

Foreign Arrangements Notification Procedure

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Purpose

Australia's Foreign Arrangements Scheme was introduced in 2020 to ensure that arrangements between state and territory governments (and their entities) and foreign entities are consistent with Australia's foreign policy and do not adversely impact national foreign relations. As a publicly funded university, Federation University is a government entity under the terms of the scheme and is bound by the requirement to notify the government of certain foreign agreements.

Agreements entered by the University are deemed **non-core arrangements** as defined by Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the Act) and do not require prior approval by the Minister for Foreign Affairs, however a notification of intention to negotiate an agreement with a foreign entity must be submitted prior to the agreement being executed. The Minister must also be notified within 14 days of entering into the agreement. The Minister may make a declaration prohibiting the University from entering the agreement or declaring that an existing agreement is not in operation if the arrangement is inconsistent with Australia's foreign policy or may adversely affect Australia's foreign relations.

This procedure has been developed to provide information and guidance to staff and to ensure that the University acts in compliance with Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the Act).

Scope

This procedure applies to all university staff when negotiating, renewing or extending an arrangement with a **foreign entity** or entering into a subsidiary arrangement under an existing agreement on behalf of the university.

Legislative Context

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

Definitions

Arrangement:	An arrangement is any written agreement, agreement, contract, understanding or undertaking: <ul style="list-style-type: none"> • whether or not it is legally binding, and • whether or not it is made in Australia, and • whether it is entered before, on or after the commencement date of the Act.
Foreign arrangement:	An arrangement between a State/Territory entity (including a public university) and a foreign entity.
Foreign country:	Any country that is outside Australia and the external Territories, whether or not it is an independent sovereign state.
Foreign entity:	A foreign entity is any of the following entities: <ul style="list-style-type: none"> • a foreign country • the national government of a foreign country • a department or agency of a foreign country or national government • a province, state, self-governing territory, region, local council, municipality or other political subdivision of a foreign country • an entity that is a department, agency or authority of a foreign government • a university that is located in a foreign country and does not have institutional autonomy • an entity that is external to Australia and is prescribed by the rules to be a foreign entity
Institutional autonomy:	A university does not have institutional autonomy if, and only if, a foreign government is in a position to exercise substantial control over the university.
Core foreign arrangement:	An arrangement between a State or Territory, the government of a State or Territory, or a department or agency of a State or Territory government and a core foreign entity. <i>(Core agreements are government to government agreements only and will not apply to Federation University agreements).</i>
Non-core foreign arrangement:	A foreign arrangement that is not a core foreign arrangement; e.g. arrangements between universities for research or provision of educational services and materials.

Subsidiary arrangement:	An arrangement entered under the auspices of an existing foreign arrangement, e.g. a commercial third party contractor providing services under the auspices of the header agreement.
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Actions

When entering into, extending or varying foreign arrangements Federation University Australia has obligations to undertake due diligence to establish the identity of all parties to the agreement and their potential affiliations with foreign governments.

University employees negotiating foreign arrangements must make all reasonable enquiries to assess whether the parties to the arrangement are **Foreign Entities** as defined above and record the findings of their enquiries as evidence of the decision-making process. Arrangements with corporations which act on a purely commercial basis are not captured by the scheme unless forming part of a **subsidiary arrangement**.

Agreements with parties identified as **Foreign Entities** must be notified to the Department of Foreign Affairs DFAT through the [Foreign Arrangements Scheme Online Portal](#). Information provided to DFAT may be made available on the public register.

Pre-agreement activities

Prior to entering into negotiation of any agreement involving a foreign entity, approval must be obtained from the Deputy Vice-Chancellor, Global and Engagement, Deputy Vice-Chancellor, Research and Innovation or the Chief Operating Officer.

On receipt of preliminary approval the following activities must be completed:

	ACTIVITY	RESPONSIBILITY	STEPS
1.	Agreement Negotiations	Member of staff requesting consideration of arrangement.	<ol style="list-style-type: none"> 1. Undertake due diligence checks of all parties to the arrangements. For guidance on determining the institutional autonomy of a foreign university refer DFAT guidance on institutional autonomy 2. Complete a Foreign Arrangements Checklist (Appendix 1) to determine if the agreement is notifiable. If the agreement is notifiable or the autonomy of the organisations cannot be confirmed, seek approval from the relevant DVC to proceed with negotiations. 3. If approved to proceed submit Foreign Arrangements Checklist along with the draft

			<p>agreement to Legal services for review.</p> <p>4. On return of the draft agreement, complete the Foreign Arrangements Portal Submission Form (Appendix 2) and provide to the Legal Office for submission.</p> <p>5. On execution of the agreement, update the Foreign Arrangements Portal Submission Form and provide the updated form along with a copy of the signed agreement to the Legal Office for portal updating within seven days.</p>
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Foreign Arrangements Scheme Online Portal notifications

	ACTIVITY	RESPONSIBILITY	STEPS
1.	DFAT notification – Potential arrangement	Legal Department	<p>1. Register arrangement to Foreign Arrangements Scheme Online Portal and submit notification of prospective arrangement. Upload a copy of the draft agreement to the portal for ministerial review.</p> <p>2. Note DFAT notification number on Foreign Arrangements Submission Form.</p> <p>3. Return draft agreement and corresponding documentation to responsible officer.</p>
2.	DFAT Notification – Signed agreement	Legal Department	<p>1. Within 14 days of entering into an arrangement identified as notifiable, a new notification must be submitted against the arrangement via the Foreign Arrangements Scheme Online Portal confirming the arrangement is now an existing arrangement, effective commencement and expiry dates of the arrangement and the signatory to the arrangement. A copy of the final agreement/</p>

			contract must be uploaded to the portal to confirm any alterations to the arrangement made during negotiations.
3.	Withdrawing Arrangements	Legal Department	<ol style="list-style-type: none"> Should a prospective arrangement not proceed, where possible the notification should be withdrawn. Withdrawal of a notification is possible whilst the assessment status remains 'Notification received'. Notifications should only be withdrawn on receipt of written instruction from the responsible officer and where there is no potential for the arrangement to proceed at a later date.

Monitoring and Reporting

	ACTIVITY	RESPONSIBILITY	STEPS
1.	Ministerial declarations	All staff	<ol style="list-style-type: none"> Any staff member authorised to make notification of potential or existing arrangement could receive notification of a ministerial direction to cease negotiation of an arrangement or that an existing agreement is not in operation. <p>Any such notification must be immediately forwarded to:</p> <ul style="list-style-type: none"> the signatory to the contract/ arrangement the Director, Governance and Strategy Legal Office
2.	International Education Committee Reporting	Director, Governance and Strategy	<ol style="list-style-type: none"> Immediately notify the Vice-Chancellor of any Ministerial declaration. Prepare a bi-monthly report to the International Education Committee confirming all notifications made to DFAT

			and ministerial directions received
3.	Audit and Risk Management Committee Reporting	Director, Governance and Strategy	1. Prepare a six monthly report to the committee of all notifications made to DFAT and the status of notifications.

Supporting Documents

- [Foreign Arrangements Scheme Online Portal User Guide for State and Territory Entities](#)
- [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020 – Guidance on Institutional Autonomy](#)
- [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020 – Guidance Government Corporations](#)
- [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020 – Fact Sheet 4 – Australian Universities](#)

Forms

Forms.

- [Foreign Arrangements Notification Checklist](#) (DOCX 360.5kb)
- [Foreign Arrangements Portal Submission Form](#) (DOCX 194.5kb)

Responsibility

- The Chief Operating Officer (as the Approval Authority) is responsible for monitoring the implementation, outcomes and scheduled review of this procedure.
- Head of Legal (as the Document Owner) is responsible for maintaining the content of this procedure as delegated by the Chief Operating Officer.

Promulgation

The [Foreign Arrangements Notification Procedure](#) will be communicated throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.
2. Distribution of e-mails to VCST Members, Deans, Directors and University staff with direct responsibility for actions.

Implementation

The [Foreign Arrangements Notification Procedure](#) will be implemented throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.
2. Targeted training as required.

Records Management

Document Title	Location	Responsible Officer	Minimum Retention Period
Foreign Arrangements Checklist	Legal Contract File	Legal Department	Term of Contract + 5 years
Foreign Arrangements Checklist	Legal Contract File	Legal Department	Term of Contract + 5 years