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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No.     , 2020**

*(Foreign Affairs and Trade)*

**A Bill for an Act to protect and manage Australia's  
foreign relations, and for related purposes**



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1 **A Bill for an Act to protect and manage Australia’s**  
2 **foreign relations, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**

5 **Division 1—Preliminary matters**  
6

7 **1 Short title**

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

Section 2

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1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.  
6

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Part 1 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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.	
3. Parts 4 and 5 and Schedule 1	The day this Act receives the Royal Assent.	

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

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

13 **3 Simplified outline of this Act**

14 *Foreign arrangements*

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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 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

**Section 4**

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1 conditions need to be satisfied before the Minister can make the  
2 declaration. Part 4 deals with these declarations.

3 *Subsidiary arrangements of foreign arrangements*

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

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

12 *Variations of foreign arrangements*

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

18 *Transitional requirements for pre-existing foreign arrangements*

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

24 **4 Definitions**

25 In this Act:

26 ***arrangement***: see subsection 9(1).

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

- 1            ***Australian law*** means a law of the Commonwealth, a State or a  
2            Territory.
- 3            ***Australia's foreign policy***: see subsection 5(2).
- 4            ***commencement day*** means the day section 1 commences.
- 5            ***core foreign arrangement***: see subsection 10(2).
- 6            ***core foreign entity***: see subsection 10(4).
- 7            ***core State/Territory entity***: see subsection 10(3).
- 8            ***court*** means the High Court of Australia or the Federal Court of  
9            Australia.
- 10           ***exempt arrangement*** means an arrangement of a kind that is  
11           prescribed by the rules to be an exempt arrangement.
- 12           ***foreign arrangement***: see subsection 6(2).
- 13           ***foreign country*** means any country that is outside Australia and  
14           the external Territories, whether or not it is an independent  
15           sovereign state.
- 16           ***foreign entity***: see subsection 8(1).
- 17           ***foreign law*** means a law of a foreign country, or part of a foreign  
18           country.
- 19           ***gives effect to***: a party to an arrangement ***gives effect to*** the  
20           arrangement if the party:
- 21           (a) gives effect to the arrangement in any way and to any extent,  
22           whether directly or indirectly; or
- 23           (b) takes any action for the purposes of implementing the  
24           arrangement (whether or not the arrangement contemplates  
25           that the action would be taken for those purposes), including,  
26           for example, the following action:
- 27           (i) participating in discussions, forums, exchanges, visits or  
28           other dealings contemplated by the arrangement;

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- 1 (ii) promoting projects or other matters contemplated by the  
2 arrangement;
- 3 (iii) engaging in activities contemplated by the arrangement;
- 4 (iv) entering, or encouraging other entities to enter, other  
5 arrangements contemplated by the arrangement; or
- 6 (c) does anything of a kind prescribed by the rules;
- 7 but does not include:
- 8 (d) taking any action to terminate the arrangement; or
- 9 (e) taking any action to vary the arrangement in accordance with  
10 a requirement under this Act; or
- 11 (f) doing anything of a kind prescribed by the rules.
- 12 Paragraphs (a), (b) and (c) do not limit each other.
- 13 **legally binding:** see subsection 9(2).
- 14 **negotiation** of an arrangement means discussions or dealings  
15 between the proposed parties that are directed towards the making  
16 of the arrangement.
- 17 **non-core foreign arrangement** means a foreign arrangement that  
18 is not a core foreign arrangement.
- 19 **pre-existing foreign arrangement:** see subclause 2(2) of  
20 Schedule 1.
- 21 **regulated Australian party** to an arrangement means any of the  
22 following entities that are a party to the arrangement:
- 23 (a) a State/Territory entity;
- 24 (b) an individual who:
- 25 (i) is an Australian citizen; or
- 26 (ii) is a permanent Australian resident;
- 27 (c) an Australian entity (within the meaning of the *Foreign*  
28 *Acquisitions and Takeovers Act 1975*);
- 29 (d) a partnership or an association incorporated or formed under  
30 an Australian law;
- 31 (e) any other entity prescribed by the rules to be a regulated  
32 Australian party;

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

3 **rules** means rules made under subsection 54(1).

4 **State/Territory entity**: see section 7.

5 **subsidiary arrangement**: see subsection 12(1).

6 **terminate** an arrangement includes withdraw from the  
7 arrangement.

8 **Territory** means:

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

12 **this Act** includes the rules.

13 **under the auspices**: see subsection 12(2).

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

1 **Division 2—Core provisions of this Act**

2 **5 Object of this Act**

3 (1) The object of this Act is to ensure that the Commonwealth is able  
4 to protect and manage Australia's foreign relations by ensuring that  
5 any arrangement between a State/Territory entity and a foreign  
6 entity:

7 (a) does not, or is unlikely to, adversely affect Australia's  
8 foreign relations; and

9 (b) is not, or is unlikely to be, inconsistent with Australia's  
10 foreign policy.

11 (2) *Australia's foreign policy* includes policy that the Minister is  
12 satisfied is the Commonwealth's policy on matters that relate to:

13 (a) Australia's foreign relations; or

14 (b) things outside Australia;

15 whether or not the policy:

16 (c) is written or publicly available; or

17 (d) has been formulated, decided upon, or approved by any  
18 particular member or body of the Commonwealth.

19 **6 Foreign arrangements**

20 (1) For the purposes of achieving the objects of this Act, this Act has  
21 provisions that apply to foreign arrangements.

22 (2) A *foreign arrangement* is an arrangement between:

23 (a) a State/Territory entity; and

24 (b) a foreign entity;

25 whether or not other entities are also a party to the arrangement.

26 **7 What are State/Territory entities?**

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

28 (a) a State or Territory;



- 1 (b) the government of a State or Territory;  
2 (c) a Department or agency (however described) that is part of  
3 an entity covered by paragraph (a) or (b);  
4 (d) a body established for the purposes of local government by,  
5 or under a law of a State or a Territory;  
6 (e) a university established by, or under, a law of a State or a  
7 Territory;  
8 (f) an entity that is prescribed by the rules to be a State/Territory  
9 entity;  
10 but does not include:  
11 (g) a corporation that operates on a commercial basis; or  
12 (h) a hospital; or  
13 (i) an entity that is prescribed by the rules as not being a  
14 State/Territory entity.  
15 Paragraphs (a) to (f) do not limit each other.

## 16 **8 What are foreign entities?**

- 17 (1) A *foreign entity* is any of the following entities:  
18 (a) a foreign country;  
19 (b) the national government of a foreign country;  
20 (c) a Department or agency (however described) of an entity  
21 covered by paragraph (a) or (b);  
22 (d) a province, state, self-governing territory, region, local  
23 council, municipality or other political subdivision (by  
24 whatever name known) of a foreign country;  
25 (e) a local council, municipality or other political subdivision  
26 (by whatever name known) of an entity covered by  
27 paragraph (d);  
28 (f) the government of an entity covered by paragraph (d) or (e);  
29 (g) a Department or agency (however described) of an entity  
30 covered by paragraph (d), (e) or (f);  
31 (h) an entity (other than a university) that:  
32 (i) is an authority of an entity covered by paragraph (a),  
33 (b), (d), (e) or (f); and  
34 (ii) is established for a public purpose;
-

**Part 1** Preliminary

**Division 2** Core provisions of this Act

**Section 9**

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- 1 (i) a university that:  
2 (i) is located in a foreign country; and  
3 (ii) does not have institutional autonomy (see  
4 subsection (2));  
5 (j) an entity that is external to Australia and is prescribed by the  
6 rules to be a foreign entity;  
7 but does not include:  
8 (k) a corporation that operates on a commercial basis; or  
9 (l) an entity that is prescribed by the rules as not being a foreign  
10 entity.  
11 Paragraphs (a) to (j) do not limit each other.
- 12 (2) For the purposes of subparagraph (1)(i)(ii), a university does not  
13 have institutional autonomy if, and only if:  
14 (a) the rules prescribe circumstances in which a university is  
15 taken not to have institutional autonomy; and  
16 (b) those circumstances exist in relation to the university.

17 **9 What is an arrangement?**

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

27 **10 Core foreign arrangements**

- 28 (1) For the purposes of achieving the objects of this Act, this Act has  
29 special provisions that apply to core foreign arrangements.
- 30 (2) A **core foreign arrangement** is an arrangement between:

- 1 (a) a core State/Territory entity; and  
2 (b) a core foreign entity;  
3 whether or not other entities are also a party to the arrangement.

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

- 9 (3) A *core State/Territory entity* is an entity covered by  
10 paragraph 7(a), (b) or (c) (even if the entity is also covered by  
11 paragraph 7(d), (e) or (f)).
- 12 (4) A *core foreign entity* is:  
13 (a) an entity covered by paragraph 8(1)(a), (b) or (c) (even if the  
14 entity is also covered by paragraph 8(1)(d), (e), (f), (g), (h),  
15 (i) or (j)); or  
16 (b) an entity that is external to Australia and is prescribed by the  
17 rules to be a core foreign entity;  
18 but does not include a corporation that operates on a commercial  
19 basis.

## 20 **11 Application of this Act to subsidiary arrangements**

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

## 24 **12 What is a subsidiary arrangement?**

- 25 (1) An arrangement is a *subsidiary arrangement* of a foreign  
26 arrangement if:  
27 (a) the arrangement is entered under the auspices of the foreign  
28 arrangement; and  
29 (b) the arrangement is not a foreign arrangement.
- 30 (2) An arrangement is entered *under the auspices* of a foreign  
31 arrangement if the arrangement is entered at the same time, or  
32 after, the foreign arrangement is entered, and:

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- 1 (a) the arrangement is entered for the purposes of implementing  
2 the foreign arrangement, in any way and to any extent,  
3 whether directly or indirectly, and whether or not:  
4 (i) the arrangement refers to the foreign arrangement; or  
5 (ii) the foreign arrangement contemplates the arrangement,  
6 or arrangements of the same kind as the arrangement,  
7 being entered; or  
8 (b) both of the following are satisfied:  
9 (i) the foreign arrangement contemplates the arrangement,  
10 or arrangements of the same kind as the arrangement,  
11 being entered (including, for example, by encouraging  
12 or promoting the arrangement, or arrangements of that  
13 kind, to be entered);  
14 (ii) the arrangement is entered as a consequence of the  
15 foreign arrangement, or of any actions taken under the  
16 foreign arrangement; or  
17 (c) the arrangement and the foreign arrangement have a  
18 relationship of a kind prescribed by the rules.  
19 Paragraphs (a), (b) and (c) do not limit each other.
- 20 (3) For the purposes of subsection (1), it does not matter whether the  
21 parties were aware, when entering the subsidiary arrangement, that  
22 the foreign arrangement:  
23 (a) was entered in contravention of a provision of this Act; or  
24 (b) was, because of the operation of a provision of this Act,  
25 invalid, unenforceable, not in operation, terminated, required  
26 to be terminated, or affected in any other way.

27 **13 Application of this Act to variations of arrangements**

28 *General application to variations of arrangements*

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

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

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

12                   *Additional application for subsidiary arrangements*

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

20                   *Exemptions*

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

24                   *Exceptions*

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

1 **Part 2—Negotiating and entering core foreign**  
2 **arrangements**

3 **Division 1—Simplified outline of this Part**

4 **14 Simplified outline of this Part**

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

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

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

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

19 Otherwise, the Minister must refuse to give approval.

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

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

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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).

1 **Division 2—Negotiating core foreign arrangements**

2 **15 Prohibition on negotiations without the Minister’s approval**

3 (1) A core State/Territory entity must not negotiate an arrangement  
4 with a core foreign entity if the Minister’s approval under  
5 subsection 17(2) or 21(2) is not in force for the negotiation.

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

7 **16 Requirement to notify the Minister about negotiations**

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

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

14 (2) The notice must:  
15 (a) be in writing; and  
16 (b) be in the approved form (if any); and  
17 (c) include any information prescribed by the rules; and  
18 (d) be accompanied by any documents prescribed by the rules;  
19 and  
20 (e) be given in the approved way (if any).

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

22 **17 The Minister’s decision about negotiations**

23 *Minister to make decision about negotiations*

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



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

6 *Approval decision*

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

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

16 *Refusal decision*

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

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

21 *Revocation of approval decision*

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

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

27 *No revocation of refusal decision*

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

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

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1 **18 Notices relating to the Minister's approval under subsection 17(2)**

2 *Notice of approval decision*

3 (1) If the Minister makes a decision under subsection 17(2) to give  
4 approval for a core State/Territory entity negotiating an  
5 arrangement with a core foreign entity, then the Minister must, as  
6 soon as practicable, give the core State/Territory entity a written  
7 notice under this subsection that states:

- 8 (a) that the Minister gives approval for the negotiation to  
9 proceed; and  
10 (b) the day the approval comes into force.

11 *Notice of decision to revoke approval decision*

12 (2) If, under subsection 17(4), the Minister revokes the approval  
13 decision under subsection 17(2), the Minister must, as soon as  
14 practicable, give the core State/Territory entity a written notice that  
15 states:

- 16 (a) that the Minister's approval is revoked; and  
17 (b) the day the revocation comes into force; and  
18 (c) that the Minister's approval is no longer in force from that  
19 day.

20 **19 When the Minister's approval under subsection 17(2) is in force**

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

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

1 **20 Notice of the Minister's refusal under subsection 17(3)**

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

7 **21 When the Minister is taken to have given approval for**  
8 **negotiations**

- 9 (1) This section applies if:
- 10 (a) a core State/Territory entity gives the Minister a notice under  
11 subsection 16(1) about its proposal to negotiate an  
12 arrangement with a core foreign entity; and
- 13 (b) the Minister has not made a decision under subsection 17(2)  
14 or (3) within the 30-day period that starts on the day the  
15 notice is given.
- 16 (2) The Minister is taken to have given approval under this subsection  
17 for the negotiation proceeding.
- 18 Note: The Minister's approval under this subsection may not be revoked.
- 19 (3) The Minister's approval under subsection (2) comes into force  
20 immediately after the end of the period referred to in  
21 paragraph (1)(b).
- 22 (4) The Minister may no longer make a decision under section 17  
23 about the negotiation.

1 **Division 3—Entering core foreign arrangements**

2 **22 Prohibition on entering core foreign arrangements**

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

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

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

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

15 **23 Requirement to notify the Minister before entering core foreign**  
16 **arrangements**

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

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

22 (2) The notice must:

23 (a) be in writing; and

24 (b) be in the approved form (if any); and

25 (c) be accompanied by a copy of the proposed arrangement; and

26 (d) specify the day it is proposed to enter the arrangement; and

27 (e) include any information prescribed by the rules; and

28 (f) be accompanied by any documents prescribed by the rules;  
29 and

30 (g) be given in the approved way (if any).

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

2 **24 The Minister's decision about proposals to enter core foreign**  
3 **arrangements**

4 *Minister must make decision about proposal*

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

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

16 *Approval decision*

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

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

26 *Refusal decision*

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

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

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1 *Revocation of approval decision*

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

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

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

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

14 *No revocation of refusal decision*

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

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

20 **25 Notices relating to the Minister's approval under subsection 24(2)**

21 *Notice of approval decision*

22 (1) If the Minister makes a decision under subsection 24(2) to give  
23 approval for a core State/Territory entity entering an arrangement  
24 with a core foreign entity, then the Minister must, as soon as  
25 practicable, give the core State/Territory entity a written notice  
26 under this subsection that states:

- 27 (a) that the Minister gives approval for the core State/Territory  
28 entity entering the arrangement; and  
29 (b) the day the approval comes into force.

1 *Notice of revocation of approval decision*

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

10 **26 When the Minister's approval under subsection 24(2) is in force**

- 11 The Minister's approval for a core State/Territory entity entering  
12 an arrangement with a core foreign entity:  
13 (a) comes into force on the day specified in the approval notice  
14 given under subsection 25(1); and  
15 (b) if, under subsection 24(4), the Minister revokes the decision  
16 under subsection 24(2)—ceases to be in force on the day  
17 specified in the revocation notice given under  
18 subsection 25(2).

19 **27 Notice of the Minister's refusal under subsection 24(3)**

- 20 As soon as practicable after making a decision under  
21 subsection 24(3) to refuse to give approval for a core  
22 State/Territory entity entering an arrangement with a core foreign  
23 entity, the Minister must give the core State/Territory a written  
24 notice that states:  
25 (a) the Minister's decision; and  
26 (b) if the Minister considers that changes could be made to the  
27 arrangement that could allow the Minister to give approval  
28 for the core State/Territory entity entering an arrangement  
29 with the core foreign entity—the Minister's recommended  
30 changes.

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

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

3 **28 When the Minister is taken to have given approval for proposals**  
4 **to enter core foreign arrangements**

5 (1) This section applies if:  
6 (a) a core State/Territory entity gives the Minister a notice under  
7 subsection 23(1) about its proposal to enter an arrangement  
8 with a core foreign entity; and  
9 (b) the Minister has not made a decision under subsection 24(2)  
10 or (3) within the 30-day period that starts on the day the  
11 notice is given.

12 (2) The Minister is taken to have given approval under this subsection  
13 for the core State/Territory entity to enter the arrangement as  
14 proposed.

15 Note: The Minister's approval under this subsection may not be revoked.

16 (3) The Minister's approval under subsection (2) comes into force  
17 immediately after the end of the period referred to in  
18 paragraph (1)(b).

19 (4) The Minister may no longer make a decision under section 24  
20 about the proposed arrangement.

21 **29 Requirement to notify the Minister about entering core foreign**  
22 **arrangements**

23 (1) If a core State/Territory entity enters an arrangement with a core  
24 foreign entity, then the State/Territory entity must, within 14 days  
25 or such longer period prescribed by the rules, give a notice to the  
26 Minister in accordance with subsection (2).

27 (2) The notice must:  
28 (a) be in writing; and  
29 (b) be accompanied by a copy of the arrangement; and  
30 (c) include any information prescribed by the rules; and



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

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

1 **Division 4—Consequences of unlawfully entering core**  
2 **foreign arrangements**

3 **Subdivision A—Effect on legally binding arrangements**

4 **30 Arrangements that purport to be legally binding under**  
5 **Australian law**

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

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

6 **31 Arrangements that are legally binding under foreign law**

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

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1 **Subdivision B—Effect on non-legally binding arrangements**

2 **32 Arrangements that are not legally binding**

- 3 (1) If:
- 4 (a) a core State/Territory entity enters an arrangement with a
- 5 core foreign entity in contravention of subsection 22(1); and
- 6 (b) the arrangement is not legally binding;
- 7 then this section applies to the arrangement.
- 8 (2) The arrangement is not, and is taken never to have been, in
- 9 operation.
- 10 (3) After entering the arrangement, the core State/Territory entity
- 11 must:
- 12 (a) within 14 days, or such longer period (if any) prescribed by
- 13 the rules, notify the core foreign entity that:
- 14 (i) this section applies to the arrangement; and
- 15 (ii) the arrangement is not, and is taken never to have been,
- 16 in operation; and
- 17 (b) as soon as practicable after it has complied with
- 18 paragraph (a), notify the Minister, in writing, of its
- 19 compliance with that paragraph.
- 20 (4) The core State/Territory entity must not, at any time:
- 21 (a) give effect to the arrangement; or
- 22 (b) hold out, or conduct itself on the basis, that:
- 23 (i) it can give effect to the arrangement; or
- 24 (ii) the arrangement is in operation.
- 25 (5) The core foreign entity must not, from the time it is notified under
- 26 subsection (3) that this section applies to the arrangement:
- 27 (a) give effect to the arrangement in Australia; or
- 28 (b) hold out in Australia, or conduct itself in Australia on the
- 29 basis, that:
- 30 (i) it can give effect to the arrangement; or
- 31 (ii) the arrangement is in operation.

1 **Part 3—Entering non-core foreign arrangements**

2 **Division 1—Simplified outline of this Part**

3 **33 Simplified outline of this Part**

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

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

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

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

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

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

1 **Division 2—Entering non-core foreign arrangements**

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

4 **34 Requirement to notify the Minister about proposals to enter**  
5 **non-core foreign arrangements**

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

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

- 14 (2) The notice must:
- 15 (a) be in writing; and
  - 16 (b) be in the approved form (if any); and
  - 17 (c) be accompanied by a copy of the proposed arrangement; and
  - 18 (d) include any information prescribed by the rules; and
  - 19 (e) be accompanied by any documents prescribed by the rules;
  - 20 and
  - 21 (f) be given in the approved way (if any); and
  - 22 (g) be given in the period (if any) prescribed by the rules.

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

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

3 **35 Declarations about negotiating non-core foreign arrangements**

4 *When Minister may make declaration*

- 5 (1) The Minister may make a declaration under subsection (2) if:  
6 (a) the Minister becomes aware that a State/Territory entity  
7 proposes to negotiate, or is negotiating, an arrangement with  
8 a foreign entity; and  
9 (b) the arrangement is a non-core foreign arrangement; and  
10 (c) if the State/Territory entity is proposing to negotiate the  
11 arrangement—the Minister is satisfied that the proposed  
12 negotiation:  
13 (i) would adversely affect, or would be likely to adversely  
14 affect, Australia’s foreign relations; or  
15 (ii) would be, or would be likely to be, inconsistent with  
16 Australia’s foreign policy; and  
17 (d) if the State/Territory entity is negotiating the arrangement—  
18 the Minister is satisfied that the negotiation:  
19 (i) adversely affects, or is likely to adversely affect,  
20 Australia’s foreign relations; or  
21 (ii) is, or is likely to be, inconsistent with Australia’s  
22 foreign policy.

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

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

27 *Declaration not to negotiate*

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

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1 *Compliance with declaration*

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

3 *Matters relating to declaration*

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

6 **36 Declarations about proposals to enter non-core foreign**  
7 **arrangements**

8 *When Minister may make declaration*

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

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

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

23 *Declaration not to enter arrangement*

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

26 *Compliance with declaration*

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

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



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

8 Note 2: In addition, the Minister may make a similar declaration in relation to  
9 any subsidiary arrangements of the arrangement (see sections 46 to  
10 48).

11 *Matters relating to declaration*

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

14 **Subdivision C—Matters relating to declarations under this Part**

15 **37 Matters relating to declarations under this Part**

16 *When this section applies*

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

21 *When declaration comes into force*

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

24 *Revoking declarations*

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

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1

*Notice of declaration*

2

(4) The Minister must, as soon as practicable after making the declaration, give the State/Territory entity a written notice under this subsection that:

3

4

5

(a) states the Minister's decision to make the declaration; and

6

(b) is accompanied by a copy of the declaration; and

7

(c) complies with any requirements prescribed by the rules.

8

*Notice of revocation of declaration*

9

(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.

10

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12

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

13

14

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

15

16

(1) If:

17

(a) a State/Territory entity enters an arrangement with a foreign entity; and

18

19

(b) the arrangement is a non-core foreign arrangement;

20

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).

21

22

23

(2) The notice must:

24

(a) be in writing; and

25

(b) be accompanied by a copy of the arrangement; and

26

(c) include any information prescribed by the rules; and

27

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

28

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

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

5 **Division 1—Simplified outline of this Part**

6 **39 Simplified outline of this Part**

7 *Declarations in relation to foreign arrangements*

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

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

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

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

**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

**Section 39**

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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 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.

The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**  
Simplified outline of this Part **Division 1**

Section 39

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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).

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

**Division 2** The Minister's power to make declarations about foreign arrangements that are in operation

Section 40

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1 **Division 2—The Minister's power to make declarations**  
2 **about foreign arrangements that are in operation**

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

5 **40 When the Minister may make declarations under this Division**

6 *When the Minister may make declaration*

7 (1) The Minister may make a declaration under this Division in  
8 relation to an arrangement between a State/Territory entity and a  
9 foreign entity if:

- 10 (a) the Minister is satisfied that the arrangement:  
11 (i) adversely affects, or is likely to adversely affect,  
12 Australia's foreign relations; or  
13 (ii) is, or is likely to be, inconsistent with Australia's  
14 foreign policy; or  
15 (b) the State/Territory entity entered the arrangement in  
16 contravention of subsection 36(3).

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

19 *Matters that are not relevant*

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

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

Section 41

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

7 **Subdivision B—Declarations about legally binding foreign**  
8 **arrangements**

9 **41 Foreign arrangements that are legally binding under Australian**  
10 **law**

11 *When Minister may make declaration*

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

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

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

24 *Declaration that arrangement is invalid and unenforceable*

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

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## Section 41

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- 1 (ii) if the arrangement was entered in contravention of  
2 subsection 36(3)—is, and is taken to have always been,  
3 invalid and unenforceable to the specified extent; and  
4 (b) the State/Territory entity must, within the specified period,  
5 notify the foreign entity that:  
6 (i) a declaration is in force under this subsection in relation  
7 to the arrangement; and  
8 (ii) the arrangement is invalid and unenforceable, to the  
9 specified extent;  
10 and give the foreign entity a copy of the declaration; and  
11 (c) the State/Territory entity must, as soon as practicable after  
12 complying with paragraph (b), notify the Minister, in writing,  
13 of its compliance with that paragraph; and  
14 (d) the State/Territory entity must not, to the specified extent and  
15 from the specified day:  
16 (i) give effect to the arrangement; or  
17 (ii) hold out, or conduct itself on the basis, that it can give  
18 effect to the arrangement; or  
19 (iii) hold out, or conduct itself on the basis, that the  
20 arrangement is valid or enforceable; and  
21 (e) the foreign entity must not, to the specified extent and from  
22 the specified day:  
23 (i) give effect to the arrangement in Australia; or  
24 (ii) hold out in Australia, or conduct itself in Australia on  
25 the basis, that it can give effect to the arrangement; or  
26 (iii) hold out in Australia, or conduct itself in Australia on  
27 the basis, that the arrangement is valid or enforceable.  
28 The declaration in relation to paragraph (a) has effect accordingly.

29 *Declaration requiring variation or termination of arrangement*

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



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- 1 (i) a declaration is in force under this subsection in relation  
2 to the arrangement; and  
3 (ii) the arrangement is required to be varied or terminated in  
4 accordance with any specified requirements;  
5 and give the foreign entity a copy of the declaration; and  
6 (b) the State/Territory entity must, in accordance with any  
7 specified requirements, vary or terminate the arrangement;  
8 and  
9 (c) the State/Territory entity must, as soon as practicable after  
10 complying with paragraph (a) or (b), notify the Minister, in  
11 writing, of its compliance with that paragraph; and  
12 (d) the State/Territory entity must not, to the specified extent and  
13 from the specified day:  
14 (i) give effect to the arrangement; or  
15 (ii) hold out, or conduct itself on the basis, that it can give  
16 effect to the arrangement; and  
17 (e) the foreign entity must not, to the specified extent and from  
18 the specified day:  
19 (i) give effect to the arrangement in Australia; or  
20 (ii) hold out in Australia, or conduct itself in Australia on  
21 the basis, that it can give effect to the arrangement.

22 *Compliance with declaration*

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

29 *Matters relating to declaration*

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

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

## 7 **42 Foreign arrangements that are legally binding under foreign law**

### 8 *When Minister may make declaration*

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

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

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

### 19 *Declaration requiring variation or termination of arrangement*

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

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

14 *Compliance with declaration*

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

21 *Matters relating to declaration*

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

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

**Division 2** The Minister’s power to make declarations about foreign arrangements that are in operation

## Section 43

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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

- 1 (c) the State/Territory entity must, as soon as practicable after  
2 complying with paragraph (b), notify the Minister, in writing,  
3 of its compliance with that paragraph; and  
4 (d) the State/Territory entity must not, to the specified extent and  
5 from the specified day:  
6 (i) give effect to the arrangement; or  
7 (ii) hold out, or conduct itself on the basis, that it can give  
8 effect to the arrangement; or  
9 (iii) hold out, or conduct itself on the basis, that the  
10 arrangement is in operation; and  
11 (e) the foreign entity must not, to the specified extent and from  
12 the specified day:  
13 (i) give effect to the arrangement in Australia; or  
14 (ii) hold out in Australia, or conduct itself in Australia on  
15 the basis, that it can give effect to the arrangement; or  
16 (iii) hold out in Australia, or conduct itself in Australia on  
17 the basis, that the arrangement is in operation.  
18 The declaration in relation to paragraph (a) has effect accordingly.

19 *Declaration requiring variation or termination of arrangement*

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

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

#### 11 *Compliance with declaration*

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

#### 18 *Matters relating to declaration*

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

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

Section 44

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1 **Subdivision D—Matters relating to declarations under this**  
2 **Division**

3 **44 Matters relating to declarations about foreign arrangements**

4 *When this section applies*

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

8 *When declaration comes into force*

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

11 *Revoking declaration*

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

20 *Notice of declaration*

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

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**Division 2** The Minister's power to make declarations about foreign arrangements that are in operation

## Section 44

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1 *Notice of revocation of declaration*

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



The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**  
The Minister's power to make declarations about subsidiary arrangements that are in operation **Division 3**

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

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

6 **45 When the Minister may make declarations under this Division**

7 *When the Minister may make declaration*

- 8 (1) The Minister may make a declaration under this Division in  
9 relation to a subsidiary arrangement of a foreign arrangement if:  
10 (a) any of the following apply to the foreign arrangement:  
11 (i) a declaration is in force under subsection 41(2) or (3),  
12 42(2) or 43(2) or (3) in relation to the foreign  
13 arrangement;  
14 (ii) the foreign arrangement was entered in contravention of  
15 subsection 22(1) or 36(3);  
16 (iii) clause 4, 5 or 6 of Schedule 1 applies to the foreign  
17 arrangement; and  
18 (b) the Minister is satisfied that the subsidiary arrangement:  
19 (i) adversely affects, or is likely to adversely affect,  
20 Australia's foreign relations; or  
21 (ii) is, or is likely to be, inconsistent with Australia's  
22 foreign policy.

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

25 *Matters that are not relevant*

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

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

## Section 46

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

### 6 **Subdivision B—Declarations about legally binding subsidiary**

### 7 **arrangements**

#### 8 **46 Subsidiary arrangements that are legally binding under**

#### 9 **Australian law**

10 *When the Minister may make declaration*

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

17 Note 1: The Minister must take into account certain matters when making a

18 decision to make a declaration under subsection (2) or (3) (see

19 section 51).

20 Note 2: Section 49 deals with general matters about the declaration (such as

21 revocation and giving notice to the parties).

22 *Declaration that arrangement is invalid and unenforceable*

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

- 1 (b) each party to the subsidiary arrangement that is a regulated  
2 Australian party must not, to the specified extent and from  
3 the specified day:  
4 (i) give effect to the arrangement; or  
5 (ii) hold out, or conduct itself on the basis, that it can give  
6 effect to the arrangement; or  
7 (iii) hold out, or conduct itself on the basis, that the  
8 arrangement is valid or enforceable; and  
9 (c) each other party to the subsidiary arrangement must not, to  
10 the specified extent and from the specified day:  
11 (i) give effect to the arrangement in Australia; or  
12 (ii) hold out in Australia, or conduct itself in Australia on  
13 the basis, that it can give effect to the arrangement; or  
14 (iii) hold out in Australia, or conduct itself in Australia on  
15 the basis, that the arrangement is valid or enforceable.  
16 The declaration in relation to paragraph (a) has effect accordingly.

17 *Declaration requiring variation or termination of arrangement*

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

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

### 4 *Compliance with declaration*

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

### 10 *Matters relating to declaration*

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

## 22 **47 Subsidiary arrangements that are legally binding under foreign** 23 **law**

### 24 *When Minister may make declaration*

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

The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**  
The Minister's power to make declarations about subsidiary arrangements that are in operation **Division 3**

Section 47

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

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

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

7 *Declaration requiring variation or termination of arrangement*

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

9 (a) each party to the subsidiary arrangement that is a regulated  
10 Australian party must:

11 (i) vary or terminate the arrangement in accordance with  
12 any specified requirements; and

13 (ii) as soon as practicable after complying with  
14 subparagraph (i), notify the Minister, in writing, of its  
15 compliance with that subparagraph; and

16 (b) each party to the subsidiary arrangement that is a regulated  
17 Australian party must not, to the specified extent and from  
18 the specified day:

19 (i) give effect to the arrangement; or

20 (ii) hold out, or conduct itself on the basis, that it can give  
21 effect to the arrangement; and

22 (c) each other party to the subsidiary arrangement must not, to  
23 the specified extent and from the specified day:

24 (i) give effect to the arrangement in Australia; or

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

27 *Compliance with declaration*

28 (3) Each party to the subsidiary arrangement must comply with the  
29 declaration:

30 (a) if the Minister has given the party a copy of the declaration  
31 under subsection 49(5); and

32 (b) to the extent that the declaration applies to the party.

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

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

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1 *Matters relating to declaration*

2 (4) For the purposes of paragraph (2)(a), the declaration may require  
3 that the subsidiary arrangement be varied or terminated:

4 (a) in accordance with the foreign law; or

5 (b) in accordance with any other requirements; or

6 (c) in accordance with both the foreign law and other  
7 requirements.

8 (5) The Minister may make a declaration under subsection (2) only to  
9 the extent that the subsidiary arrangement was entered under the  
10 auspices of the foreign arrangement.

11 (6) A declaration made under subsection (2) is not a legislative  
12 instrument.

### 13 **Subdivision C—Declarations about non-legally binding** 14 **subsidiary arrangements**

#### 15 **48 Subsidiary arrangements that are not legally binding**

16 *When Minister may make declaration*

17 (1) The Minister may make a declaration under subsection (2) or (3) in  
18 relation to an arrangement if:

19 (a) subsection 45(1) is satisfied in relation to the subsidiary  
20 arrangement; and

21 (b) the subsidiary arrangement is not legally binding.

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

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

27 *Declaration that arrangement is not in operation*

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

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The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**  
The Minister's power to make declarations about subsidiary arrangements that are in operation **Division 3**

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- 1 (a) the subsidiary arrangement:  
2 (i) is not in operation, to the specified extent and from the  
3 specified day; or  
4 (ii) if the foreign arrangement was entered in contravention  
5 of subsection 22(1) or 36(3)—is not, and is taken never  
6 to have been, in operation to the specified extent; and  
7 (b) each party to the subsidiary arrangement that is a regulated  
8 Australian party must not, to the specified extent and from  
9 the specified day:  
10 (i) give effect to the arrangement; or  
11 (ii) hold out, or conduct itself on the basis, that it can give  
12 effect to the arrangement; or  
13 (iii) hold out, or conduct itself on the basis, that the  
14 arrangement is in operation; and  
15 (c) each other party to the subsidiary arrangement must not, to  
16 the specified extent and from the specified day:  
17 (i) give effect to the arrangement in Australia; or  
18 (ii) hold out in Australia, or conduct itself in Australia on  
19 the basis, that it can give effect to the arrangement; or  
20 (iii) hold out in Australia, or conduct itself in Australia on  
21 the basis, that the arrangement is in operation.

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

23 *Declaration requiring variation or termination of arrangement*

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

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- 1 (b) each party to the subsidiary arrangement that is a regulated  
2 Australian party must not, to the specified extent and from  
3 the specified day:  
4 (i) give effect to the arrangement; or  
5 (ii) hold out, or conduct itself on the basis, that it can give  
6 effect to the arrangement; and  
7 (c) each other party to the subsidiary arrangement must not, to  
8 the specified extent and from the specified day:  
9 (i) give effect to the arrangement in Australia; or  
10 (ii) hold out in Australia, or conduct itself in Australia on  
11 the basis, that it can give effect to the arrangement.

### 12 *Compliance with declaration*

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

### 18 *Matters relating to declaration*

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



The Minister's powers to make declarations about foreign arrangements, and subsidiary arrangements, that are in operation **Part 4**  
The Minister's power to make declarations about subsidiary arrangements that are in operation **Division 3**

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

1 **Part 5—Other matters**

2 **Division 1—Simplified outline of this Part**

3 **50 Simplified outline of this Part**

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

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

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

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

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

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

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

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

3 **51 Matters that the Minister must take into account**

4 (1) This section applies if the Minister is making a decision to make a  
5 declaration in relation to an arrangement under:

- 6 (a) subsection 35(2) (which is about declarations that prohibit  
7 State/Territory entities from negotiating non-core foreign  
8 arrangements); or  
9 (b) subsection 36(2) (which is about declarations that prohibit  
10 State/Territory entities from entering non-core foreign  
11 arrangements); or  
12 (c) subsection 41(2) or (3) (which are about declarations that  
13 affect foreign arrangements that are legally binding under  
14 Australian law); or  
15 (d) subsection 42(2) (which is about declarations that affect  
16 foreign arrangements that are legally binding under foreign  
17 law); or  
18 (e) subsection 43(2) or (3) (which are about declarations that  
19 affect foreign arrangements that are not legally binding); or  
20 (f) subsection 46(2) or (3) (which are about declarations that  
21 affect subsidiary arrangements that are legally binding under  
22 Australian law); or  
23 (g) subsection 47(2) (which is about declarations that affect  
24 subsidiary arrangements that are legally binding under  
25 foreign law); or  
26 (h) subsection 48(2) or (3) (which are about declarations that  
27 affect subsidiary arrangements that are not legally binding).

28 (2) When making the decision, the Minister must take into account the  
29 following matters in relation to the State or Territory to which the  
30 arrangement relates:

- 31 (a) the importance of the arrangement in assisting or enhancing  
32 the functioning of the State or Territory;

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

1 **Division 3—Enforcement**

2 **52 Injunctions**

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

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

1 **Division 4—The Public Register**

2 **53 The Minister must keep a public register**

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



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

1 **Division 5—The rules**

2 **54 The rules**

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

1 **Division 6—The Australian National University**

2 **55 Application of this Act to the Australian National University**

3 (1) This Act applies in relation to the Australian National University  
4 (the *ANU*) as if it were a State/Territory entity covered by  
5 paragraph 7(e) (which covers universities established under a law  
6 of a State or Territory).

7 (2) However, if the ANU is the only State/Territory entity that is a  
8 party, or proposed party, to a foreign arrangement, then section 51  
9 does not apply when the Minister is making a decision to make a  
10 declaration in relation to:

11 (a) the foreign arrangement; or

12 (b) a subsidiary arrangement of the foreign arrangement.

1 **Division 7—Other matters**

2 **56 Delegation by the Minister**

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

17 **57 Compensation for acquisition of property**

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

1 **58 Requirements in relation to procedural fairness**

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

5 **59 Extraterritorial application and extension to external Territories**

6 (1) This Act applies both within and outside Australia.

7 (2) This Act extends to every external Territory.

8 **60 Crown to be bound**

9 This Act binds the Crown in each of its capacities.

10 **61 Concurrent operation with State and Territory laws**

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

14 **62 Approved forms**

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

18 **63 Approved ways of giving notices to the Minister**

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

23 **64 Schedule 1**

24 Schedule 1 has effect.

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

**Division 1** Simplified outline of this Schedule

Clause 1

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1 **Schedule 1—Transitional requirements**  
2 **relating to pre-existing foreign**  
3 **arrangements**  
4

5 Note: See section 64.

6 **Division 1—Simplified outline of this Schedule**

7 **1 Simplified outline of this Schedule**

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

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

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

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

3 **2 Requirement to notify the Minister about pre-existing foreign**  
4 **arrangements that are core foreign arrangements**

5 (1) This clause applies to a pre-existing foreign arrangement between a  
6 core State/Territory entity and a core foreign entity.

7 (2) A *pre-existing foreign arrangement* is a foreign arrangement that:

8 (a) is in operation on the commencement day; or

9 (b) comes into operation during the period that:

10 (i) starts on the day after the commencement day; and

11 (ii) ends on the day before Part 2 of this Act commences.

12 (3) The core State/Territory entity must give a notice to the Minister:

13 (a) in accordance with subclause (4); and

14 (b) in accordance with subclause (5);

15 before the end of the period that:

16 (c) starts on the commencement day; and

17 (d) ends 3 months, or such longer period (if any) prescribed by  
18 the rules, after the commencement day.

19 Note: If the core State/Territory entity fails to give a notice in accordance  
20 with subclause (4) before the end of that period, then clause 4, 5 or 6  
21 automatically applies to the pre-existing foreign arrangement to make  
22 it invalid, unenforceable or not in operation, or to require the  
23 State/Territory entity to terminate it. Those clauses also prohibit the  
24 parties from giving effect to the arrangement.

25 (4) The notice must:

26 (a) be in writing; and

27 (b) specify the arrangement; and

28 (c) be accompanied by a copy of the arrangement.

29 (5) The notice must also:

30 (a) be in the approved form (if any); 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

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

13 **3 Requirement to notify the Minister about pre-existing foreign**  
14 **arrangements that are non-core foreign arrangements**

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



- 1 (ii) if the State/Territory entity has a copy of the subsidiary  
2 arrangement—be accompanied by a copy of the  
3 subsidiary arrangement; and  
4 (e) include any information prescribed by the rules; and  
5 (f) be accompanied by any documents prescribed by the rules;  
6 and  
7 (g) be given in the approved way (if any).
- 8 (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

Clause 4

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

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

6 **4 Arrangements that are legally binding under Australian law**

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

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

9 **5 Arrangements that are legally binding under foreign law**

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

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

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

Clause 6

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

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

9 **6 Arrangements that are not legally binding**

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

- 1                   (5) The core foreign entity must not, from the time it is notified under  
2                   subclause (3) that this clause applies to the arrangement:  
3                   (a) give effect to the arrangement in Australia; or  
4                   (b) hold out in Australia, or conduct itself in Australia on the  
5                   basis, that:  
6                   (i) it can give effect to the arrangement; or  
7                   (ii) the arrangement is in operation.
- 8                   (6) This clause does not apply to an exempt arrangement  
9