



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

No. 116, 2020

An Act to protect and manage Australia's foreign relations, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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

No. 116, 2020

An Act to protect and manage Australia's foreign relations, and for related purposes

[Assented to 10 December 2020]

The Parliament of Australia enacts:

No. 116, 2020 Australia's Foreign Relations (State and Territory Arrangements) 1
Act 2020

Part 1—Preliminary

Division 1—Preliminary matters

1 Short title

This Act is the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2020
2. Parts 2 and 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 3 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	10 March 2021
3. Parts 4 and 5 and Schedule 1	The day this Act receives the Royal Assent.	10 December 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

Foreign arrangements

This Act deals with foreign arrangements. These are arrangements between particular kinds of State and Territory entities and particular kinds of foreign entities.

The kinds of State and Territory entities that are covered by this Act are the States and Territories themselves, their governments, Departments and agencies, as well as some other entities (see section 7 for the entities that are covered). Each of these entities is a “State/Territory entity”.

The kinds of foreign entities that are covered by this Act are foreign countries and the national governments, Departments and agencies of foreign countries; provinces, states or other political subdivisions of foreign countries and their corresponding governments, Departments and agencies; and some other entities (see section 8 for the entities that are covered). Each of these entities is a “foreign entity”.

A State/Territory entity is required to notify the Minister if the entity proposes to enter, or enters, a foreign arrangement.

There are additional requirements in Part 2 that apply just to core foreign arrangements. Core foreign arrangements are arrangements between a core State/Territory entity and a core foreign entity. Generally, these are principal State/Territory entities and foreign entities. (See subsections 10(3) and (4) for the entities that are covered.)

In some cases, additional requirements might apply to non-core foreign arrangements. This depends on whether the Minister

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decides to make a declaration in relation to those arrangements. Certain conditions need to be satisfied before the Minister can make the declaration. Part 3 deals with these declarations.

The Minister may make a declaration that a foreign arrangement (whether or not a core foreign arrangement) is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the arrangement). Certain conditions need to be satisfied before the Minister can make the declaration. Part 4 deals with these declarations.

Subsidiary arrangements of foreign arrangements

This Act also applies in a more limited way to subsidiary arrangements of foreign arrangements. A subsidiary arrangement is an arrangement that is entered under the auspices of a foreign arrangement but is not itself a foreign arrangement.

The Minister may make a declaration that a subsidiary arrangement is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the arrangement). Part 4 deals with these declarations for subsidiary arrangements.

Variations of foreign arrangements

Generally, this Act applies to variations of arrangements in the same way as it applies to arrangements. For example, a State/Territory entity will be required to give a notice of a proposal to vary a foreign arrangement in the same way as it is required to give a notice of a proposal to enter a foreign arrangement.

Transitional requirements for pre-existing foreign arrangements

A State/Territory entity that is party to a foreign arrangement that is in operation on the commencement day, or which comes into operation before the day on which Part 2 commences, must notify the Minister about the arrangement. Schedule 1 deals with these notification requirements.

4 Definitions

In this Act:

arrangement: see subsection 9(1).

Australia, when used in a geographical sense, includes the external Territories.

Australian law means a law of the Commonwealth, a State or a Territory.

Australia's foreign policy: see subsection 5(2).

commencement day means the day section 1 commences.

core foreign arrangement: see subsection 10(2).

core foreign entity: see subsection 10(4).

core State/Territory entity: see subsection 10(3).

court means the High Court of Australia or the Federal Court of Australia.

exempt arrangement means an arrangement of a kind that is prescribed by the rules to be an exempt arrangement.

foreign arrangement: see subsection 6(2).

foreign country means any country that is outside Australia and the external Territories, whether or not it is an independent sovereign state.

foreign entity: see subsection 8(1).

foreign law means a law of a foreign country, or part of a foreign country.

gives effect to: a party to an arrangement **gives effect to** the arrangement if the party:

- (a) gives effect to the arrangement in any way and to any extent, whether directly or indirectly; or

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- (b) takes any action for the purposes of implementing the arrangement (whether or not the arrangement contemplates that the action would be taken for those purposes), including, for example, the following action:
- (i) participating in discussions, forums, exchanges, visits or other dealings contemplated by the arrangement;
 - (ii) promoting projects or other matters contemplated by the arrangement;
 - (iii) engaging in activities contemplated by the arrangement;
 - (iv) entering, or encouraging other entities to enter, other arrangements contemplated by the arrangement; or
- (c) does anything of a kind prescribed by the rules; but does not include:
- (d) taking any action to terminate the arrangement; or
 - (e) taking any action to vary the arrangement in accordance with a requirement under this Act; or
 - (f) doing anything of a kind prescribed by the rules.

Paragraphs (a), (b) and (c) do not limit each other.

governing documents of a university: see subsection 8(4).

legally binding: see subsection 9(2).

negotiation of an arrangement means discussions or dealings between the proposed parties that are directed towards the making of the arrangement.

non-core foreign arrangement means a foreign arrangement that is not a core foreign arrangement.

pre-existing foreign arrangement: see subclause 2(2) of Schedule 1.

regulated Australian party to an arrangement means any of the following entities that are a party to the arrangement:

- (a) a State/Territory entity;
- (b) an individual who:
 - (i) is an Australian citizen; or

- (ii) is a permanent Australian resident;
- (c) an Australian entity (within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*);
- (d) a partnership or an association incorporated or formed under an Australian law;
- (e) any other entity prescribed by the rules to be a regulated Australian party;

but does not include an entity prescribed by the rules as not being a regulated Australian party.

rules means rules made under subsection 54(1).

State/Territory entity: see section 7.

subsidiary arrangement: see subsection 12(1).

terminate an arrangement includes withdraw from the arrangement.

Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory; or
- (c) an external Territory.

this Act includes the rules.

under the auspices: see subsection 12(2).

variation of an arrangement: see subsection 13(2).

Division 2—Core provisions of this Act

5 Object of this Act

- (1) The object of this Act is to ensure that the Commonwealth is able to protect and manage Australia's foreign relations by ensuring that any arrangement between a State/Territory entity and a foreign entity:
 - (a) does not, or is unlikely to, adversely affect Australia's foreign relations; and
 - (b) is not, or is unlikely to be, inconsistent with Australia's foreign policy.
- (2) *Australia's foreign policy* includes policy that the Minister is satisfied is the Commonwealth's policy on matters that relate to:
 - (a) Australia's foreign relations; or
 - (b) things outside Australia;whether or not the policy:
 - (c) is written or publicly available; or
 - (d) has been formulated, decided upon, or approved by any particular member or body of the Commonwealth.

6 Foreign arrangements

- (1) For the purposes of achieving the objects of this Act, this Act has provisions that apply to foreign arrangements.
- (2) A *foreign arrangement* is an arrangement between:
 - (a) a State/Territory entity; and
 - (b) a foreign entity;whether or not other entities are also a party to the arrangement.

7 What are State/Territory entities?

A *State/Territory entity* is any of the following entities:

- (a) a State or Territory;

- (b) the government of a State or Territory;
 - (c) a Department or agency (however described) that is part of an entity covered by paragraph (a) or (b);
 - (d) a body established for the purposes of local government by, or under a law of a State or a Territory;
 - (e) a university established by, or under, a law of a State or a Territory;
 - (f) an entity that is prescribed by the rules to be a State/Territory entity;
- but does not include:
- (g) a corporation that operates on a commercial basis; or
 - (h) a hospital; or
 - (i) an entity that is prescribed by the rules as not being a State/Territory entity.

Paragraphs (a) to (f) do not limit each other.

8 What are foreign entities?

- (1) A **foreign entity** is any of the following entities:
- (a) a foreign country;
 - (b) the national government of a foreign country;
 - (c) a Department or agency (however described) of an entity covered by paragraph (a) or (b);
 - (d) a province, state, self-governing territory, region, local council, municipality or other political subdivision (by whatever name known) of a foreign country;
 - (e) a local council, municipality or other political subdivision (by whatever name known) of an entity covered by paragraph (d);
 - (f) the government of an entity covered by paragraph (d) or (e);
 - (g) a Department or agency (however described) of an entity covered by paragraph (d), (e) or (f);
 - (h) an entity (other than a university) that:
 - (i) is an authority of an entity covered by paragraph (a), (b), (d), (e) or (f); and
 - (ii) is established for a public purpose;

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- (i) a university that:
 - (i) is located in a foreign country; and
 - (ii) does not have institutional autonomy (see subsection (2));
- (j) an entity that is external to Australia and is prescribed by the rules to be a foreign entity;

but does not include:

- (k) a corporation that operates on a commercial basis; or
- (l) an entity that is prescribed by the rules as not being a foreign entity.

Paragraphs (a) to (j) do not limit each other.

- (2) For the purposes of subparagraph (1)(i)(ii), a university does not have institutional autonomy if, and only if, a foreign government (whether or not the government of the country, or part of the country, in which the university is located) is in a position to exercise substantial control over the university.
- (3) For the purposes of subsection (2), a foreign government is in a position to exercise substantial control over a university if, and only if, one or more of the following paragraphs are satisfied:
 - (a) a majority of the members of the university's governing body are required, by a law or the university's governing documents, to be members or part of (however described) the political party that forms the foreign government;
 - (b) education provided or research conducted at the university is required, by a law or the university's governing documents, to adhere to, or be in service of, political principles or political doctrines of:
 - (i) the foreign government; or
 - (ii) the political party that forms the foreign government;
 - (c) the university's academic staff are required, by a law or the university's governing documents, to adhere to, or be in service of, political principles or political doctrines referred to in paragraph (b) in their teaching, research, discussions, publications or public commentary.

- (4) The ***governing documents*** of a university are the constitution, rules or other official documents by which the university is constituted or according to which the university operates.

9 What is an arrangement?

- (1) An ***arrangement*** is any written arrangement, agreement, contract, understanding or undertaking:
- (a) whether or not it is legally binding; and
 - (b) whether or not it is made in Australia; and
 - (c) whether it is entered before, on or after the commencement day.
- (2) An arrangement is ***legally binding*** if any of the provisions of the arrangement confer legal rights or impose legal obligations that are legally enforceable under an Australian law or a foreign law.

10 Core foreign arrangements

- (1) For the purposes of achieving the objects of this Act, this Act has special provisions that apply to core foreign arrangements.
- (2) A ***core foreign arrangement*** is an arrangement between:
- (a) a core State/Territory entity; and
 - (b) a core foreign entity;
- whether or not other entities are also a party to the arrangement.

Note: Core foreign arrangements are a particular subset of foreign arrangements. There are special requirements for them because they are more likely to affect Australia's foreign relations. Part 2, in particular, has special rules about negotiating or entering core foreign arrangements.

- (3) A ***core State/Territory entity*** is an entity covered by paragraph 7(a), (b) or (c) (even if the entity is also covered by paragraph 7(d), (e) or (f)).
- (4) A ***core foreign entity*** is:

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- (a) an entity covered by paragraph 8(1)(a), (b) or (c) (even if the entity is also covered by paragraph 8(1)(d), (e), (f), (g), (h), (i) or (j)); or
 - (b) an entity that is external to Australia and is prescribed by the rules to be a core foreign entity;
- but does not include a corporation that operates on a commercial basis.

11 Application of this Act to subsidiary arrangements

For the purposes of achieving the objects of this Act, this Act also has provisions dealing with subsidiary arrangements of foreign arrangements.

12 What is a subsidiary arrangement?

- (1) An arrangement is a *subsidiary arrangement* of a foreign arrangement if:
 - (a) the arrangement is entered under the auspices of the foreign arrangement; and
 - (b) the arrangement is not a foreign arrangement.
- (2) An arrangement is entered *under the auspices* of a foreign arrangement if the arrangement is entered at the same time, or after, the foreign arrangement is entered, and:
 - (a) the arrangement is entered for the purposes of implementing the foreign arrangement, in any way and to any extent, whether directly or indirectly, and whether or not:
 - (i) the arrangement refers to the foreign arrangement; or
 - (ii) the foreign arrangement contemplates the arrangement, or arrangements of the same kind as the arrangement, being entered; or
 - (b) both of the following are satisfied:
 - (i) the foreign arrangement contemplates the arrangement, or arrangements of the same kind as the arrangement, being entered (including, for example, by encouraging or promoting the arrangement, or arrangements of that kind, to be entered);

- (ii) the arrangement is entered as a consequence of the foreign arrangement, or of any actions taken under the foreign arrangement; or
 - (c) the arrangement and the foreign arrangement have a relationship of a kind prescribed by the rules.
- Paragraphs (a), (b) and (c) do not limit each other.
- (3) For the purposes of subsection (1), it does not matter whether the parties were aware, when entering the subsidiary arrangement, that the foreign arrangement:
- (a) was entered in contravention of a provision of this Act; or
 - (b) was, because of the operation of a provision of this Act, invalid, unenforceable, not in operation, terminated, required to be terminated, or affected in any other way.

13 Application of this Act to variations of arrangements

General application to variations of arrangements

- (1) This Act applies in relation to a variation of an arrangement (whether the arrangement is made before, on or after the commencement day) in the same way it applies in relation to an arrangement.

Example: Sections 16 and 23 require a core State/Territory entity to notify the Minister about proposals to negotiate or enter a core foreign arrangement. Because of this subsection, if the entity proposes to negotiate a variation of a core foreign arrangement, or make a variation of a core foreign arrangement, then the entity is required to notify the Minister about that proposal.

- (2) A **variation of an arrangement** is any written variation of an arrangement:
- (a) whether or not it is legally binding; and
 - (b) whether or not it is made in Australia;
- and includes the exercise of an option to extend the arrangement.

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Additional application for subsidiary arrangements

- (3) Without limiting subsection (1), this Act applies as if a reference to an arrangement that is entered under the auspices of a foreign arrangement includes a reference to the following:
- (a) a variation of an arrangement that is made under the auspices of a foreign arrangement;
 - (b) an arrangement that is entered under the auspices of a variation of a foreign arrangement.

Exemptions

- (4) Without limiting subsection (1), the rules may prescribe that variations of arrangements of a kind are exempt, even if the rules do not prescribe that arrangements of that kind are exempt.

Exceptions

- (5) Subsections (1), (3) and (4) do not apply in:
- (a) subsection (2); and
 - (b) subsection 9(1) (which is the definition of **arrangement**); and
 - (c) Schedule 1 (which is about pre-existing foreign arrangements).

Part 2—Negotiating and entering core foreign arrangements

Division 1—Simplified outline of this Part

14 Simplified outline of this Part

A core State/Territory entity that proposes to negotiate or enter an arrangement with a core foreign entity must notify the Minister about that proposal. If the entity enters the arrangement, it must also notify the Minister about that.

A core State/Territory entity must not negotiate an arrangement with a core foreign entity without the Minister's approval (see section 15). The entity also must not enter the arrangement without the Minister's approval (see section 22).

The Minister must give approval if the Minister is satisfied that the proposed negotiation or arrangement:

- (a) would not adversely affect, or would be unlikely to adversely affect, Australia's foreign relations; and
- (b) would not be, or would be unlikely to be, inconsistent with Australia's foreign policy.

Otherwise, the Minister must refuse to give approval.

However, if the Minister does not make a decision within 30 days of being notified of the proposal to negotiate or enter the arrangement, then the Minister is taken to have given approval for the proposal.

If a core State/Territory entity enters an arrangement with a core foreign entity without the Minister's approval, then the arrangement will be invalid and unenforceable, be required to be terminated, or not be in operation (depending on the nature of the arrangement). The entities will also be prohibited from giving

Part 2 Negotiating and entering core foreign arrangements

Division 1 Simplified outline of this Part

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effect to the arrangement and from holding out that they are able to give effect to the arrangement. These consequences will apply automatically and without the involvement of the Minister (see sections 30 to 32).

Subsidiary arrangements of the unlawfully entered arrangement may also be affected (see Division 3 of Part 4).

Division 2—Negotiating core foreign arrangements**15 Prohibition on negotiations without the Minister's approval**

- (1) A core State/Territory entity must not negotiate an arrangement with a core foreign entity if the Minister's approval under subsection 17(2) or 21(2) is not in force for the negotiation.
- (2) Subsection (1) does not apply to an exempt arrangement.

16 Requirement to notify the Minister about negotiations

- (1) If a core State/Territory entity proposes to negotiate an arrangement with a core foreign entity, then it must give a notice to the Minister in accordance with the requirements in subsection (2).

Note: If the core State/Territory entity proposes to enter the arrangement, it is required to give the Minister another notice about that (see section 23).

- (2) The notice must:
 - (a) be in writing; and
 - (b) be in the approved form (if any); and
 - (c) include any information prescribed by the rules; and
 - (d) be accompanied by any documents prescribed by the rules; and
 - (e) be given in the approved way (if any).
- (3) Subsection (1) does not apply to an exempt arrangement.

17 The Minister's decision about negotiations*Minister to make decision about negotiations*

- (1) If a core State/Territory entity gives the Minister a notice under subsection 16(1) about a proposal to negotiate an arrangement with a core foreign entity, then the Minister must, as soon as practicable, make a decision under this section about the proposal.

Part 2 Negotiating and entering core foreign arrangements

Division 2 Negotiating core foreign arrangements

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Note: However, if the Minister does not make a decision within 30 days of being given the notice, then, under subsection 21(2), the Minister is taken to have given approval for the negotiation proceeding. In addition, the Minister will no longer be able to make a decision under this section about the negotiation (see subsection 21(4)).

Approval decision

- (2) If the Minister is satisfied that the proposed negotiation:
- (a) would not adversely affect, or would be unlikely to adversely affect, Australia's foreign relations; and
 - (b) would not be, or would be unlikely to be, inconsistent with Australia's foreign policy;
- then the Minister must give approval for the negotiation proceeding.

Note: The Minister must give the core State/Territory entity written notice of the approval decision (see subsection 18(1)).

Refusal decision

- (3) Otherwise, the Minister must refuse to give approval for the negotiation proceeding.

Note: The Minister must give the core State/Territory entity written notice of the refusal decision (see section 20).

Revocation of approval decision

- (4) The Minister may revoke an approval decision under subsection (2) if the Minister ceases to be satisfied of the matters on which the decision was made.

Note: The Minister must give the core State/Territory entity written notice of the revocation decision (see subsection 18(2)).

No revocation of refusal decision

- (5) However, the Minister may not revoke a refusal decision under subsection (3).

Note: The Minister may make a new decision to give approval under this section if the core State/Territory entity gives the Minister a new notice under subsection 16(1).

18 Notices relating to the Minister's approval under subsection 17(2)

Notice of approval decision

- (1) If the Minister makes a decision under subsection 17(2) to give approval for a core State/Territory entity negotiating an arrangement with a core foreign entity, then the Minister must, as soon as practicable, give the core State/Territory entity a written notice under this subsection that states:
 - (a) that the Minister gives approval for the negotiation to proceed; and
 - (b) the day the approval comes into force.

Notice of decision to revoke approval decision

- (2) If, under subsection 17(4), the Minister revokes the approval decision under subsection 17(2), the Minister must, as soon as practicable, give the core State/Territory entity a written notice that states:
 - (a) that the Minister's approval is revoked; and
 - (b) the day the revocation comes into force; and
 - (c) that the Minister's approval is no longer in force from that day.

19 When the Minister's approval under subsection 17(2) is in force

The Minister's approval for a core State/Territory entity to negotiate an arrangement with a core foreign entity:

- (a) comes into force on the day specified in the approval notice given under subsection 18(1); and
- (b) if, under subsection 17(4), the Minister revokes the approval decision under subsection 17(2)—ceases to be in force on the day specified in the revocation notice given under subsection 18(2).

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20 Notice of the Minister's refusal under subsection 17(3)

As soon as practicable after making a decision under subsection 17(3) to refuse to give approval for a core State/Territory entity to negotiate an arrangement with a core foreign entity, the Minister must give the core State/Territory entity a written notice of the decision.

21 When the Minister is taken to have given approval for negotiations

- (1) This section applies if:
 - (a) a core State/Territory entity gives the Minister a notice under subsection 16(1) about its proposal to negotiate an arrangement with a core foreign entity; and
 - (b) the Minister has not made a decision under subsection 17(2) or (3) within the 30-day period that starts on the day the notice is given.
- (2) The Minister is taken to have given approval under this subsection for the negotiation proceeding.

Note: The Minister's approval under this subsection may not be revoked.
- (3) The Minister's approval under subsection (2) comes into force immediately after the end of the period referred to in paragraph (1)(b).
- (4) The Minister may no longer make a decision under section 17 about the negotiation.

Division 3—Entering core foreign arrangements

22 Prohibition on entering core foreign arrangements

- (1) A core State/Territory entity must not enter an arrangement with a core foreign entity if the Minister's approval under subsection 24(2) or 28(2) is not in force in relation to the arrangement.

Note 1: If the State/Territory entity enters the arrangement without the Minister's approval, then section 30, 31 or 32 automatically applies to the arrangement to make it invalid, unenforceable or not in operation, or to require the State/Territory entity to terminate it. Those sections also prohibit the parties from giving effect to the arrangement.

Note 2: Similar consequences may apply to any subsidiary arrangements of the arrangement (see sections 46 to 48).

- (2) Subsection (1) does not apply to an exempt arrangement.

23 Requirement to notify the Minister before entering core foreign arrangements

- (1) If a core State/Territory entity proposes to enter an arrangement with a core foreign entity, then it must give a notice to the Minister in accordance with subsection (2) before entering the arrangement.

Note: If the core State/Territory entity enters the arrangement, it is required to give the Minister another notice about that (see section 29).

- (2) The notice must:
- (a) be in writing; and
 - (b) be in the approved form (if any); and
 - (c) be accompanied by a copy of the proposed arrangement; and
 - (d) specify the day it is proposed to enter the arrangement; and
 - (e) include any information prescribed by the rules; and
 - (f) be accompanied by any documents prescribed by the rules; and
 - (g) be given in the approved way (if any).

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- (3) Subsection (1) does not apply to an exempt arrangement.

24 The Minister's decision about proposals to enter core foreign arrangements

Minister must make decision about proposal

- (1) If a core State/Territory entity gives the Minister a notice under subsection 23(1) about its proposal to enter an arrangement with a core foreign entity, then the Minister must, as soon as practicable, make a decision under this section about the proposed arrangement.

Note: However, if the Minister does not make a decision within 30 days of being given the notice, then, under subsection 28(2), the Minister is taken to have given approval for the core State/Territory to enter the proposed arrangement. In addition, the Minister will no longer be able to make a decision under this section about the proposed arrangement (see subsection 28(4)).

Approval decision

- (2) If the Minister is satisfied that the proposed arrangement:
- (a) would not adversely affect, or would be unlikely to adversely affect, Australia's foreign relations; and
 - (b) would not be, or would be unlikely to be, inconsistent with Australia's foreign policy;
- then the Minister must give approval for the core State/Territory entity to enter the arrangement as proposed.

Note: The Minister must give the core State/Territory entity a written notice of the approval decision (see subsection 25(1)).

Refusal decision

- (3) Otherwise, the Minister must refuse to give approval for the core State/Territory entity entering the arrangement.

Note: The Minister must give the core State/Territory entity a written notice of the refusal decision (see section 27).

Revocation of approval decision

- (4) The Minister may revoke a decision under subsection (2) if the Minister ceases to be satisfied of the matters on which the decision was made.

Note: The Minister must give the core State/Territory entity a written notice of the revocation decision (see subsection 25(2)).

- (5) However, the Minister may not revoke a decision under subsection (2) after the core State/Territory entity enters the arrangement.

Note: However, if after the arrangement is entered, the Minister is no longer satisfied of the matters referred to in subsection (2), the Minister may make a declaration under Part 4 about the arrangement (see section 40).

No revocation of refusal decision

- (6) The Minister may not revoke a refusal decision under subsection (3).

Note: The Minister may make a new decision to give approval under this section if the core State/Territory entity gives the Minister a new notice under subsection 23(1).

25 Notices relating to the Minister's approval under subsection 24(2)

Notice of approval decision

- (1) If the Minister makes a decision under subsection 24(2) to give approval for a core State/Territory entity entering an arrangement with a core foreign entity, then the Minister must, as soon as practicable, give the core State/Territory entity a written notice under this subsection that states:
- (a) that the Minister gives approval for the core State/Territory entity entering the arrangement; and
 - (b) the day the approval comes into force.

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Notice of revocation of approval decision

- (2) If, under subsection 24(4), the Minister revokes an approval decision under subsection 24(2), the Minister must, as soon as practicable, give the core State/Territory entity a written notice that states:
- (a) that the Minister's approval is revoked; and
 - (b) the day the revocation comes into force; and
 - (c) that the Minister's approval is no longer in force from that day.

26 When the Minister's approval under subsection 24(2) is in force

The Minister's approval for a core State/Territory entity entering an arrangement with a core foreign entity:

- (a) comes into force on the day specified in the approval notice given under subsection 25(1); and
- (b) if, under subsection 24(4), the Minister revokes the decision under subsection 24(2)—ceases to be in force on the day specified in the revocation notice given under subsection 25(2).

27 Notice of the Minister's refusal under subsection 24(3)

As soon as practicable after making a decision under subsection 24(3) to refuse to give approval for a core State/Territory entity entering an arrangement with a core foreign entity, the Minister must give the core State/Territory a written notice that states:

- (a) the Minister's decision; and
- (b) if the Minister considers that changes could be made to the arrangement that could allow the Minister to give approval for the core State/Territory entity entering an arrangement with the core foreign entity—the Minister's recommended changes.

Note: If the core State/Territory entity agrees to the Minister's recommended changes, the entity could decide to give a new notice

under subsection 23(1) for a new arrangement with the core foreign entity that incorporates those changes.

28 When the Minister is taken to have given approval for proposals to enter core foreign arrangements

- (1) This section applies if:
 - (a) a core State/Territory entity gives the Minister a notice under subsection 23(1) about its proposal to enter an arrangement with a core foreign entity; and
 - (b) the Minister has not made a decision under subsection 24(2) or (3) within the 30-day period that starts on the day the notice is given.
- (2) The Minister is taken to have given approval under this subsection for the core State/Territory entity to enter the arrangement as proposed.

Note: The Minister's approval under this subsection may not be revoked.
- (3) The Minister's approval under subsection (2) comes into force immediately after the end of the period referred to in paragraph (1)(b).
- (4) The Minister may no longer make a decision under section 24 about the proposed arrangement.

29 Requirement to notify the Minister about entering core foreign arrangements

- (1) If a core State/Territory entity enters an arrangement with a core foreign entity, then the State/Territory entity must, within 14 days or such longer period prescribed by the rules, give a notice to the Minister in accordance with subsection (2).
- (2) The notice must:
 - (a) be in writing; and
 - (b) be accompanied by a copy of the arrangement; and
 - (c) include any information prescribed by the rules; and

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(d) be accompanied by any other documents prescribed by the rules.

(3) Subsection (1) does not apply to an exempt arrangement.

Division 4—Consequences of unlawfully entering core foreign arrangements

Subdivision A—Effect on legally binding arrangements

30 Arrangements that purport to be legally binding under Australian law

- (1) If:
 - (a) a core State/Territory entity enters an arrangement with a core foreign entity in contravention of subsection 22(1); and
 - (b) the arrangement purports to be legally binding under an Australian law;then this section applies to the arrangement.
- (2) The arrangement is, and is taken to have always been, invalid and unenforceable.
- (3) The core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules, notify the core foreign entity that:
 - (i) this section applies to the arrangement; and
 - (ii) the arrangement is, and is taken to have always been, invalid and unenforceable; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
- (4) The core State/Territory entity must not, at any time:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is valid or enforceable.
- (5) The core foreign entity must not, from the time it is notified under subsection (3) that this section applies to the arrangement:

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- (a) give effect to the arrangement in Australia; or
- (b) hold out in Australia, or conduct itself in Australia on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is valid or enforceable.

31 Arrangements that are legally binding under foreign law

- (1) If:
 - (a) a core State/Territory entity enters an arrangement with a core foreign entity in contravention of subsection 22(1); and
 - (b) the arrangement is legally binding under a foreign law;then this section applies to the arrangement.
- (2) After entering the arrangement, the core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules:
 - (i) notify the core foreign entity that this section applies to the arrangement; and
 - (ii) take steps to terminate the arrangement in accordance with the foreign law; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
- (3) The core State/Territory entity must not, at any time:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that it can give effect to the arrangement.
- (4) The core foreign entity must not, from the time it is notified under subsection (2) that this section applies to the arrangement:
 - (a) give effect to the arrangement in Australia; or
 - (b) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Subdivision B—Effect on non-legally binding arrangements

32 Arrangements that are not legally binding

- (1) If:
 - (a) a core State/Territory entity enters an arrangement with a core foreign entity in contravention of subsection 22(1); and
 - (b) the arrangement is not legally binding;then this section applies to the arrangement.
- (2) The arrangement is not, and is taken never to have been, in operation.
- (3) After entering the arrangement, the core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules, notify the core foreign entity that:
 - (i) this section applies to the arrangement; and
 - (ii) the arrangement is not, and is taken never to have been, in operation; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
- (4) The core State/Territory entity must not, at any time:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is in operation.
- (5) The core foreign entity must not, from the time it is notified under subsection (3) that this section applies to the arrangement:
 - (a) give effect to the arrangement in Australia; or
 - (b) hold out in Australia, or conduct itself in Australia on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is in operation.

Part 3—Entering non-core foreign arrangements

Division 1—Simplified outline of this Part

33 Simplified outline of this Part

A State/Territory entity that proposes to enter a non-core arrangement must notify the Minister about that proposal. If the entity enters the arrangement, it must also notify the Minister about that.

The Minister may make a declaration prohibiting a State/Territory entity from negotiating or entering a non-core arrangement. Broadly, the Minister may only make such a declaration if the Minister is satisfied that the negotiation or arrangement:

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

There are particular matters that the Minister must take into account when making a decision to make a declaration (see section 51).

If a State/Territory entity enters a non-core arrangement with a foreign entity in contravention of a declaration by the Minister, then that will be a ground on which the Minister may make a declaration under Part 4 about the arrangement (which could result in the arrangement being invalid and unenforceable, required to be terminated, or not in operation (depending on the nature of the arrangement)).

Subsidiary arrangements of the unlawfully entered arrangement may also be affected (see Division 3 of Part 4).

Division 2—Entering non-core foreign arrangements

Subdivision A—Requirement to notify the Minister about proposals to enter non-core foreign arrangements

34 Requirement to notify the Minister about proposals to enter non-core foreign arrangements

- (1) If:
- (a) a State/Territory entity proposes to enter an arrangement with a foreign entity; and
 - (b) the arrangement is a non-core foreign arrangement;
- then it must give a notice to the Minister in accordance with subsection (2).

Note: If the State/Territory entity enters the arrangement, it is required to give the Minister another notice about that (see section 38).

- (2) The notice must:
- (a) be in writing; and
 - (b) be in the approved form (if any); and
 - (c) be accompanied by a copy of the proposed arrangement; and
 - (d) include any information prescribed by the rules; and
 - (e) be accompanied by any documents prescribed by the rules; and
 - (f) be given in the approved way (if any); and
 - (g) be given in the period (if any) prescribed by the rules.
- (3) Subsection (1) does not apply to an exempt arrangement.

Subdivision B—Declarations about negotiations or proposals to enter non-core foreign arrangements

35 Declarations about negotiating non-core foreign arrangements

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) if:
 - (a) the Minister becomes aware that a State/Territory entity proposes to negotiate, or is negotiating, an arrangement with a foreign entity; and
 - (b) the arrangement is a non-core foreign arrangement; and
 - (c) if the State/Territory entity is proposing to negotiate the arrangement—the Minister is satisfied that the proposed negotiation:
 - (i) would adversely affect, or would be likely to adversely affect, Australia’s foreign relations; or
 - (ii) would be, or would be likely to be, inconsistent with Australia’s foreign policy; and
 - (d) if the State/Territory entity is negotiating the arrangement—the Minister is satisfied that the negotiation:
 - (i) adversely affects, or is likely to adversely affect, Australia’s foreign relations; or
 - (ii) is, or is likely to be, inconsistent with Australia’s foreign policy.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) (see section 51).

Note 2: Section 37 deals with general matters about the declaration (such as revocation and giving notice to the State/Territory entity).

Declaration not to negotiate

- (2) The Minister may make a written declaration that the State/Territory entity must not start, or continue, to negotiate the arrangement.

Compliance with declaration

- (3) The State/Territory entity must comply with the declaration.

Matters relating to declaration

- (4) A declaration made under subsection (2) is not a legislative instrument.

36 Declarations about proposals to enter non-core foreign arrangements

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) if:
- (a) a State/Territory entity proposes to enter an arrangement with a foreign entity (whether or not notice of the proposal has been given to the Minister under section 34); and
 - (b) the arrangement is a non-core foreign arrangement; and
 - (c) the Minister is satisfied that the proposed arrangement:
 - (i) would adversely affect, or would be likely to adversely affect, Australia's foreign relations; or
 - (ii) would be, or would be likely to be, inconsistent with Australia's foreign policy.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) (see section 51).

Note 2: Section 37 deals with general matters about the declaration (such as revocation and giving notice to the State/Territory entity).

Declaration not to enter arrangement

- (2) The Minister may make a written declaration that the State/Territory entity must not enter the arrangement.

Compliance with declaration

- (3) The State/Territory entity must comply with the declaration.

Note 1: If the State/Territory entity enters the arrangement in contravention of the declaration, then the Minister may make a declaration under

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section 41, 42 or 43 in relation to the arrangement. If the Minister does so, then, to the extent specified in the declaration, the arrangement will become invalid, unenforceable or not in operation, or be required to be varied or terminated. The declaration may also prohibit the State/Territory entity and foreign entity from giving effect to the arrangement or from holding out that they are able to give effect to the arrangement.

Note 2: In addition, the Minister may make a similar declaration in relation to any subsidiary arrangements of the arrangement (see sections 46 to 48).

Matters relating to declaration

- (4) A declaration made under subsection (2) is not a legislative instrument.

Subdivision C—Matters relating to declarations under this Part

37 Matters relating to declarations under this Part

When this section applies

- (1) This section applies if the Minister makes a declaration under subsection 35(2) or 36(2) in relation to negotiations or proposals to enter an arrangement between a State/Territory entity and a foreign entity.

When declaration comes into force

- (2) The declaration must specify the day the declaration comes into force.

Revoking declarations

- (3) The Minister may revoke the declaration if the Minister ceases to be satisfied of the matters on which the declaration was made.

Notice of declaration

- (4) The Minister must, as soon as practicable after making the declaration, give the State/Territory entity a written notice under this subsection that:
- (a) states the Minister's decision to make the declaration; and
 - (b) is accompanied by a copy of the declaration; and
 - (c) complies with any requirements prescribed by the rules.

Notice of revocation of declaration

- (5) If, under subsection (3), the Minister revokes the declaration, then the Minister must, as soon as practicable, give the State/Territory entity a written notice that states that the declaration is revoked.

Subdivision D—Requirement to notify the Minister about entering non-core foreign arrangements

38 Requirement to notify the Minister about entering non-core foreign arrangements

- (1) If:
- (a) a State/Territory entity enters an arrangement with a foreign entity; and
 - (b) the arrangement is a non-core foreign arrangement;
- then the State/Territory entity must, within 14 days or such longer period prescribed by the rules, give a notice to the Minister in accordance with subsection (2).
- (2) The notice must:
- (a) be in writing; and
 - (b) be accompanied by a copy of the arrangement; and
 - (c) include any information prescribed by the rules; and
 - (d) be accompanied by any documents prescribed by the rules.
- (3) Subsection (1) does not apply to an exempt arrangement.

Part 4 The Minister’s powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation

Division 1 Simplified outline of this Part

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Part 4—The Minister’s powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation

Division 1—Simplified outline of this Part

39 Simplified outline of this Part

Declarations in relation to foreign arrangements

Under this Part, the Minister may make a declaration that a foreign arrangement between a State/Territory entity and a foreign entity is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the arrangement), to the extent specified in the declaration. If the Minister makes such a declaration, the entities will also be prohibited from giving effect to the arrangement and from holding out that they are able to give effect to the arrangement, to the extent specified in the declaration.

There are 2 situations in which the Minister may make the declaration. The first is where the Minister is satisfied that the arrangement:

- (a) adversely affects, or is likely to adversely affect, Australia’s foreign relations; or
- (b) is, or is likely to be, inconsistent with Australia’s foreign policy.

The second is where the arrangement was entered in contravention of a declaration made by the Minister under Part 3 (which is about non-core arrangements).

There are particular matters that the Minister must take into account when making a decision to make a declaration about a foreign arrangement (see section 51).

Declarations in relation to subsidiary arrangements

Under this Part, the Minister may also make a declaration that a subsidiary arrangement of a foreign arrangement is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the subsidiary arrangement), to the extent specified in the declaration. If the Minister makes such a declaration, the parties to the subsidiary arrangement will be prohibited from giving effect to the arrangement and from holding out that they are able to give effect to the arrangement, to the extent specified in the declaration.

Two conditions must be satisfied before the Minister may make such a declaration in relation to a subsidiary arrangement.

The first is that any of the following apply to the foreign arrangement:

- (a) the Minister has made a declaration that the foreign arrangement is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the foreign arrangement);
- (b) the foreign arrangement was entered in contravention of subsection 22(1) or 36(3);
- (c) clause 4, 5 or 6 of Schedule 1 applies to the foreign arrangement.

The second is that the Minister is satisfied that the subsidiary arrangement:

- (a) adversely affects, or is likely to adversely affect, Australia's foreign relations; or
- (b) is, or is likely to be, inconsistent with Australia's foreign policy.

Part 4 The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation

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There are particular matters that the Minister must take into account when making a decision to make a declaration about a subsidiary arrangement (see section 51).

The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**
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Division 2—The Minister's power to make declarations about foreign arrangements that are in operation

Subdivision A—When the Minister may make declarations about foreign arrangements

40 When the Minister may make declarations under this Division

When the Minister may make declaration

- (1) The Minister may make a declaration under this Division in relation to an arrangement between a State/Territory entity and a foreign entity if:
 - (a) the Minister is satisfied that the arrangement:
 - (i) adversely affects, or is likely to adversely affect, Australia's foreign relations; or
 - (ii) is, or is likely to be, inconsistent with Australia's foreign policy; or
 - (b) the State/Territory entity entered the arrangement in contravention of subsection 36(3).

Note: The Minister must take into account certain matters when making a decision to make a declaration under this Division (see section 51).

Matters that are not relevant

- (2) The Minister may make the declaration, irrespective of whether:
 - (a) the arrangement was entered before or after the commencement day; or
 - (b) the Minister previously decided:
 - (i) not to make a declaration under this Division in relation to the arrangement; or
 - (ii) to make a different declaration under this Division in relation to the arrangement; or

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- (c) if the arrangement is a core foreign arrangement—the Minister gave approval under subsection 24(2) or 28(2) for the core State/Territory entity to enter the arrangement; or
- (d) if the arrangement is a non-core foreign arrangement—the Minister did not make a declaration under subsection 36(2) prohibiting a State/Territory entity entering the arrangement.

Subdivision B—Declarations about legally binding foreign arrangements

41 Foreign arrangements that are legally binding under Australian law

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) or (3) in relation to an arrangement between a State/Territory entity and a foreign entity if:
 - (a) subsection 40(1) is satisfied in relation to the arrangement; and
 - (b) apart from the declaration, the arrangement would be legally binding under an Australian law.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) or (3) (see section 51).

Note 2: Section 44 deals with general matters about the declaration (such as revocation and giving notice to the State/Territory entity).

Declaration that arrangement is invalid and unenforceable

- (2) The Minister may make a written declaration that:
 - (a) the arrangement:
 - (i) is invalid and unenforceable to the specified extent and from the specified day; or

- (ii) if the arrangement was entered in contravention of subsection 36(3)—is, and is taken to have always been, invalid and unenforceable to the specified extent; and
- (b) the State/Territory entity must, within the specified period, notify the foreign entity that:
 - (i) a declaration is in force under this subsection in relation to the arrangement; and
 - (ii) the arrangement is invalid and unenforceable, to the specified extent;and give the foreign entity a copy of the declaration; and
- (c) the State/Territory entity must, as soon as practicable after complying with paragraph (b), notify the Minister, in writing, of its compliance with that paragraph; and
- (d) the State/Territory entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; or
 - (iii) hold out, or conduct itself on the basis, that the arrangement is valid or enforceable; and
- (e) the foreign entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement; or
 - (iii) hold out in Australia, or conduct itself in Australia on the basis, that the arrangement is valid or enforceable.

The declaration in relation to paragraph (a) has effect accordingly.

Declaration requiring variation or termination of arrangement

- (3) The Minister may make a written declaration that:
 - (a) the State/Territory entity must, within the specified period, notify the foreign entity that:

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- (i) a declaration is in force under this subsection in relation to the arrangement; and
- (ii) the arrangement is required to be varied or terminated in accordance with any specified requirements; and give the foreign entity a copy of the declaration; and
- (b) the State/Territory entity must, in accordance with any specified requirements, vary or terminate the arrangement; and
- (c) the State/Territory entity must, as soon as practicable after complying with paragraph (a) or (b), notify the Minister, in writing, of its compliance with that paragraph; and
- (d) the State/Territory entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
- (e) the foreign entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (4) The State/Territory entity must comply with the declaration to the extent that it applies to the entity.
- (5) The foreign entity must comply with the declaration:
 - (a) if it has been given a copy of the declaration as required by paragraph (2)(b) or (3)(a); and
 - (b) to the extent that the declaration applies to the entity.

Matters relating to declaration

- (6) For the purposes of paragraph (3)(b), the declaration may require that the arrangement be varied or terminated:

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Section 42

- (a) in accordance with the Australian law; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with both the Australian law and other requirements.
- (7) A declaration made under subsection (2) or (3) is not a legislative instrument.

42 Foreign arrangements that are legally binding under foreign law

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) in relation to an arrangement between a State/Territory entity and a foreign entity if:
- (a) subsection 40(1) is satisfied in relation to the arrangement; and
 - (b) the arrangement is legally binding under a foreign law.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) (see section 51).

Note 2: Section 44 deals with general matters about the declaration (such as revocation and giving notice to the State/Territory entity).

Declaration requiring variation or termination of arrangement

- (2) The Minister may make a written declaration that:
- (a) the State/Territory entity must, within the specified period, notify the foreign entity that:
 - (i) a declaration is in force under this subsection in relation to the arrangement; and
 - (ii) the arrangement is required to be varied or terminated in accordance with any specified requirements; and give the foreign entity a copy of the declaration; and
 - (b) the State/Territory entity must, in accordance with any specified requirements, vary or terminate the arrangement; and

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- (c) the State/Territory entity must, as soon as practicable after complying with paragraph (a) or (b), notify the Minister, in writing, of its compliance with that paragraph; and
- (d) the State/Territory entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
- (e) the foreign entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (3) The State/Territory entity must comply with the declaration to the extent that it applies to the entity.
- (4) The foreign entity must comply with the declaration:
 - (a) if it has been given a copy of the declaration as required by paragraph (2)(a); and
 - (b) to the extent that the declaration applies to the entity.

Matters relating to declaration

- (5) For the purposes of paragraph (2)(b), the declaration may require that the arrangement be varied or terminated:
 - (a) in accordance with the foreign law; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with both the foreign law and other requirements.
- (6) A declaration made under subsection (2) is not a legislative instrument.

The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**
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Subdivision C—Declarations about non-legally binding foreign arrangements

43 Foreign arrangements that are not legally binding

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) or (3) in relation to an arrangement between a State/Territory entity and a foreign entity if:
- (a) subsection 40(1) is satisfied in relation to the arrangement; and
 - (b) the arrangement is not legally binding.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) or (3) (see section 51).

Note 2: Section 44 deals with general matters about the declaration (such as revocation and giving notice to the State/Territory entity).

Declaration that arrangement is not in operation

- (2) The Minister may make a written declaration that:
- (a) the arrangement:
 - (i) is not in operation, to the specified extent and from the specified day; or
 - (ii) if the arrangement was entered in contravention of subsection 36(3)—is not, and is taken never to have been, in operation to the specified extent; and
 - (b) the State/Territory entity must, within the specified period notify the foreign entity that:
 - (i) a declaration is in force under this subsection in relation to the arrangement; and
 - (ii) the arrangement is not in operation, to the specified extent;and give the foreign entity a copy of the declaration; and

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- (c) the State/Territory entity must, as soon as practicable after complying with paragraph (b), notify the Minister, in writing, of its compliance with that paragraph; and
- (d) the State/Territory entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; or
 - (iii) hold out, or conduct itself on the basis, that the arrangement is in operation; and
- (e) the foreign entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement; or
 - (iii) hold out in Australia, or conduct itself in Australia on the basis, that the arrangement is in operation.

The declaration in relation to paragraph (a) has effect accordingly.

Declaration requiring variation or termination of arrangement

- (3) The Minister may make a written declaration that:
 - (a) the State/Territory entity must, within the specified period, notify the foreign entity that:
 - (i) a declaration is in force under this subsection in relation to the arrangement; and
 - (ii) the arrangement is required to be varied or terminated in accordance with any specified requirements;and give the foreign entity a copy of the declaration; and
 - (b) the State/Territory entity must, in accordance with any specified requirements, vary or terminate the arrangement; and
 - (c) the State/Territory entity must, as soon as practicable after complying with paragraph (a) or (b), notify the Minister, in writing, of its compliance with that paragraph; and

- (d) the State/Territory entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
- (e) the foreign entity must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (4) The State/Territory entity must comply with the declaration to the extent that it applies to the entity.
- (5) The foreign entity must comply with the declaration:
 - (a) if it has been given a copy of the declaration as required by paragraph (2)(b) or (3)(a); and
 - (b) to the extent that the declaration applies to the entity.

Matters relating to declaration

- (6) For the purposes of paragraph (3)(b), the declaration may require that the arrangement be varied or terminated:
 - (a) in accordance with any variation or termination clause of the arrangement; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with any variation or termination clause and other requirements.
- (7) A declaration made under subsection (2) or (3) is not a legislative instrument.

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Subdivision D—Matters relating to declarations under this Division

44 Matters relating to declarations about foreign arrangements

When this section applies

- (1) This section applies if the Minister makes a declaration under subsection 41(2) or (3), 42(2) or 43(2) or (3) in relation to an arrangement between a State/Territory entity and a foreign entity.

When declaration comes into force

- (2) The declaration must specify the day the declaration comes into force.

Revoking declaration

- (3) The Minister may revoke the declaration if the Minister ceases to be satisfied of the matters on which the declaration was made.
- (4) However, the Minister may not revoke the declaration if it has already come into force.
- (5) If the Minister revokes the declaration, then the Minister must revoke any declaration made under subsection 46(2) or (3), 47(2) or 48(2) or (3) in relation to a subsidiary arrangement of the arrangement.

Notice of declaration

- (6) The Minister must, as soon as practicable after making the declaration, give the State/Territory entity a written notice under this subsection that:
 - (a) states the Minister's decision to make the declaration; and
 - (b) is accompanied by a copy of the declaration; and
 - (c) complies with any requirements prescribed by the rules.

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Notice of revocation of declaration

- (7) If, under subsection (3), the Minister revokes the declaration, then the Minister must, as soon as practicable, give the State/Territory entity a written notice that states that the declaration is revoked.

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Division 3—The Minister's power to make declarations about subsidiary arrangements that are in operation

Subdivision A—When the Minister may make declarations about subsidiary arrangements

45 When the Minister may make declarations under this Division

When the Minister may make declaration

- (1) The Minister may make a declaration under this Division in relation to a subsidiary arrangement of a foreign arrangement if:
- (a) any of the following apply to the foreign arrangement:
 - (i) a declaration is in force under subsection 41(2) or (3), 42(2) or 43(2) or (3) in relation to the foreign arrangement;
 - (ii) the foreign arrangement was entered in contravention of subsection 22(1) or 36(3);
 - (iii) clause 4, 5 or 6 of Schedule 1 applies to the foreign arrangement; and
 - (b) the Minister is satisfied that the subsidiary arrangement:
 - (i) adversely affects, or is likely to adversely affect, Australia's foreign relations; or
 - (ii) is, or is likely to be, inconsistent with Australia's foreign policy.

Note: The Minister must take into account certain matters when making a decision to make a declaration under this Division (see section 51).

Matters that are not relevant

- (2) The Minister may make the declaration, irrespective of whether:
- (a) the subsidiary arrangement was entered before or after the commencement day; or

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- (b) the Minister previously decided:
 - (i) not to make a declaration under this Division in relation to the subsidiary arrangement; or
 - (ii) to make a different declaration under this Division in relation to the subsidiary arrangement.

Subdivision B—Declarations about legally binding subsidiary arrangements

46 Subsidiary arrangements that are legally binding under Australian law

When the Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) or (3) in relation to a subsidiary arrangement of a foreign arrangement if:
 - (a) subsection 45(1) is satisfied in relation to the subsidiary arrangement; and
 - (b) apart from the declaration, the subsidiary arrangement would be legally binding under an Australian law.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) or (3) (see section 51).

Note 2: Section 49 deals with general matters about the declaration (such as revocation and giving notice to the parties).

Declaration that arrangement is invalid and unenforceable

- (2) The Minister may make a written declaration that:
 - (a) the subsidiary arrangement:
 - (i) is invalid and unenforceable to the specified extent and from the specified day; or
 - (ii) if the foreign arrangement was entered in contravention of subsection 22(1) or 36(3)—is, and is taken to have always been, invalid and unenforceable to the specified extent; and

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- (b) each party to the subsidiary arrangement that is a regulated Australian party must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; or
 - (iii) hold out, or conduct itself on the basis, that the arrangement is valid or enforceable; and
 - (c) each other party to the subsidiary arrangement must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement; or
 - (iii) hold out in Australia, or conduct itself in Australia on the basis, that the arrangement is valid or enforceable.
- The declaration in relation to paragraph (a) has effect accordingly.

Declaration requiring variation or termination of arrangement

- (3) The Minister may make a written declaration that:
 - (a) each party to the subsidiary arrangement that is a regulated Australian party must:
 - (i) vary or terminate the arrangement in accordance with any specified requirements; and
 - (ii) as soon as practicable after complying with subparagraph (i), notify the Minister, in writing, of its compliance with that subparagraph; and
 - (b) each party to the subsidiary arrangement that is a regulated Australian party must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
 - (c) each other party to the subsidiary arrangement must not, to the specified extent and from the specified day:

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- (i) give effect to the arrangement in Australia; or
- (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (4) Each party to the subsidiary arrangement must comply with the declaration:
 - (a) if the Minister has given the party a copy of the declaration under subsection 49(5); and
 - (b) to the extent that the declaration applies to the party.

Matters relating to declaration

- (5) For the purposes of paragraph (3)(a), the declaration may require that the subsidiary arrangement be varied or terminated:
 - (a) in accordance with the Australian law; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with both the Australian law and other requirements.
- (6) The Minister may make a declaration under subsection (2) or (3) only to the extent that the subsidiary arrangement was entered under the auspices of the foreign arrangement.
- (7) A declaration made under subsection (2) or (3) is not a legislative instrument.

47 Subsidiary arrangements that are legally binding under foreign law

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) in relation to a subsidiary arrangement of a foreign arrangement if:
 - (a) subsection 45(1) is satisfied in relation to the subsidiary arrangement; and

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(b) the subsidiary arrangement is legally binding under a foreign law.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) (see section 51).

Note 2: Section 49 deals with general matters about the declaration (such as revocation and giving notice to the parties).

Declaration requiring variation or termination of arrangement

- (2) The Minister may make a written declaration that:
- (a) each party to the subsidiary arrangement that is a regulated Australian party must:
 - (i) vary or terminate the arrangement in accordance with any specified requirements; and
 - (ii) as soon as practicable after complying with subparagraph (i), notify the Minister, in writing, of its compliance with that subparagraph; and
 - (b) each party to the subsidiary arrangement that is a regulated Australian party must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
 - (c) each other party to the subsidiary arrangement must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (3) Each party to the subsidiary arrangement must comply with the declaration:
- (a) if the Minister has given the party a copy of the declaration under subsection 49(5); and
 - (b) to the extent that the declaration applies to the party.

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Matters relating to declaration

- (4) For the purposes of paragraph (2)(a), the declaration may require that the subsidiary arrangement be varied or terminated:
 - (a) in accordance with the foreign law; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with both the foreign law and other requirements.
- (5) The Minister may make a declaration under subsection (2) only to the extent that the subsidiary arrangement was entered under the auspices of the foreign arrangement.
- (6) A declaration made under subsection (2) is not a legislative instrument.

Subdivision C—Declarations about non-legally binding subsidiary arrangements

48 Subsidiary arrangements that are not legally binding

When Minister may make declaration

- (1) The Minister may make a declaration under subsection (2) or (3) in relation to an arrangement if:
 - (a) subsection 45(1) is satisfied in relation to the subsidiary arrangement; and
 - (b) the subsidiary arrangement is not legally binding.

Note 1: The Minister must take into account certain matters when making a decision to make a declaration under subsection (2) or (3) (see section 51).

Note 2: Section 49 deals with general matters about the declaration (such as revocation and giving notice to the parties).

Declaration that arrangement is not in operation

- (2) The Minister may make a written declaration that:

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- (a) the subsidiary arrangement:
 - (i) is not in operation, to the specified extent and from the specified day; or
 - (ii) if the foreign arrangement was entered in contravention of subsection 22(1) or 36(3)—is not, and is taken never to have been, in operation to the specified extent; and
- (b) each party to the subsidiary arrangement that is a regulated Australian party must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; or
 - (iii) hold out, or conduct itself on the basis, that the arrangement is in operation; and
- (c) each other party to the subsidiary arrangement must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement; or
 - (iii) hold out in Australia, or conduct itself in Australia on the basis, that the arrangement is in operation.

The declaration in relation to paragraph (a) has effect accordingly.

Declaration requiring variation or termination of arrangement

- (3) The Minister may make a written declaration that:
 - (a) each party to the subsidiary arrangement that is a regulated Australian party must:
 - (i) vary or terminate the arrangement in accordance with any specified requirements; and
 - (ii) as soon as practicable after complying with subparagraph (i), notify the Minister, in writing, of its compliance with that subparagraph; and

- (b) each party to the subsidiary arrangement that is a regulated Australian party must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement; or
 - (ii) hold out, or conduct itself on the basis, that it can give effect to the arrangement; and
- (c) each other party to the subsidiary arrangement must not, to the specified extent and from the specified day:
 - (i) give effect to the arrangement in Australia; or
 - (ii) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.

Compliance with declaration

- (4) Each party to the subsidiary arrangement must comply with the declaration:
 - (a) if the Minister has given the party a copy of the declaration under subsection 49(5); and
 - (b) to the extent that the declaration applies to the party.

Matters relating to declaration

- (5) For the purposes of paragraph (3)(a), the declaration may require that the subsidiary arrangement be varied or terminated:
 - (a) in accordance with any variation or termination clause of the arrangement; or
 - (b) in accordance with any other requirements; or
 - (c) in accordance with any variation or termination clause and other requirements.
- (6) The Minister may make a declaration under subsection (2) or (3) only to the extent that the subsidiary arrangement was entered under the auspices of the foreign arrangement.
- (7) A declaration made under subsection (2) or (3) is not a legislative instrument.

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Subdivision D—Matters relating to declarations under this Division

49 Matters relating to declarations about subsidiary arrangements

When this section applies

- (1) This section applies if the Minister makes a declaration under subsection 46(2) or (3), 47(2) or 48(2) or (3) in relation to a subsidiary arrangement.

When declaration comes into force

- (2) The declaration must specify the day the declaration comes into force.

Revoking declaration

- (3) The Minister may revoke the declaration if the Minister ceases to be satisfied of the matters on which the declaration was made.
- (4) However, the Minister may not revoke the declaration if it has already come into force.

Notice of declaration

- (5) The Minister must, as soon as practicable after making the declaration, take reasonable steps to give the parties to the subsidiary arrangement a written notice under this subsection that:
 - (a) states the Minister's decision to make the declaration; and
 - (b) is accompanied by a copy of the declaration; and
 - (c) complies with any requirements prescribed by the rules.

Notice of revocation of declaration

- (6) If, under subsection (3), the Minister revokes the declaration, then the Minister must, as soon as practicable, take reasonable steps to

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give the parties to the subsidiary arrangement a written notice that states that the declaration is revoked.

Part 5 Other matters

Division 1 Simplified outline of this Part

Section 50

Part 5—Other matters

Division 1—Simplified outline of this Part

50 Simplified outline of this Part

This Part mostly deals with general matters that are relevant to this Act.

The Minister must take into account certain matters when making declarations under this Act. Those matters are set out in section 51.

If the Minister is satisfied that an entity has contravened, is contravening, or is proposing to contravene particular provisions of this Act, the Minister may apply to the court for an injunction to require the entity to comply with the provision.

The Minister must keep a Public Register and make that register available for public inspection on the internet. Broadly, the Public Register must contain particular information about foreign arrangements to which this Act applies, and their subsidiary arrangements. Some information must not be included on the Public Register (such as commercially sensitive information).

The Minister may make rules for the purposes of this Act.

Generally, this Act applies to the Australian National University as if it were a State/Territory entity.

This Part also deals with a number of miscellaneous matters (such as the Minister's ability to delegate the Minister's powers and functions under this Act, the extraterritorial application of this Act, approved forms and approved ways of giving notices to the Minister).

Division 2—Matters that the Minister must take into account when making declarations under this Act

51 Matters that the Minister must take into account

- (1) This section applies if the Minister is making a decision to make a declaration in relation to an arrangement under:
 - (a) subsection 35(2) (which is about declarations that prohibit State/Territory entities from negotiating non-core foreign arrangements); or
 - (b) subsection 36(2) (which is about declarations that prohibit State/Territory entities from entering non-core foreign arrangements); or
 - (c) subsection 41(2) or (3) (which are about declarations that affect foreign arrangements that are legally binding under Australian law); or
 - (d) subsection 42(2) (which is about declarations that affect foreign arrangements that are legally binding under foreign law); or
 - (e) subsection 43(2) or (3) (which are about declarations that affect foreign arrangements that are not legally binding); or
 - (f) subsection 46(2) or (3) (which are about declarations that affect subsidiary arrangements that are legally binding under Australian law); or
 - (g) subsection 47(2) (which is about declarations that affect subsidiary arrangements that are legally binding under foreign law); or
 - (h) subsection 48(2) or (3) (which are about declarations that affect subsidiary arrangements that are not legally binding).
- (2) When making the decision, the Minister must take into account the following matters in relation to the State or Territory to which the arrangement relates:
 - (a) the importance of the arrangement in assisting or enhancing the functioning of the State or Territory;

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Division 2 Matters that the Minister must take into account when making declarations under this Act

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- (b) the extent of the performance of the arrangement;
 - (c) whether the declaration would impair the continued existence of the State or Territory as an independent entity;
 - (d) whether the declaration would significantly curtail or interfere with the capacity of the State or Territory to function as a government;
 - (e) whether the declaration would have significant financial consequences for the State or Territory;
 - (f) whether the declaration would impede the acquisition of goods or services by the State or Territory, including, for example, for the purposes of infrastructure;
 - (g) whether the declaration would have an effect on the capacity of the State or Territory to complete an existing project that is to be delivered under the arrangement (either at all, or within the intended timeframe);
 - (h) any other matter that the Minister considers is relevant; to the extent that information concerning those matters has been given to the Minister by the State or Territory in accordance with subsection (3).
- (3) A State or Territory may give the Minister information concerning the matters referred to in subsection (2) in relation to an arrangement. However, the information may only be given:
- (a) in writing; and
 - (b) in the approved form (if any); and
 - (c) in the approved way (if any).

Division 3—Enforcement

52 Injunctions

- (1) This section applies if the Minister is satisfied that an entity has contravened, is contravening, or is proposing to contravene one or more of the following provisions:
- (a) subsection 15(1) (which deals with when negotiations about core foreign arrangements are prohibited);
 - (b) subsection 16(1) (which deals with the requirement to notify the Minister about negotiations of core foreign arrangements);
 - (c) subsection 22(1) (which deals with the prohibition on entering core foreign arrangements);
 - (d) subsection 23(1) (which deals with the requirement to notify the Minister about proposals to enter core foreign arrangements);
 - (e) subsection 29(1) (which deals with the requirement to notify the Minister about entering core foreign arrangements);
 - (f) subsection 30(3), (4) or (5), 31(2), (3) or (4) or 32(3), (4) or (5) (which deal with requirements relating to core foreign arrangements that have been unlawfully entered);
 - (g) subsection 34(1) (which deals with the requirement to notify the Minister about proposals to enter non-core foreign arrangements);
 - (h) subsection 35(3) (which prohibits negotiating arrangements that are non-core foreign arrangements in contravention of a declaration);
 - (i) subsection 36(3) (which prohibits entering non-core foreign arrangements in contravention of a declaration);
 - (j) subsection 38(1) (which deals with the requirement to notify the Minister about entering non-core foreign arrangements);
 - (k) subsection 41(4) or (5), 42(3) or (4) or 43(4) or (5) (which deal with requirements in declarations about foreign arrangements);

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- (l) subsection 46(4), 47(3) or 48(4) (which deal with requirements about subsidiary arrangements);
 - (m) subclause 2(3) of Schedule 1 (which deals with the requirement to notify the Minister about pre-existing foreign arrangements that are core foreign arrangements);
 - (n) subclause 3(2) of Schedule 1 (which deals with the requirement to notify the Minister about pre-existing foreign arrangements that are non-core foreign arrangements);
 - (o) subclause 4(3), (4) or (5), 5(2), (3) or (4) or 6(3), (4) or (5) of Schedule 1 (which deal with contraventions of the requirement to notify the Minister about pre-existing foreign arrangements that are core foreign arrangements).
- (2) The Minister may apply to the court for an injunction to require the entity to comply with the relevant provision.
- (3) If the court is satisfied that the entity has contravened, is contravening, or is proposing to contravene the relevant provision, the court must grant an injunction on such terms as the court considers appropriate.

Division 4—The Public Register

53 The Minister must keep a public register

- (1) The Minister must keep a register (the ***Public Register***) of information of the kind referred to in subsection (2) relating to:
 - (a) each foreign arrangement for which:
 - (i) a State/Territory entity has given a notice to the Minister under this Act; or
 - (ii) the Minister has made a decision under this Act; or
 - (iii) section 30, 31 or 32, or clause 4, 5 or 6 of Schedule 1, has applied, but only if the Minister is aware of the application of those sections to the foreign arrangement; and
 - (b) each subsidiary arrangement of a foreign arrangement referred to in paragraph (a) for which:
 - (i) a State/Territory entity has given a notice to the Minister under this Act; or
 - (ii) the Minister has made a decision about under Division 3 of Part 4.
- (2) The Minister must include on the Public Register the following information for each foreign arrangement and subsidiary arrangement referred to in subsection (1):
 - (a) the title of the arrangement;
 - (b) the parties to the arrangement;
 - (c) whether any decisions were made by the Minister in relation to the arrangement;
 - (d) any information prescribed by the rules.
- (3) However, the following information must not be included on the Public Register:
 - (a) information that the Minister is satisfied:
 - (i) is commercially sensitive; or

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- (ii) would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet of a State or Territory; or
 - (iii) would disclose the deliberations of a meeting of the Cabinet of a State or Territory; or
 - (iv) is the subject of legal professional privilege; or
 - (v) is protected by public interest immunity; or
 - (vi) affects national security; or
 - (b) information about notices given by a core State/Territory entity under subsection 16(1); or
 - (c) information about the Minister's recommended changes to a foreign arrangement (as referred to in paragraph 27(b)) that is included in a notice given by the Minister under section 27; or
 - (d) any information prescribed by the rules.
- (4) The Public Register must be made available for public inspection on the internet.
- (5) The Minister may correct or update information on the Public Register.

Division 4A—Annual report

53A Annual report

- (1) The Minister must cause to be prepared, as soon as practicable after the end of each calendar year, an annual report on the exercise of the Minister's decision-making powers under this Act during the year.
- (2) Without limiting subsection (1), the report must include the following:
 - (a) statistical information about the decisions made by the Minister under the Act during the year, including the total number of decisions, the total number of decisions in each class of decision, and the outcomes of the decisions;
 - (b) a summary of the details of each of the decisions made by the Minister under the Act during the year;
 - (c) an outline of the engagement that has occurred during the year with entities covered by the Act to articulate and explain to those entities Australia's foreign policy and how they should engage with foreign entities in Australia's national interest.
- (3) A copy of the report must be given to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat as secret any part of the report that is not tabled in a House of the Parliament.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the end of the year to which the report relates.
- (5) However, before tabling the report the Minister may make such redactions to the report as the Minister considers necessary in order to avoid prejudice to security, the defence of Australia, Australia's relations with other countries, law enforcement operations or the privacy of individuals.

Division 5—The rules

54 The rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

Division 6—The Australian National University

55 Application of this Act to the Australian National University

- (1) This Act applies in relation to the Australian National University (the *ANU*) as if it were a State/Territory entity covered by paragraph 7(e) (which covers universities established under a law of a State or Territory).
- (2) However, if the ANU is the only State/Territory entity that is a party, or proposed party, to a foreign arrangement, then section 51 does not apply when the Minister is making a decision to make a declaration in relation to:
 - (a) the foreign arrangement; or
 - (b) a subsidiary arrangement of the foreign arrangement.

Division 7—Other matters

56 Delegation by the Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's powers or functions under this Act to:
 - (a) the Secretary to the Department; or
 - (b) a person who holds or performs the duties of an SES officer in the Department.
- (2) However, the Minister may not delegate any of the Minister's powers or functions under:
 - (a) Part 2 (which deals with negotiating and entering core foreign arrangements); or
 - (b) Part 4 in relation to a core foreign arrangement; or
 - (c) section 54 (which deals with making the rules).
- (3) In exercising a power or performing a function under a delegation under subsection (1), the delegate must comply with any directions of the Minister.

57 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

58 Requirements in relation to procedural fairness

The Minister is not required to observe any requirements of procedural fairness in exercising a power or performing a function under this Act.

59 Extraterritorial application and extension to external Territories

- (1) This Act applies both within and outside Australia.
- (2) This Act extends to every external Territory.

60 Crown to be bound

This Act binds the Crown in each of its capacities.

61 Concurrent operation with State and Territory laws

This Act does not exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

62 Approved forms

The Minister may, in writing, approve one or more forms for the purposes of a provision of this Act that provides for something to be done in an approved form.

63 Approved ways of giving notices to the Minister

The Minister may, in writing, approve one or more ways in which a State/Territory entity may or must give a notice for the purposes of a provision of this Act that provides for a notice to be given in an approved way.

63A Review of operation of Act

- (1) The Minister must cause a review of the operation of this Act to be commenced as soon as possible after the third anniversary of the commencement of Parts 2 and 3.

Section 64

Note: The reference to this Act includes the rules (see the definition of *this Act* in section 4).

- (2) The review must include:
 - (a) whether it is necessary or desirable to do anything to improve the operation of this Act; and
 - (b) the effectiveness of this Act in meeting the object of this Act; and
 - (c) whether this Act should be amended to implement review recommendations; and
 - (d) whether a further review of this Act should be undertaken, and if so, when.
- (3) The persons undertaking the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

64 Schedule 1

Schedule 1 has effect.

Schedule 1—Transitional requirements relating to pre-existing foreign arrangements

Note: See section 64.

Division 1—Simplified outline of this Schedule

1 Simplified outline of this Schedule

A State/Territory entity is required to notify the Minister of any foreign arrangements that are in operation on the commencement day, or that come into operation before the day Part 2 commences.

If the foreign arrangement is a core foreign arrangement, then the State/Territory entity must notify the Minister before the end of 3 months, or such longer period (if any) prescribed by the rules, after the commencement day. Failure to meet the minimum notification requirements for a core foreign arrangement will result in the arrangement becoming invalid and unenforceable, becoming required to be terminated, or ceasing to be in operation (depending on the nature of the arrangement). The State/Territory entity and the foreign entity that are parties to the arrangement will also be prohibited from giving effect to the arrangement and from holding out that they are able to give effect to the arrangement. These consequences will apply automatically and without the involvement of the Minister (see clauses 4 to 6).

If the foreign arrangement is a non-core arrangement, then the State/Territory entity must notify the Minister about the arrangement before the end of 6 months, or such longer period (if any) prescribed by the rules, after the commencement day.

Division 2—Requirement to notify the Minister about pre-existing foreign arrangements

2 Requirement to notify the Minister about pre-existing foreign arrangements that are core foreign arrangements

- (1) This clause applies to a pre-existing foreign arrangement between a core State/Territory entity and a core foreign entity.
- (2) A *pre-existing foreign arrangement* is a foreign arrangement that:
 - (a) is in operation on the commencement day; or
 - (b) comes into operation during the period that:
 - (i) starts on the day after the commencement day; and
 - (ii) ends on the day before Part 2 of this Act commences.
- (3) The core State/Territory entity must give a notice to the Minister:
 - (a) in accordance with subclause (4); and
 - (b) in accordance with subclause (5);before the end of the period that:
 - (c) starts on the commencement day; and
 - (d) ends 3 months, or such longer period (if any) prescribed by the rules, after the commencement day.

Note: If the core State/Territory entity fails to give a notice in accordance with subclause (4) before the end of that period, then clause 4, 5 or 6 automatically applies to the pre-existing foreign arrangement to make it invalid, unenforceable or not in operation, or to require the State/Territory entity to terminate it. Those clauses also prohibit the parties from giving effect to the arrangement.
- (4) The notice must:
 - (a) be in writing; and
 - (b) specify the arrangement; and
 - (c) be accompanied by a copy of the arrangement.
- (5) The notice must also:
 - (a) be in the approved form (if any); and

- (b) if the core State/Territory entity knows that there is another arrangement that is a subsidiary arrangement of the arrangement:
 - (i) include details about the subsidiary arrangement; and
 - (ii) if the core State/Territory entity has a copy of the subsidiary arrangement—be accompanied by a copy of the subsidiary arrangement; and
 - (c) include any information prescribed by the rules; and
 - (d) be accompanied by any documents prescribed by the rules; and
 - (e) be given in the approved way (if any).
- (6) Subclause (3) does not apply to an exempt arrangement.

3 Requirement to notify the Minister about pre-existing foreign arrangements that are non-core foreign arrangements

- (1) This clause applies to a pre-existing foreign arrangement between a State/Territory entity and a foreign entity if the arrangement is a non-core foreign arrangement.
- (2) The State/Territory entity must give a notice to the Minister in accordance with subclause (3) before the end of the period that:
 - (a) starts on the commencement day; and
 - (b) ends 6 months, or such longer period (if any) prescribed by the rules, after the commencement day.
- (3) The notice must:
 - (a) be in writing; and
 - (b) be in the approved form (if any); and
 - (c) be accompanied by a copy of the arrangement; and
 - (d) if the State/Territory entity knows that there is another arrangement that is a subsidiary arrangement of the arrangement:
 - (i) include details about the subsidiary arrangement; and

Schedule 1 Transitional requirements relating to pre-existing foreign arrangements

Division 2 Requirement to notify the Minister about pre-existing foreign arrangements

Clause 3

- (ii) if the State/Territory entity has a copy of the subsidiary arrangement—be accompanied by a copy of the subsidiary arrangement; and
 - (e) include any information prescribed by the rules; and
 - (f) be accompanied by any documents prescribed by the rules; and
 - (g) be given in the approved way (if any).
- (4) Subclause (2) does not apply to an exempt arrangement.

**Division 3—Consequences for failing to notify the Minister
about pre-existing foreign arrangements that are
core foreign arrangements**

**Subdivision A—Pre-existing foreign arrangements that are
legally binding**

4 Arrangements that are legally binding under Australian law

- (1) If:
 - (a) a core State/Territory entity contravenes paragraph 2(3)(a) in relation to a pre-existing foreign arrangement between the State/Territory entity and a core foreign entity; and
 - (b) apart from this clause, the arrangement would be legally binding under an Australian law;then this clause applies to the arrangement.
- (2) The arrangement is invalid and unenforceable after the contravention.
- (3) The core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules, notify the core foreign entity that:
 - (i) this clause applies to the arrangement; and
 - (ii) the arrangement is invalid and unenforceable; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
- (4) The core State/Territory entity must not, at any time after the contravention:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is valid or enforceable.

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Division 3 Consequences for failing to notify the Minister about pre-existing foreign arrangements that are core foreign arrangements

Clause 5

- (5) The core foreign entity must not, from the time it is notified under subclause (3) that this clause applies to the arrangement:
 - (a) give effect to the arrangement in Australia; or
 - (b) hold out in Australia, or conduct itself in Australia on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is valid or enforceable.
- (6) This clause does not apply to an exempt arrangement.

5 Arrangements that are legally binding under foreign law

- (1) If:
 - (a) a core State/Territory entity contravenes paragraph 2(3)(a) in relation to a pre-existing foreign arrangement between the State/Territory entity and a core foreign entity; and
 - (b) the arrangement is legally binding under a foreign law;then this clause applies to the arrangement.
- (2) The core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules:
 - (i) notify the core foreign entity that this clause applies to the arrangement; and
 - (ii) take steps to terminate the arrangement in accordance with the foreign law; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
- (3) The core State/Territory entity must not, at any time after the contravention:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that it can give effect to the arrangement.

- (4) The core foreign entity must not, from the time it is notified under subclause (2) that this clause applies to the arrangement:
 - (a) give effect to the arrangement in Australia; or
 - (b) hold out in Australia, or conduct itself in Australia on the basis, that it can give effect to the arrangement.
- (5) This clause does not apply to an exempt arrangement.

Subdivision B—Pre-existing foreign arrangements that are not legally binding

6 Arrangements that are not legally binding

- (1) If:
 - (a) a core State/Territory entity contravenes paragraph 2(3)(a) in relation to an arrangement between the State/Territory entity and a core foreign entity; and
 - (b) the arrangement is not legally binding;then this clause applies to the arrangement.
 - (2) The arrangement is not in operation after the contravention.
 - (3) The core State/Territory entity must:
 - (a) within 14 days, or such longer period (if any) prescribed by the rules, notify the core foreign entity that:
 - (i) this clause applies to the arrangement; and
 - (ii) the arrangement is not in operation; and
 - (b) as soon as practicable after it has complied with paragraph (a), notify the Minister, in writing, of its compliance with that paragraph.
 - (4) The core State/Territory entity must not, at any time after the contravention:
 - (a) give effect to the arrangement; or
 - (b) hold out, or conduct itself on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is in operation.
-

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Division 3 Consequences for failing to notify the Minister about pre-existing foreign arrangements that are core foreign arrangements

Clause 6

- (5) The core foreign entity must not, from the time it is notified under subclause (3) that this clause applies to the arrangement:
 - (a) give effect to the arrangement in Australia; or
 - (b) hold out in Australia, or conduct itself in Australia on the basis, that:
 - (i) it can give effect to the arrangement; or
 - (ii) the arrangement is in operation.
- (6) This clause does not apply to an exempt arrangement

*[Minister's second reading speech made in—
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(119/20)
