Impact of Australia's Foreign Relations (State and Territory Arrangements) Act 2020 on Local Governments

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In December 2020, the Commonwealth parliament passed the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) (**Foreign Relations Act**), which will impose new restrictions on local governments' autonomy in making certain types of arrangements with foreign entities.

The Foreign Relations Act requires State and Territory statutory bodies, including local governments, to notify the responsible Minister (which is currently the Foreign Minister) before entering into arrangements with foreign public entities. The type of "arrangement" that will trigger compliance with this requirement are extremely wide and include:- any written arrangement; agreement; contracts; understandings; or undertakings, whether legally binding or not. The types of foreign entities with whom arrangements are entered into that will trigger the notification requirement are also very wide, including:- foreign countries; foreign local governments; and certain types of universities.

Under section 34 of the Foreign Relations Act, a local government must notify the Foreign Minister when it proposes to enter into an arrangement with a foreign entity. The Foreign Minister may then, under sections 35 and 36, make a binding declaration that the local government must not enter into the notified arrangement if the Foreign Minister is satisfied that the arrangement would adversely affect, or would be likely to adverse affect, Australia's foreign relations, or would be, or would be likely to be, inconsistent with Australia's foreign policy.

Furthermore, if a local government enters into an arrangement with a foreign entity, it must notify the Foreign Minister within 14 days (or such longer period prescribed by the rules). Under Part 4 of the Foreign Relations Act, if the Foreign Minister is satisfied that the relevant arrangement adversely affects Australia's foreign relations or is inconsistent with Australia's foreign policy, the Foreign Minister may also declare arrangements to be invalid and unenforceable, not in operation, or required to be varied or terminated. The Explanatory Memorandum expressly states the purpose of Part 4 of the Foreign Relations Act is to give the Foreign Minister an opportunity to make declarations for pre-existing arrangements entered into before the commencement of the Foreign Relations Act.

If a local government has any existing arrangement with foreign entity, it must notify the Minister about the existing arrangement within 6 months from 10 December 2020 pursuant to Schedule 1 of the Foreign Relations Act. Failure to make the notification could result in the arrangement becoming invalid or unenforceable.

These new notification obligations and restrictions introduced by the Foreign Relations Act will no doubt affect many local councils in NSW. As the Australian Local Government Association noted in its submission for the *Australia's Foreign Relations (State and Territory Arrangements) Bill*, there are some 600 sister cities affiliations between local councils in Australian and foreign

cities that potentially attract notification obligations. The submission also noted in NSW, there are at least 7 MOUs between local councils and various foreign entities according to public sources. To minimise the risk of existing arrangement becoming unenforceable and ongoing negotiations for new arrangements becoming derailed, local councils should review their existing and proposed arrangements with foreign entities and consider whether it has an obligation to notify any of the existing or proposed arrangements.