

# Foreign Relations Act

## Prospective foreign arrangements – process for departments and agencies

### Overview of the Act

The *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) ('the Act') requires the State of Victoria, the Victorian Government, departments and agencies from 10 March 2021 to take the following actions:

#### For core foreign arrangements

1. seek the Foreign Minister's **approval to negotiate** a core foreign arrangement (automatic approval after 30 days)
2. seek the Foreign Minister's **approval to enter** a core foreign arrangement (automatic approval after 30 days)
3. **notify** the Foreign Minister of entry into a core foreign arrangement (within 14 days).

Note: Core foreign arrangements cannot be negotiated or entered without Foreign Minister approval (automatic after 30 days).

#### For non-core foreign arrangements

1. **notify** the Foreign Minister of proposal to **enter** a non-core foreign arrangement
2. **notify** the Foreign Minister of entry into a non-core foreign arrangement (within 14 days).

Note: Non-core foreign arrangements can be entered without Foreign Minister approval, but must be notified to the Foreign Minister, who may make a declaration invalidating the arrangement.

### Definitions

- **Foreign arrangements** include written arrangements, agreements, contracts, memoranda of understanding and undertakings, whether or not legally binding.
- **Core foreign arrangements** are with foreign countries and foreign national governments, departments and agencies.
- **Non-core foreign arrangements** are with foreign subnational jurisdictions, foreign subnational governments, departments and agencies, foreign authorities established for a public purpose, and foreign universities without institutional autonomy.
- **The Act does not apply to corporations that operate on a commercial basis** (including government corporations). Please refer to the attached Department of Foreign Affairs & Trade (DFAT) fact sheet for information on how to assess whether a corporation operates on a commercial basis.

Details of the arrangement will be uploaded to a public register maintained by the Department of Foreign Affairs and Trade (DFAT) including the title, parties to the arrangement, commencement date and relevant decisions by the Foreign Minister.

Departments and agencies are encouraged to regularly visit DFAT's website ([www.foreignarrangements.gov.au](http://www.foreignarrangements.gov.au)) for more information on the Act.

### Process for Victorian government departments and agencies

*This process applies to core and non-core foreign arrangements to be signed by Ministers and officials.*

The Department of Premier and Cabinet (DPC) is coordinating Victoria's compliance with the Act (excluding local governments and public universities) and will coordinate liaison with DFAT. Departments and agencies are encouraged to seek legal advice where necessary to determine the Act's application to a prospective arrangement and engage with DPC's Economic Development and International Branch (EDIB) to discuss new foreign arrangement proposals.

Proposals to negotiate and enter a core foreign arrangement or enter a non-core foreign arrangement must be submitted to DPC and receive a formal response before departments and agencies proceed. Departments are responsible for coordinating compliance by their portfolio agencies and should determine whether agency

proposals are processed through the department or submitted directly by the agency to DPC. A joint proposal is appropriate where more than one Victorian department and/or agency intends to enter the arrangement.

The proposal must:

- include a letter from the relevant department Secretary/s or agency head/s endorsing the proposal
- include a draft copy of the foreign arrangement (does not apply for negotiation proposals)
- include a completed copy of the attached checklist
- be submitted to DPC at [foreignarrangements@dpc.vic.gov.au](mailto:foreignarrangements@dpc.vic.gov.au).

#### Indicative timeframes for a formal response

The Foreign Minister has 30 days to approve or deny a proposal to negotiate or enter a core foreign arrangement under the Act (approval is automatic after 30 days). The following timeframes include 30 days for DPC to process proposals and receive appropriate approvals prior to notifying DFAT. Timeframes are based on the provision of complete documentation. DPC's response time may vary depending on the volume and complexity of proposals.

Proposal type	Indicative timeframe
Proposal to <b>negotiate</b> a <b>core</b> foreign arrangement	60 days
Proposal to <b>enter</b> a <b>core</b> foreign arrangement	60 days
Proposal to <b>enter</b> a <b>non-core</b> foreign arrangement	30 days

#### Resources

- Flowchart for entering prospective foreign arrangements
- Checklist for negotiating or entering prospective foreign arrangements
- DFAT fact sheets

# Foreign Relations Act

## Flowchart for entering prospective foreign arrangements

### Proposal to negotiate core foreign arrangement

**Core foreign arrangement** negotiations cannot commence without Foreign Minister approval

Allow **60 days** for core foreign arrangements



### Proposal to enter foreign arrangement

**Core foreign arrangements** cannot be entered without Foreign Minister approval

**Non-core foreign arrangements** can be entered without Foreign Minister approval, but must be notified to the Foreign Minister, who may make a declaration invalidating the arrangement

Allow **60 days** for core foreign arrangements and **30 days** for non-core foreign arrangements



### Notification of entry into foreign arrangements

Must be notified **within 14 days** of entry into foreign arrangement



**Core foreign arrangements** are with a:

- foreign country
- foreign national government, department or agency

**Non-core foreign arrangements** are with a:

- foreign subnational jurisdiction
- foreign subnational government, department or agency
- foreign authority established for a public purpose
- foreign university without institutional autonomy

Please submit proposals and notifications to [foreignarrangements@dpc.vic.gov.au](mailto:foreignarrangements@dpc.vic.gov.au)

For more information about the Act visit <https://www.foreignarrangements.gov.au/>

# Prospective foreign arrangement checklist

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

This checklist must be completed for proposals to negotiate a core foreign arrangement and proposals to enter a core or non-core foreign arrangement. The completed checklist must be submitted to [foreignarrangements@dpc.vic.gov.au](mailto:foreignarrangements@dpc.vic.gov.au) with a draft copy of the foreign arrangement (except for negotiation proposals) and a letter from the relevant department Secretary/s or agency head endorsing the proposal.

Q.	Review questions	Answers
1.	What is the <b>title</b> of the arrangement?	<i>Title</i>
2.	Who are the <b>parties</b> to the arrangement?	<i>Parties</i>
3.	In which <b>country</b> is the foreign entity based?	<i>Country</i>
4.	Please provide a brief statement summarising the subject matter, purpose and effect of the arrangement.	<i>Brief statement summarising subject matter and effect</i>
5.	Will the arrangement be <b>legally binding under Australian or foreign law</b> ?	<i>Binding (Australian law) / Binding (foreign law) / non-binding</i>

Q.	Review questions	Answers
6.	<p>Is a party a core or non-core <b>Victorian state entity</b>? Consider:</p> <ul style="list-style-type: none"> <li>• If a party is a department or agency which is part of the executive government of Victoria, the party is a core state entity.</li> <li>• If a party is a corporation which operates on a commercial basis, the party is not a state entity.</li> <li>• If a party is a hospital, it is not a state entity.</li> <li>• If a party is a local government or university, it is a non-core state entity.</li> </ul>	<p>Select one:</p> <p>Core <input type="checkbox"/></p> <p>Non-core <input type="checkbox"/></p> <p>Not a state entity <input type="checkbox"/></p> <p>Unsure <input type="checkbox"/> (<i>if unsure, please answer Q10. below</i>)</p>
7.	<p>Please provide the name, ABN (if applicable), phone number and postal address of the Victorian entity.</p>	<p><i>Name, ABN, phone, postal address</i></p>
8.	<p>Is a party a core or non-core <b>foreign entity</b>? Consider:</p> <ul style="list-style-type: none"> <li>• If a party is a foreign country, its national government or a department or agency of its national government, the party is a core foreign entity.</li> <li>• If a party is any political subdivision of a foreign country, a sub-national government (or department or agency thereof), a foreign authority established for a public purpose or a foreign university without institutional autonomy, the party is a non-core foreign entity.</li> <li>• If a party is a corporation which operates on a commercial basis, the party is not a foreign entity.</li> </ul>	<p>Select one:</p> <p>Core <input type="checkbox"/></p> <p>Non-core <input type="checkbox"/></p> <p>Not a foreign entity <input type="checkbox"/></p> <p>Unsure <input type="checkbox"/> (<i>if unsure, please answer Q10. below</i>)</p>
9.	<p>What <b>type of entity</b> is the foreign entity? (e.g. national government, subnational government, university)</p>	<p><i>Type of entity</i></p>
10.	<p>Please provide the name, any registration number, phone number and postal address of the foreign entity.</p>	<p><i>Name, ABN, phone, postal address</i></p>

Q.	Review questions	Answers				
11.	<p>If unsure whether the state or foreign entity is core or non-core, please provide details about the entity that may assist our assessment of its status.</p> <p><i>Information could include legal status, governance arrangements, level of government involvement, funding arrangements (including funding from a foreign government) with foreign entities etc.</i></p>	<p><i>Entity details, if applicable</i></p>				
12.	<p>Is the arrangement an <b>exempt arrangement</b> under any of the following three categories?</p> <ol style="list-style-type: none"> <li>1. The arrangement solely deals with minor administrative or logistical matters.</li> <li>2. The arrangement is a core arrangement that solely deals with the sharing of information or resources for the management of a declared emergency in Australia, negotiated or proposed during that emergency.</li> <li>3. The arrangement solely deals with child protection.</li> </ol>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Unsure <input type="checkbox"/></p>				
13.	<p>Is the arrangement a <b>subsidiary arrangement</b>?</p> <p><i>Subsidiary arrangements are those “entered under the auspices of a foreign arrangement” but are not foreign arrangements themselves. For example, an arrangement between two parties outside the Act’s scope that gives effect to or implements a separate foreign arrangement that is within the Act’s scope would be considered a subsidiary arrangement.</i></p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Unsure <input type="checkbox"/></p>				
14.	<p>Are there any <b>relevant considerations</b> for the Foreign Minister under Section 51(2) of the Act? Consider:</p> <table border="1" data-bbox="226 1273 1256 1380"> <tr> <td data-bbox="226 1273 1088 1327">a) Is the arrangement important in assisting or enhancing the functioning of Victoria?</td> <td data-bbox="1088 1273 1256 1327">Yes <input type="checkbox"/></td> </tr> <tr> <td data-bbox="226 1327 1088 1380"></td> <td data-bbox="1088 1327 1256 1380">No <input type="checkbox"/></td> </tr> </table>	a) Is the arrangement important in assisting or enhancing the functioning of Victoria?	Yes <input type="checkbox"/>		No <input type="checkbox"/>	<p><i>If you ticked ‘Yes’ to any of Q12(a-e), please tick ‘Yes’ and outline why below.</i></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
a) Is the arrangement important in assisting or enhancing the functioning of Victoria?	Yes <input type="checkbox"/>					
	No <input type="checkbox"/>					

Q.	Review questions		Answers
	b) Would invalidating or preventing the arrangement impair the continued existence of Victoria as an independent entity?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Outline details of the relevant consideration/s here.
	c) Would invalidating or preventing the arrangement significantly curtail or interfere with the capacity of Victoria to function as a government?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	d) Would invalidating or preventing the arrangement have significant financial consequences for Victoria?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	e) Would invalidating or preventing the arrangement impede the acquisition of goods or services by Victoria?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
15.	Should any information be <b>excluded from the Public Register</b> ? Consider:		If you answered yes to any of Q13(a-f), please tick 'Yes' and outline what information should be excluded below and why:  Yes <input type="checkbox"/> No <input type="checkbox"/>  Outline information to be excluded here
	a) Is any of the information in the arrangement commercially sensitive?  <i>Please note if the proposed arrangement has confidentiality clauses to protect commercial in confidence information.</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	b) Does any of the information in the arrangement disclose the contents of a document prepared for the purposes of a meeting of the Victorian Cabinet?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	c) Does any of the information in the arrangement disclose the deliberations of a meeting of the Victorian Cabinet?	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Q.	Review questions	Answers
	d) Is any of the information in the arrangement the subject of legal professional privilege?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	e) Is any of the information in the arrangement protected by public interest immunity?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	f) Would any of the information in the arrangement affect national security if made public?	Yes <input type="checkbox"/> No <input type="checkbox"/>
16.	a) Are there any <b>proposed subsidiary arrangements</b> to this arrangement?	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/>
	b) If yes, for each arrangement please note the <b>title, parties</b> and provide a <b>brief statement summarising the subject matter, purpose and effect</b> of the arrangement, whether it is <b>legally binding</b> (and if so, under foreign or Australian law) and whether any information should be <b>excluded from the public register (and why)</b> .	N/A <input type="checkbox"/> <i>Title; Parties; Brief statement summarising the subject matter and effect; Binding (Australian law) / Binding (foreign law) / Non-Binding; Information to be excluded (and why)</i>
	c) If the subsidiary arrangement has been entered, please note the <b>date of entry</b> and <b>duration</b> of the arrangement.	N/A <input type="checkbox"/> Date of entry: <i>DD/MM/YYYY</i> Duration:
	d) If available, please attach a copy of the proposed subsidiary arrangement.	Attached <input type="checkbox"/> Not available <input type="checkbox"/>

Q.	Review questions	Answers
17.	Is the arrangement <b>domestically</b> or <b>internationally sensitive</b> ? (For example, could include but not be limited to, arrangements relating to counter terrorism or intelligence sharing)	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/> <i>Outline here</i>
18.	Are there any relevant <b>public interest</b> considerations?	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/> <i>Outline here</i>
19.	How will the arrangement support the <b>Victorian Government's priorities</b> ?	<i>Outline here</i>
20.	Would the arrangement constitute a <b>new policy position</b> ?	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/> <i>Outline here</i>

Q.	Review questions	Answers
21.	Does the arrangement have any <b>budgetary implications</b> ?	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/> <i>Outline here</i>
22.	How will the arrangements support <b>economic and/or job outcomes</b> for the State or the departments involved?	<i>Outline here</i>
23.	Is the arrangement related to an <b>election commitment/s</b> ?	Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure <input type="checkbox"/> <i>Outline here</i>
24.	<b>Please provide a draft copy of the arrangement.</b>	Attached <input type="checkbox"/> Arrangement is in negotiation phase and the text is under development <input type="checkbox"/>
25.	<b>Please provide a letter from the relevant department Secretary/s or agency head endorsing the proposal.</b>	Attached <input type="checkbox"/>
26.	Has your nominated <b>departmental coordinator</b> approved the submission of this arrangement?	Yes <input type="checkbox"/>



Q.	Review questions	Answers
27.	Please include any other information that may be relevant.	<i>Outline here</i>



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

### FACT SHEET 2 – STATES AND TERRITORIES<sup>i</sup>

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'

#### How does the scheme apply to States and Territories?

The Foreign Arrangements Scheme (the scheme) creates obligations for States and Territories that propose to enter, or enter, an arrangement with a foreign entity.

States and Territories, and their governments, departments and agencies, are **core State/Territory entities**. Foreign arrangements entered into by States and Territories may be core foreign arrangements or non-core foreign arrangements depending on the nature of the foreign entity.

- A **core foreign arrangement** is an arrangement between a State or Territory, their government, departments or agencies and a core foreign entity.
- A **non-core foreign arrangement** is an arrangement between a State or Territory, their government, departments or agencies and a non-core foreign entity.
- **Core foreign entities** include a foreign country, its national government and a department or agency of that national government.
- **Non-core foreign entities** include sub-national level governments in foreign countries, departments of those sub-national level governments, public entities established under the authority of a foreign country or its national or sub-national government, universities without institutional autonomy and any other entities prescribed by the rules.

#### What does the scheme do?

The scheme creates an 'approval' process for arrangements known as 'core foreign arrangements' and a 'notification' process for arrangements known as 'non-core foreign arrangements'. The scheme applies to prospective arrangements, as well as pre-existing arrangements already in operation. Further detail is in **Fact Sheet 1**.

#### How will I comply with obligations under the scheme?

State and Territory entities notify the Minister of arrangements through the online portal: [www.foreignarrangements.gov.au](http://www.foreignarrangements.gov.au).

The Department of Foreign Affairs and Trade administers the scheme.

#### Where can I get further information?

Contact the Department of Foreign Affairs and Trade at [foreignarrangements@dfat.gov.au](mailto:foreignarrangements@dfat.gov.au)

<sup>i</sup> \* 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.



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

### GUIDANCE – GOVERNMENT CORPORATIONS<sup>i</sup>

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 Guidance Note should be read together with 'Fact Sheet 1–Overview'.

#### When does the Scheme apply to corporations?

The Foreign Arrangements Scheme (the Scheme) creates obligations for State/Territory entities that propose to enter, or enter, an arrangement with a foreign entity.

The Scheme is not intended to regulate arrangements with **purely commercial corporations**, including where the corporation is wholly or partly state-owned.

To reflect this intention, corporations that **operate on a commercial basis** are excluded from the definition of 'State/Territory entity' and 'foreign entity'. This means that commercial corporations are not included within the Scheme, except where they are party to a **subsidiary arrangement** entered into under the auspices of a head arrangement between a State/Territory entity and a foreign entity.

However, corporations that **do not operate on a commercial basis** are within the scope of the Scheme where they fall within the definition of 'State/Territory entity' or 'foreign entity' (for example, because the corporation is an **agency** of a State/Territory or foreign government). Whether a State/Territory or foreign corporation is captured by the Scheme will need to be determined on a **case-by-case** basis.

#### What factors are relevant to determining whether a corporation is in scope?

A government-controlled or owned corporation is likely to be within scope of the Scheme where its operations predominantly involve goods, services or activities that are provided or conducted:

- **gratuitously** or not with a view to generating revenue or profit;
- not generally pursuant to a **commercial contract or agreement**;
- with the support of funding from **consolidated revenue**; and/or
- with the purpose of fulfilling **statutory functions** or to pursue objectives which are not of a commercial character but are, instead, **predominantly political or governmental**.

These factors should be considered **holistically**. None of the factors will, on its own, be determinative. Further, these factors are not exhaustive. Each corporate entity will need to be **assessed on a case-by-case basis**, having regard to its individual circumstances.

State/Territory entities are **best placed** to make an assessment of whether a State/Territory entity or foreign entity is within scope, as they have awareness of the nature of their own operations and the operations of their foreign partners.

## How should these factors be used to distinguish a commercial corporation?

**Key factors** to consider include the financing of an entity, whether the entity's operations occur gratuitously and whether the entity's operations are political or governmental in character.

- Where a corporation conducts its operations gratuitously, it is more likely that the corporation's operations are not commercial. However, there is a difference between operating gratuitously and operating commercially but without making a profit. A corporation that fails to make a profit, but does not operate gratuitously, may not be within the Scheme.
- Where a corporation's operations are not generally undertaken pursuant to a commercial contract or agreement, it is more likely that the corporation's operations are not commercial. Where a corporation may be capable of entering a commercial contract, or may do so on an ad hoc basis, this is not sufficient to demonstrate that it operates on a commercial basis.
- Where a corporation is financed by a State/Territory or foreign government, it is more likely that the corporation's operations are not commercial. The ordinary meaning of 'commercial' is that there is an exchange of goods, commodities or services, generally in return for monetary or other reward.
- Where a corporation's operations appear to be intended to promote, or to contribute to, public debate concerning a current or proposed law or government policy, or another issue of general concern to the community, it is more likely that the corporation's operations are not commercial. This is particularly the case where the corporation's duties, powers and objects are stipulated by law or otherwise relate to matters of policy. For example, where a corporation's purpose is to enforce a law or pursue government policy, the corporation is likely to be in scope.

In contrast where the functions and activities performed by a corporation are ones that can be, and are, performed by **private entities engaged in a business**, this will tend to indicate that the corporation **is not within scope**.

## How will entities comply with obligations under the Scheme?

State and Territory entities must notify the Minister of foreign arrangements within scope of the Scheme through the online portal: [www.foreignarrangements.gov.au](http://www.foreignarrangements.gov.au).

Corporations that are considered to be agencies of a State/Territory entity or foreign government are **core entities** for the purposes of the Act.

Where both the foreign entity and the State/Territory entity are core entities, the arrangement must be notified as a **core arrangement**. If either entity is a **non-core** entity, the arrangement is a **non-core arrangement**.

Pre-existing arrangements must be notified by:

- **10 March 2021** if core foreign arrangements, and
- **10 June 2021** if non-core foreign arrangements.

Commencing **10 March 2021**, the Minister must be notified of a proposal to negotiate or enter a core foreign arrangement. The Minister must also be notified of a proposal to enter a non-core foreign arrangement. For both core and non-core arrangements, the Minister must also be notified on entering the arrangement.

## Where can I get further information?

Contact the Department of Foreign Affairs and Trade at [foreignarrangements@dfat.gov.au](mailto:foreignarrangements@dfat.gov.au)

---

<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 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.