Commonwealth and an Australian State or between two or more Australian States?</li> <li>▪ prejudice the prevention, investigation or prosecution of an offence?</li> <li>▪ disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement or administration of laws?</li> <li>▪ prejudice the proper functioning of government?</li> </ul> </li> </ul>
Information that <b>affects national security</b>	Information in relation to matters including the protection of Australia and its people from threats and harm, including in relation to espionage, foreign interference, terrorism, and political violence; the defence and protection of the integrity of Australia's borders; or the activities of security, intelligence and law enforcement agencies.	<ul style="list-style-type: none"> <li>• Is the information generally known to the public?</li> <li>• Is there a real risk that disclosing the information would, for example: <ul style="list-style-type: none"> <li>▪ disclose intelligence assessments or other national security information?</li> <li>▪ affect the protection of Australia and its people from threats and harm?</li> <li>▪ affect or impair defence and protection of the integrity of Australia's borders?</li> <li>▪ disclose security intelligence or activities of law enforcement agencies (if disclosure of those activities would affect national security)?</li> </ul> </li> </ul>