Foreign Acquisitions and Takeovers Regulation 2015

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made under the

Foreign Acquisitions and Takeovers Act 1975

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About this compilation

This compilation

This is a compilation of the *Foreign Acquisitions and Takeovers Regulation 2015* that shows the text of the law as amended and in force on 1 July 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This is the *Foreign Acquisitions and Takeovers Regulation 2015*.

3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Act 1975*.

4 Simplified outline of this Part

This Part defines terms that are used in this instrument.

Terms used in this instrument that are not defined in this Part may be defined in section 4 of the Act.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:
(a) asset;
(b) Australian business;
(c) Australian land;
(d) entity;
(e) foreign person;
(f) interest;
(g) security;
(h) share.

In this instrument:

Act means the *Foreign Acquisitions and Takeovers Act 1975*.

ADI has the same meaning as in the *Banking Act 1959*.

Note: ADI is short for authorised deposit-taking institution.

aggregate interest of a specified percentage in an unincorporated limited partnership has the meaning given by subsection 17(3).

agreement country or region means any of the following countries or regions:
(a) the United States of America;
(b) New Zealand;
(c) Chile;
(d) Japan;
(e) the Republic of Korea;
(f) China;

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(fa) Peru;
(g) Singapore;
(h) a country (other than Australia) for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018, is in force;
(i) the region of Hong Kong, China;
(j) the United Kingdom.

Note: The Agreement mentioned in paragraph (h) is in Australian Treaty Series [2018] ATS 23 and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

agreement country or region investor means an entity (within the ordinary meaning of the term) that is:

(a) an enterprise or a national of a country that is an agreement country or region; or
(b) an enterprise or a resident of a region that is an agreement country or region;

(other than a foreign government investor).

agribusiness: see section 12.

Note: ***Agribusiness*** is defined in section 4 of the Act.

agricultural land corporation has the meaning given by subsection 13(2).

agricultural land trust has the meaning given by subsection 13(3).

Australian and New Zealand Standard Industrial Classification Codes means the Australian and New Zealand Standard Industrial Classification Codes, as in force from time to time, published by the Australian Bureau of Statistics.

Australian land corporation has the meaning given by subsection 13(4).

Australian land trust has the meaning given by subsection 13(5).

Australian media business has the meaning given by section 13A.

businesses or entities certificate has the meaning given by section 42.

class value has the meaning given by subsections 21(3) and (5).

consideration has a meaning affected by subsection 14(2).

consideration for the acquisition or issue of a class of securities has the meaning given by subsection 21(4).

defence and intelligence personnel means:

(a) a member of the Australian Defence Force; or
(b) in relation to the Defence Department—the following:
  (i) an APS employee in the Department;
  (ii) a consultant engaged by the Secretary of the Department on behalf of the Commonwealth;

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(iii) a person whose services are made available to the Department under an arrangement entered into by the Secretary of the Department on behalf of the Commonwealth; or

(c) in relation to an agency in the national intelligence community—the following:

(i) a member of the staff of the agency;

(ii) a consultant engaged by the agency;

(iii) a person whose services are made available to the agency or the head (however described) of the agency.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

direct interest in an entity or business has the meaning given by section 16.

education institution has the same meaning as in the *Student Assistance Act 1973*.

enterprise of a country or a region has the meaning given by section 7.

excluded provisions has the meaning given by section 28.

existing value has the meaning given by subsection 58(6).

foreign country, for the purposes of the definition of ***foreign intelligence agency***, includes a region where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

(d) a foreign country exercises jurisdiction or control over the region; or

(e) a foreign country is responsible for the region's international relations.

foreign government investor has the meaning given by section 17.

foreign intelligence agency means a government body that has responsibility for:

(a) intelligence gathering for a foreign country; or

(b) the security of a foreign country.

GDP implicit price deflator value has the meaning given by subsection 58(6).

general insurer has the meaning given by the *Insurance Act 1973*.

government authority has the meaning given by subsection 44(3).

government body means:

(a) the government of a country; or

(b) an agency or authority of the government of a country; or

(c) the government of part of a country; or

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(d) an agency or authority of the government of part of a country.

intelligence use includes security intelligence, foreign intelligence or financial intelligence.

inter-modal transfer facility has the meaning given by the *National Land Transport Act 2014*.

land entity means an agricultural land corporation, an agricultural land trust, an Australian land corporation or an Australian land trust.

life company has the meaning given by the *Life Insurance Act 1995*.

mining operation has the meaning given by subparagraph 44(4)(b)(ii).

mining, production or exploration entity means an entity where the total value of legal or equitable interests in tenements held by the entity, or any subsidiary of the entity, exceeds 50% of the total asset value for the entity.

moneylending agreement means:

(a) an agreement entered into:
  (i) in good faith and on ordinary commercial terms; and
  (ii) in the ordinary course of carrying on a moneylending business;
  except an agreement dealing with any matter unrelated to the carrying on of that moneylending business; or

(b) an agreement entered into:
  (i) in good faith and on ordinary commercial terms; and
  (ii) relating to the purpose of lending money or otherwise providing financial accommodation; and
  (iii) by an entity that was created predominantly for that purpose by a person or entity in the ordinary course of carrying on a moneylending business;
  except an agreement if:
  (iv) the agreement deals with any matter unrelated to the purpose of lending money or otherwise providing financial accommodation and unrelated to the carrying on of that moneylending business; or
  (v) the entity, before entering into the agreement, began carrying on a business unrelated to the purpose of lending money or otherwise providing financial accommodation; or

(c) for a person or entity that:
  (i) is carrying on a moneylending business; or
  (ii) was created predominantly for the purpose of lending money or otherwise providing financial accommodation by a person or entity in the ordinary course of carrying on a moneylending business; or
  (iii) is a subsidiary or holding entity of a person or entity covered by subparagraph (i) or (ii);
  an agreement to acquire an interest arising from a moneylending agreement (within the meaning of paragraph (a) or (b)).

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moneylending business means a business of lending money or otherwise providing financial accommodation.

most recent financial statement has the meaning given by subsection 23(2).

national of a country has the meaning given by section 8.

national security business has the meaning given by section 8AA.

national security land means:

(a) defence premises (within the meaning of section 71A of the *Defence Act 1903*, excluding subparagraph (a)(iii) of the definition of that expression); or

(b) land in which the Commonwealth, as represented by an agency in the national intelligence community, has an interest that:

(i) is publicly known; or

(ii) could be known upon the making of reasonable inquiries.

near-new dwelling interest means an interest in a dwelling, if all of the following apply:

(a) the dwelling is contained in a development;

(b) an agreement to sell the interest in the dwelling had become binding;

(c) that agreement did not result in the transfer of title to the interest, and is no longer in force;

(d) the interest is to be sold under another agreement;

(e) the interest would be an interest in a new dwelling, to be acquired under the other agreement, if there were no agreements to which paragraphs (b) and (c) applied.

personal information has the same meaning as in the *Privacy Act 1988*.

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action.

public infrastructure means:

(a) an airport or airport site (within the meaning of the *Airports Act 1996*); or

(b) a port (within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003*); or

(c) infrastructure for public transport (whether or not the infrastructure is operated or owned by a Commonwealth, State or Territory body); or

(d) a system or facility that is used to provide any of the following services to the public:

(i) the generation, transmission, distribution or supply of electricity;

(ii) the supply of gas;

(iii) the storage, treatment or distribution of water;

(iv) the treatment of sewage.

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public utility means a body that provides any of the following products or services, or any similar products or services, to the public:

(a) reticulated products or services, such as electricity, gas, water, sewerage or drainage;

(b) telecommunication services;

(c) transport services.

relevant agreement country investor means an entity (within the ordinary meaning of the term) that is an enterprise or national of:

(a) the United States of America; or

(b) New Zealand; or

(c) Chile;

(other than a foreign government investor).

relevant subsidiary of an entity (the ***higher entity***) means an entity that is:

(a) a subsidiary of the higher entity; and

(b) either:

(i) for a corporation—a relevant entity that is carrying on an Australian business; or

(ii) for a unit trust—a relevant entity the trustee of which holds assets of an Australian business.

relevant World Trade Organization member means any of the following members of the World Trade Organization established by the World Trade Organization Agreement:

(a) Hong Kong, China;

(b) Macao, China;

(c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

resident of a region has the meaning given by section 8A.

residential care has the same meaning as in the *Aged Care Act 1997*.

residential land (near-new dwelling interests) certificate has the meaning given by section 43A.

residential land (other than established dwellings) certificate has the meaning given by section 43B.

resident trust means a trust that is taken to be a resident trust estate under subsection 95(2) of the *Income Tax Assessment Act 1936*.

retirement village has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

school has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

sensitive business: see section 22.

Note: ***Sensitive business*** is defined in section 26 of the Act.

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tenement means an exploration tenement or a mining or production tenement.

Note: Although an agreement giving rights that form the basis of a tenement may be any duration, the duration of the agreement must be at least 5 years for an interest in the agreement to be an interest in Australian land. (See the definitions of ***exploration tenement***, ***mining or production tenement*** and ***interest*** in Australian land in sections 4 and 12 of the Act.)

tenements and mining, production or exploration entities certificate has the meaning given by section 43.

total asset value has the meaning given by section 20.

total earnings has the meaning given by subsection 12(2).

vacant:

(a) land is ***vacant*** if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock; but

(b) despite paragraph (a), land is not ***vacant*** if a wind or solar power station is located on the surface of the land.

value, of an interest in Australian land held by an entity, includes the value of the entity's interest (if any) in a wind or solar power station located on the land (whether on or beneath the surface).

value, of consideration, has the meaning given by subsections 14(3) to (4A).

wind or solar power station means:

(a) an accredited power station within the meaning of the *Renewable Energy (Electricity) Act 2000* that is:

(i) a wind power station (incorporating one or more wind turbines); or

(ii) a solar electricity generation system; or

(b) any component of such an accredited power station that is taken to be a part of the power station for the purposes of the *Renewable Energy (Electricity) Act 2000*.

Note: For components of a wind or solar power station that are taken to be a part of the power station for the purposes of that Act, see clause 8 or 10 of Schedule 1 to the *Renewable Energy (Electricity) Regulations 2001*.

World Trade Organization Agreement means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

7 Meaning of *enterprise* of a country or region

Enterprise of a country

(1) An ***enterprise*** of a country is:

(a) an entity (within the ordinary meaning of the term) of a kind mentioned in subsections (2) to (4); or

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(b) a branch of an entity (within the ordinary meaning of the term) mentioned in subsection (5);

that is not excluded under subsection (6).

Enterprise of a region

(1A) An ***enterprise*** of a region is:

(a) an entity (within the ordinary meaning of the term) of a kind mentioned in subsections (2) to (4); or

(b) a branch of an entity (within the ordinary meaning of the term) mentioned in subsection (5A);

that is not excluded under subsection (8) or (9).

Entity of a country or a region

(2) The entity is constituted or organised under a law of the country or a law of the region.

Note: For references to a law of the United States of America or China, see sections 9 and 9A.

(3) The form in which the entity may be constituted or organised may be, but is not limited to, any of the following forms:

(a) a corporation;

(b) a trust;

(c) a partnership;

(d) a sole proprietorship;

(e) a joint venture;

(f) an unincorporated association.

(4) It is immaterial whether the entity:

(a) is carried on for profit; or

(b) is owned or controlled privately.

Branch of an entity of a country

(5) A branch of an entity (within the ordinary meaning of the term) is an ***enterprise*** of a country if:

(a) the entity is not described in subsections (2) to (4); and

(b) the branch is located in the country; and

(c) the branch is carrying on business activities in the country:

(i) in a way other than being solely a representative office; and

(ii) in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the country; and

(iii) by having its administration in the country.

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Branch of an entity of a region

(5A) A branch of an entity (within the ordinary meaning of the term) is an ***enterprise*** of a region if:

(a) the entity is not described in subsections (2) to (4); and

(b) the branch is located in the region; and

(c) the branch is carrying on business activities in the region:

(i) in a way other than being solely a representative office; and

(ii) in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the region; and

(iii) by having its administration in the region.

(5B) For the purposes of working out under subsection (5A) whether a branch of an entity is an ***enterprise*** of Hong Kong, China, subsection (5A) applies as if:

(a) paragraphs (5A)(a) and (c) were omitted; and

(b) subsection (5A) also required the entity to be of a kind mentioned in subsections (2) to (4) for Hong Kong, China.

When entities or branches are not enterprises of a country

(6) An entity, or a branch of an entity, (within the ordinary meaning of the term) is not an ***enterprise*** of a particular country if the Treasurer is satisfied that:

(a) it is owned or controlled by one or more persons of another country; and

(b) any one or more of the following applies:

(i) Australia does not maintain diplomatic relations with the other country;

(ii) Australia adopts or maintains measures relating to the other country or a person of the other country that have the effect of prohibiting transactions with the entity or branch;

(iii) the entity or branch has no substantial business activities in the particular country.

(7) Without limiting subsection (6), an entity, or a branch of an entity, (within the ordinary meaning of the term) is not an ***enterprise*** of China if the Treasurer is satisfied that:

(a) it is owned or controlled by one or more of the following:

(i) an individual who is usually resident in the territory of a relevant World Trade Organization member;

(ii) an entity that is constituted or organised under a law of a relevant World Trade Organization member; and

(b) the entity or branch has no substantial business activities in China.

When entities or branches are not enterprises of a region—general

(8) An entity, or a branch of an entity, (within the ordinary meaning of the term) is not an ***enterprise*** of a particular region of a country if the Treasurer is satisfied that:

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(a) it is owned or controlled by one or more persons of another country; and
(b) any one or more of the following applies:
(i) Australia does not maintain diplomatic relations with the other country;
(ii) Australia adopts or maintains measures relating to the other country or a person of the other country that have the effect of prohibiting transactions with the entity or branch;
(iii) the entity or branch has no substantial business activities in the particular region;

and the particular region is not Hong Kong, China.

When entities or branches are not enterprises of a region—Hong Kong, China

(9) An entity, or a branch of an entity, (within the ordinary meaning of the term) is not an ***enterprise*** of Hong Kong, China if the Treasurer is satisfied that:
(a) subsection (10) applies to it; or
(b) the entity or branch has no substantial business activities in Hong Kong, China.

(10) This subsection applies to an entity or branch if:
(a) it is owned or controlled by one or more of the following:
(i) an individual of a country who is not a resident of Hong Kong, China;
(ii) an entity constituted or organised under a law of a country that is not a law applying in Hong Kong, China; and
(b) Australia adopts or maintains measures relating to that country, or a person of that country, that have the effect of prohibiting transactions with the entity or branch.

8 Meaning of *national* of a country

General definition

(1) A ***national*** of a country (other than the United States of America or China) is:
(a) an individual who is a citizen of the country; or
(b) an individual who is entitled to live indefinitely in the country.

Definition for the United States of America

(2) A ***national*** of the United States of America is:
(a) a national of the United States of America, as defined in Title III of the *Immigration and Nationality Act* of the United States of America; or
(b) a permanent resident of the United States of America.

Definition for China

(2A) A ***national*** of China is an individual who is a national of China according to the law of China, other than an individual who is usually resident within the territory of a relevant World Trade Organization member.

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Exception for New Zealand

(3) Despite subsection (1), a ***national*** of New Zealand does not include an individual who:

(a) is entitled to live in the Cook Islands, Niue or Tokelau; and

(b) does not live in New Zealand.

8AA Meaning of *national security business*

(1) A business is a ***national security business*** if:

(a) the business is carried on wholly or partly in Australia whether or not in anticipation of profit or gain; and

(b) it is publicly known, or could be known upon the making of reasonable inquiries, that the business is of a kind referred to in subsection (2).

(2) A business is of a kind referred to in this subsection if:

(a) the business is a responsible entity (within the meaning of the *Security of Critical Infrastructure Act 2018*) for an asset; or

(b) the business is an entity that is a direct interest holder in relation to a critical infrastructure asset (within the meaning of those terms in the *Security of Critical Infrastructure Act 2018*); or

(c) the business is a carrier or nominated carriage service provider to which the *Telecommunications Act 1997* applies; or

(d) the business develops, manufactures or supplies critical goods that are, or are intended to be, for a military use, or an intelligence use, by:

(i) defence and intelligence personnel; or

(ii) the defence force of another country; or

(iii) a foreign intelligence agency; or

(e) the business develops, manufactures or supplies critical technology that is, or is intended to be, for a military use, or an intelligence use, by:

(i) defence and intelligence personnel; or

(ii) the defence force of another country; or

(iii) a foreign intelligence agency; or

(f) the business provides, or intends to provide, critical services to:

(i) defence and intelligence personnel; or

(ii) the defence force of another country; or

(iii) a foreign intelligence agency; or

(g) the business stores or has access to information that has a security classification; or

(h) the business stores or maintains personal information, collected by the Australian Defence Force, the Defence Department or an agency in the national intelligence community:

(i) of persons who are covered by the definition of ***defence and intelligence personnel***; and

(ii) which, if accessed, could compromise Australia's national security; or

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(i) the business collects, as part of an arrangement with the Australian Defence Force, the Defence Department or an agency in the national intelligence community, personal information:

(i) of persons who are covered by the definition of ***defence and intelligence personnel***; and

(ii) which, if disclosed, could compromise Australia's national security; or

(j) the business stores, maintains or has access to personal information of a kind mentioned in paragraph (i) which, if disclosed, could compromise Australia's national security.

8A Meaning of *resident* of a region

A ***resident*** of Hong Kong, China is an individual who is a permanent resident of Hong Kong, China.

9 References to United States of America

In this instrument, a reference (whether or not expressly) to:

(a) the territory of the United States of America includes Puerto Rico and the District of Columbia; and

(b) a law of the United States of America includes a law that applies in a State of the United States of America or in any part of the territory of the United States of America.

9A References to China

(1) In this instrument, a reference (whether or not expressly) to China does not include a reference to a relevant World Trade Organization member.

Note: For example, a reference to the law of China does not include a reference to the law of a relevant World Trade Organization member.

(2) Subsection (1) does not apply to a reference to China used to identify a relevant World Trade Organisation member.

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Part 2—Provisions relating to definitions and rules of interpretation

11 Simplified outline of this Part

This Part prescribes various matters for the purposes of Part 1 of the Act (which deals mainly with interpretation). The main section in that Part is section 4 which lists all the terms defined for the purposes of the Act. That Part also contains some other rules of interpretation.

This Part prescribes:

(a) definitions for section 4 of the Act; and

(b) particular matters for definitions listed in that section; and

(c) some rules for interpreting the Act and this instrument, such as rules for valuing assets of entities or businesses, and for translating amounts expressed in foreign currencies.

12 When an Australian entity or Australian business is an agribusiness

(1) For the definition of ***agribusiness*** in section 4 of the Act, the following table prescribes the circumstances in which an Australian entity or Australian business is an agribusiness.

Australian entities and Australian businesses that are agribusinesses

Item	Column 1 This kind of Australian entity or Australian business …	Column 2 is an agribusiness if …
1	an Australian entity	(a) any one or more of the following entities (the ***agribusiness entities***) derive earnings from carrying on a business of the kind mentioned in subsection (3): (i) the entity; (ii) a subsidiary of the entity; and (b) the amount of those earnings before interest and tax, derived by the agribusiness entities in the most recent financial year for which the financial accounts of the entity have been audited, exceeds 25% of the amount of the total earnings for the entity.
2	an Australian entity	(a) any one or more of the following entities use assets in carrying on a business of the kind mentioned in subsection (3): (i) the entity; (ii) a subsidiary of the entity; and

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Australian entities and Australian businesses that are agribusinesses		
Item	**Column 1** **This kind of Australian entity or Australian business …**	**Column 2** **is an agribusiness if …**
		(b) the value of those assets exceeds 25% of the total asset value for the entity.
3	an Australian business	(a) the business uses assets in carrying on a business of the kind mentioned in subsection (3); and (b) the value of those assets exceeds 25% of the value of the total assets of the business.

Note: See also sections 23 (value of assets of entities or businesses) and 24 (value of assets of entities that prepare consolidated financial statements).

*Meaning of **total earnings***

(2) The ***total earnings*** for the entity is the total of all earnings before interest and tax in that year by the entity and any one or more subsidiaries of the entity.

Classes of business

(3) The business must be carried on wholly or partly in any of the following classes of the Australian and New Zealand Standard Industrial Classification Codes:

(a) any of the classes in Division A (agriculture, forestry and fishing);

(b) any of the classes in Subdivision 11 of Division C (food product manufacturing), other than any of the following:

(i) class 1113 (cured meat and smallgoods manufacturing);

(ii) class 1132 (ice cream manufacturing);

(iii) class 1162 (cereal, pasta and baking mix manufacturing);

(iv) a class in group 117 (bakery product manufacturing);

(v) class 1182 (confectionery manufacturing);

(vi) a class in group 119 (other food product manufacturing).

Mixed earnings and mixed-use assets

(4) For the purposes of this section:

(a) earnings that are derived from carrying on a business that is not wholly in a class mentioned in subsection (3); or

(b) the value of assets that are used in carrying on a business that is not wholly in a class mentioned in subsection (3);

may be apportioned, on the basis of information available to a foreign person taking an action in relation to the business, between the part of the business that is in the class and the other parts of the business.

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13 Land entities

(1) This section prescribes the meanings of the following for section 4 of the Act:
  (a) ***agricultural land corporation***;
  (b) ***agricultural land trust***;
  (c) ***Australian land corporation***;
  (d) ***Australian land trust***.

Note: Any of these corporations or trusts may be formed or established in or outside Australia.

(2) A corporation (the ***entity***) of a kind mentioned in column 1 of the table in subsection (6) is an ***agricultural land corporation*** if the value of interests in agricultural land mentioned in column 2 of the table exceeds 50% of the value of total assets mentioned in column 3 of the table.

(3) A trust (the ***entity***) of a kind mentioned in column 1 of the table in subsection (6) is an ***agricultural land trust*** if:
  (a) the entity is a unit trust; and
  (b) the value of interests in agricultural land mentioned in column 2 of the table exceeds 50% of the value of total assets mentioned in column 3 of the table.

(4) A corporation (the ***entity***) of a kind mentioned in column 1 of the table in subsection (6) is an ***Australian land corporation*** if the value of interests in Australian land mentioned in column 2 of the table exceeds 50% of the value of total assets mentioned in column 3 of the table.

(5) A trust (the ***entity***) of a kind mentioned in column 1 of the table in subsection (6) is an ***Australian land trust*** if:
  (a) the entity is a unit trust; and
  (b) the value of interests in Australian land mentioned in column 2 of the table exceeds 50% of the value of total assets mentioned in column 3 of the table.

(6) The following table sets out the interests in land and total assets taken into account for land entities.

Interests of land entities

Item	Column 1 Entity	Column 2 Interests in land	Column 3 Total assets
1	An Australian entity that: (a) is a holding entity; and (b) prepares financial statements or another document in accordance with subsection 24(2) or (3)	Interests in agricultural land or Australian land (as the case requires) set out in the financial statements	Total assets set out in the financial statements or other document
2	Any other entity	Interests in agricultural land or Australian land (as the	Total assets of the entity or the trustee of the entity

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Interests of land entities			
Item	**Column 1** **Entity**	**Column 2** **Interests in land**	**Column 3** **Total assets**
		case requires) held by the entity or a trustee of the entity	

13A Meaning of *Australian media business*

(1) An ***Australian media business*** is an Australian business of doing one or more of the following:

(a) publishing daily newspapers in Australia (including on websites from which all or part of those newspapers may be accessed);

(b) broadcasting television or radio in Australia (including on websites from which all or part of those broadcasts may be accessed);

(c) operating an electronic service covered by subsection (2).

(2) An electronic service is covered by this subsection if:

(a) the service delivers content over the internet; and

(b) the service is operated wholly or partly for the purpose of serving Australian audiences; and

(c) the service meets the content test in subsection (3); and

(d) the service meets the threshold test in subsection (4).

(3) An electronic service meets the content test in this subsection if:

(a) the content delivered by the service consists predominantly of content that reports, investigates or explains:

(i) issues or events that are relevant in engaging Australians in public debate and in informing democratic decision-making; or

(ii) current issues or events of public significance for Australians at a local, regional or national level; or

(b) the content delivered by the service is delivered wholly or predominantly by way of programs of audio or video content.

(4) An electronic service meets the threshold test in this subsection if it is reasonable to conclude that the average daily audience for the service exceeds 10,000 people in Australia.

(5) In applying subsection (4) at a time, have regard to the shorter of the following periods:

(a) the period of 12 months ending at that time;

(b) the period since the service first started to be operated.

14 Meaning of consideration

(1) This section prescribes the meaning of ***consideration*** for section 4 of the Act.

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(2) The ***consideration*** for an acquisition of an interest in securities, assets, Australian land or a tenement, or for an issue of securities in an entity, includes the following:

(a) consideration in any form;

(b) any GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*), or equivalent tax under a law of a foreign country or a part of a foreign country, that is payable in relation to the acquisition or issue;

(c) any consideration that is contingent on the occurrence or non-occurrence of a particular event.

Assessing the value of consideration

(3) The ***value*** of the consideration for an acquisition of an interest in securities, assets, Australian land or a tenement, or for an issue of securities in an entity, is:

(a) if there is an agreement relating to the acquisition or issue and the parties to the agreement are not dealing at arm's length, or if there is no agreement that sets out the value of the consideration—a reasonable assessment of the value of the consideration for the acquisition or issue; or

(b) otherwise—the value of the consideration set out in the agreement relating to the acquisition or issue.

(4) Without limiting paragraph (3)(a), an assessment of consideration is reasonable on a particular day if it is worked out on the basis of:

(a) for an acquisition of an interest in securities, assets, Australian land or a tenement that has a publicly available price—a price that was publicly available no more than 7 days earlier; and

(b) for an acquisition of an interest in securities made under a takeover bid (whether under the *Corporations Act 2001* or a law of a foreign country or part of a foreign country)—the first amount specified for the interest in the bidder's statement (within the meaning of the *Corporations Act 2001*) or any equivalent document under a law of a foreign country or part of a foreign country.

(4A) Despite subsection (3), the ***value*** of the consideration for the acquisition of an interest in Australian land is to be adjusted under this subsection if:

(a) the interest is:

(i) an interest as lessee in a lease; or

(ii) an interest as licensee in a licence;

giving rights to occupy agricultural land, commercial land or residential land; and

(b) the term of the lease or licence (including any extension or renewal) is reasonably likely, at the time the interest is acquired, to exceed 20 years; and

(c) there is an agreement relating to the acquisition that sets out the value of the consideration and the parties to the agreement are dealing at arm's length (see paragraph (3)(b)).

The ***value*** of the consideration for the acquisition is adjusted to be the following:

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$$\frac{20}{\text{Term of the lease or licence (including any extension or renewal)}} \times \text{Value of the consideration apart from the adjustment under this subsection}$$

Consideration for acquisition of interests in securities of foreign entities

(5) The consideration for the acquisition of an interest in securities in a foreign entity may be apportioned between the relevant Australian business or Australian entity and any other business or entity on the basis of the earnings before interest and tax of the Australian business or Australian entity and the other business or entity.

15 Number of independent self-contained dwellings in a development

For paragraph (c) of the definition of ***development*** in section 4 of the Act, the number of independent self-contained dwellings is 50.

16 Meaning of *direct interest* in an entity or business

For the definition of ***direct interest*** in section 4 of the Act, a ***direct interest*** in an entity or business is:

(a) an interest of at least 10% in the entity or business; or

(b) an interest of at least 5% in the entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business; or

(c) an interest of any percentage in the entity or business if the person who acquired the interest is in a position:

(i) to influence or participate in the central management and control of the entity or business; or

(ii) to influence, participate in or determine the policy of the entity or business.

Note: Section 16A of the Act defines ***interest*** of a specified percentage in a business. Section 17 of the Act defines ***interest*** of a specified percentage in an entity.

17 Meaning of *foreign government investor*

(1) For the purposes of the definition of ***foreign government investor*** in section 4 of the Act, a person is a ***foreign government investor*** if the person is:

(a) a foreign government or separate government entity; or

(b) a corporation in which:

(i) a foreign government or separate government entity holds a substantial interest; or

(ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate substantial interest; or

(c) the trustee of a trust in which:

(i) a foreign government or separate government entity holds a substantial interest; or

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(ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate substantial interest; or

(d) the general partner of an unincorporated limited partnership in which:

(i) a foreign government or separate government entity holds a substantial interest; or

(ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate interest of at least 40%; or

(e) a corporation, trustee or partner of a kind described in paragraph (b), (c) or (d) assuming the references to foreign government (or foreign governments) in those paragraphs included references to a foreign government investor (or foreign government investors):

(i) within the meaning of those paragraphs; or

(ii) as a result of a previous application of this paragraph.

(2) However, a person is not a ***foreign government investor*** if:

(a) the person is a corporation, trustee of a unit trust or general partner of an unincorporated limited partnership and would not be a foreign government investor but for:

(i) subparagraph (1)(b)(ii), (c)(ii) or (d)(ii); or

(ii) paragraph (1)(e) to the extent that it relates to any of those subparagraphs; and

(b) the corporation, trustee of the unit trust or general partner of the unincorporated limited partnership operates a scheme (within the ordinary meaning of that word) that has the following features:

(i) persons make contributions, by way of consideration, to acquire rights to benefits produced by the scheme (***rights in the scheme***) (whether the rights are actual, prospective or contingent and whether they are enforceable or not);

(ii) any of the contributions are to be pooled to produce financial benefits, or benefits consisting of rights or interests (within the ordinary meaning of that word) in property, for the persons (the ***members***) who hold rights in the scheme;

(iii) an individual member is not able to influence any individual investment decisions, or the management of any individual investments, of the corporation, trustee or general partner under the scheme; and

(c) each foreign government or separate government entity that holds an interest in the corporation, unit trust or unincorporated limited partnership holds the interest only as a member of the scheme.

(3) Two or more persons (who are not associates of each other), hold an ***aggregate interest*** of a specified percentage in an unincorporated limited partnership if they, together with any one or more associates of any of them:

(a) are in a position to control at least that percentage of the voting power or potential voting power in the partnership; or

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(b) are entitled to at least that percentage of the total distributions of capital, assets or profits of the partnership on the dissolution of the partnership; or

(c) are entitled to at least that percentage of the total distributions of capital, assets or profits of the partnership otherwise than on the dissolution of the partnership.

(4) For the purposes of subsection (3), in determining the percentage of voting power or potential voting power that a person is in a position to control in an unincorporated limited partnership, disregard any votes that the person controls as a proxy or representative.

18 Meaning of *foreign person*

General partners of limited partnerships

(1) For paragraph (g) of the definition of ***foreign person*** in section 4 of the Act, a person is a ***foreign person*** if:

(a) the person is a general partner of a limited partnership; and

(b) either:

(i) an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest in the limited partnership; or

(ii) 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government hold an aggregate interest of at least 40% in the limited partnership.

Certain foreign government investors

(2) For paragraph (g) of the definition of ***foreign person*** in section 4 of the Act, a person is a ***foreign person*** if:

(a) the person is a foreign government investor; and

(b) apart from this subsection, the person would not be a foreign person.

19 Number of future dwellings on residential land

For subparagraph (a)(ii) of the definition of ***residential land*** in section 4 of the Act, the number of dwellings is 10.

20 Meaning of *total asset value*

(1) This section prescribes the meaning of ***total asset value*** for an entity for section 4 of the Act.

Entities that are not holding entities

(2) The ***total asset value*** for an entity that is not a holding entity is the value of the assets mentioned in subsection (5) of the entity.

Note: See also section 23 (value of assets of entities or businesses).

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Holding entities

(3) The ***total asset value*** for a holding entity that does not prepare financial statements or another document in accordance with subsection 24(2) or (3) is the aggregate value of the assets, mentioned in subsection (5) of this section, of:

(a) the entity; and

(b) each relevant subsidiary of the entity (disregarding any securities in those subsidiaries of the holding entity).

Note 1: See subsections (6) and (7) for valuing stapled securities and the assets of entities operating on a unified basis.

Note 2: See also section 23 (value of assets of entities or businesses).

(4) The ***total asset value*** for a holding entity that prepares financial statements or another document in accordance with subsection 24(2) or (3) is the aggregate value of the total assets, mentioned in subsection (5) of this section, set out in the financial statements or other document.

Note: See also section 23 (value of assets of entities or businesses).

Assets of entities that are taken into account

(5) The assets of an entity that are taken into account for the purposes of this section are:

(a) for an Australian entity—the total assets of the entity; and

(b) for a foreign entity—the total relevant Australian assets, and any other assets in Australia, of the entity.

Note: For the definition of ***relevant Australian assets***, see section 4 of the Act.

Entities whose securities are stapled

(6) If any of the securities in an entity (the ***first entity***) whose assets are valued under this section can only be transferred together with securities in one or more other entities whose assets would not (apart from this subsection) be valued under this section, the value of the assets of the first entity is taken to include the value of the assets mentioned in subsection (5) of the other entities.

Entities operating on a unified basis

(7) If:

(a) an entity (the ***first entity***) whose assets are valued under this section has entered an arrangement with one or more other entities resulting in the entities being under a legal obligation to operate on a unified basis; and

(b) the value of the assets of the other entities would not (apart from this subsection) be valued under this section;

the value of the assets of the first entity is taken to include the value of the assets mentioned in subsection (5) of the other entities.

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21 Meaning of *total issued securities value*

(1) This section prescribes the meaning of ***total issued securities value*** for an entity for section 4 of the Act.

(2) The ***total issued securities value*** for an entity is the total of the class values worked out under subsection (3) or (5) for each class of securities in the entity.

Meaning of ***class value***

(3) The ***class value*** for a class of securities in an entity is worked out using the following formula if securities in that class are being acquired or issued:

$$\frac{\text{The consideration for the acquisition or issue of that class of securities}}{\text{The number of securities in that class to be acquired or issued}} \times \text{The total number of issued securities in that class immediately before the acquisition or issue}$$

(4) The ***consideration for the acquisition or issue*** of a class of securities is:

(a) for an acquisition of interests in securities—the total consideration for the acquisition of securities in that class; or

(b) for an issue of securities—the total issue price of all the securities in that class to be issued.

Note: ***Consideration*** is defined in section 14. The consideration for the acquisition of an interest in securities in a foreign entity may be apportioned in certain cases (see subsection 14(5)).

(5) The ***class value*** for a class of securities in an entity is worked out using the following formula if securities in that class are not being acquired or issued:

$$\text{The market value of securities in that class} \times \text{The total number of issued securities in that class immediately before the acquisition or issue of the other class or classes of securities in that entity}$$

22 Businesses that are sensitive businesses

(1) This section prescribes conditions for subsection 26(1) of the Act.

(2) A business is a sensitive business if:

(a) the business is carried on wholly or partly in any of the following sectors (including such a business relating to infrastructure for those sectors):

(i) media;

(ii) telecommunications;

(iii) transport; or

(b) the business is wholly or partly:

(i) the supply of training or human resources to, the manufacture of military goods, equipment or technology for, or the supply of military

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goods, equipment or technology to, the Australian Defence Force or other defence forces; or

(ii) the manufacture or supply of goods, equipment or technology able to be used for a military purpose; or

(iii) the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; or

(iv) the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of a nuclear facility.

22A Rights that are not registrable water entitlements

(1) For the purposes of paragraph 26A(2)(d) of the Act, a right held by an irrigation infrastructure operator (within the meaning of the *Water Act 2007*) is not a ***registrable water entitlement*** to the extent that this right:

(a) is a right to hold or take water from a water resource for another person who has an irrigation right (within the meaning of the *Water Act 2007*); or

(b) is a right to deliver water to water users, including water lost in transit from its source to end users due to seepage, leakage, evaporation or other similar effects.

(2) Subsection (1) applies to rights that start to be held before, on or after the commencement of this section.

23 Value of assets of entities or businesses

(1) For section 27 of the Act, the value on a particular day of an asset of an entity or business is (subject to subsections (3) and (4) of this section) the following value:

(a) if there is a most recent financial statement and an event affecting the value of the asset as shown in that financial statement has not occurred since the financial statement was most recently audited or reviewed—the value of the asset as shown in the financial statement;

(b) otherwise—the value of the asset as shown on that day in the accounting records of the entity or business.

(2) The ***most recent financial statement***, in relation to a day, is the financial statement of the entity or business that was most recently audited or reviewed by an auditor before that day.

(3) Subsection (1) does not apply if the value shown is not a reasonable value.

(4) This section does not limit how the value of an asset of an entity or business may be determined.

24 Value of assets of entities that prepare consolidated financial statements

(1) This section applies in relation to an entity that prepares consolidated financial statements.

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(2) If the entity's consolidated financial statements are prepared in accordance with the international financial reporting standards, the value of the assets of the entity is the value set out in those statements.

(3) If an entity produces financial statements or another document (each of which is the ***reconciliation document***) for the purpose of reconciling the value of the assets of the entity set out in the entity's consolidated financial statements with the value produced using the method, set out in the international financial reporting standards, for valuing assets for consolidated financial statements, the value of the assets of the entity is the value set out in the reconciliation document.

25 Foreign currencies

(1) For section 27 of the Act, this section applies if:

(a) the Act requires the determination of a value (however described) of a thing; and

(b) either:

(i) that value has been expressed in an agreement or other document only in a currency that is not Australian dollars; or

(ii) a notice is given for the purposes of the Act in relation to an acquisition of an interest or an issue of securities in an entity and there is no agreement relating to the acquisition or issue.

Note: Examples of a thing whose value is required by the Act to be determined include assets (and interests in assets) and consideration.

(2) The value of the thing is the value expressed in Australian dollars, worked out using the following exchange rate for the end of the day covered by subsection (3):

(a) if the Reserve Bank of Australia publishes a daily exchange rate for the currency—that exchange rate;

(b) otherwise—any exchange rate:

(i) that is publicly or commercially available; and

(ii) that it is reasonable to use.

(3) The day covered by this subsection is:

(a) either:

(i) for subparagraph (1)(b)(i)—the day the agreement is entered into or the document is made; or

(ii) for subparagraph (1)(b)(ii)—any of the 7 days before the notice is given; or

(b) if there is no exchange rate published or made publicly available on that day or any of those days—the day before that day or the earliest of those days (as the case requires) on which the exchange rate was most recently published or made publicly available.

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Part 3—Exemptions

Division 1—Simplified outline of this Part

26 Simplified outline of this Part

This Part prescribes matters for sections 37 (regulations providing for exemptions) and 63 (exemption certificates provided for by the regulations) of the Act.

Division 2 exempts certain interests entirely from the operation of the Act.

Division 3 exempts the acquisition of certain interests from being significant actions, notifiable actions or notifiable national security actions. Those interests are, however, taken into account in determining whether a person is a foreign person for the purposes of the Act. Division 3 does not apply to an action that is a reviewable national security action.

Division 4 provides exemptions relating to particular actions. The Division also deals with the effect of exemption certificates prescribed by this instrument.

Division 4A exempts foreign persons from being liable to pay a vacancy fee in certain circumstances.

Division 5 contains exemptions from various provisions for certain other limited purposes.

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Division 2—Exemptions applying for all purposes

27 Moneylending agreements

(1) The Act does not (subject to subsections (2), (2A) and (3)) apply in relation to an interest in securities, assets, a trust, Australian land or a tenement, or a registrable water interest, (the ***interest***) if:

(a) the interest is:

(i) held solely by way of security for the purposes of a moneylending agreement; or

(ii) acquired by way of enforcement of a security held solely for the purposes of a moneylending agreement; and

(b) the entity that holds or acquires the interest is:

(i) the entity (the ***first entity***) that entered the moneylending agreement; or

(ii) a subsidiary or holding entity of the first entity; or

(iii) a person who is (alone or with others) in a position to determine the investments or policy of an entity mentioned in subparagraph (i) or (ii); or

(iv) a security trustee who holds or acquires the interest on behalf of a person or entity mentioned in any of subparagraphs (i) to (iii); or

(v) a receiver, or a receiver and manager, appointed by or in relation to a person or entity mentioned in any of subparagraphs (i) to (iv).

Interests relating to residential land

(2) For an interest in residential land where the first entity is not a foreign government investor, the Act does not apply in relation to the interest only if:

(a) an entity (the ***key entity***) that is:

(i) the first entity; or

(ii) a holding entity of the first entity;

is an ADI, or otherwise licensed (whether or not in Australia) as a financial institution; and

(b) if the key entity is not an ADI:

(i) there are at least 100 holders of securities in the key entity; or

(ia) there are at least 100 members of the key entity; or

(ii) the key entity is listed for quotation in the official list of a stock exchange (whether or not in Australia).

Interests relating to national security land or national security businesses

(2A) For an interest of any of the following kinds acquired by way of enforcement of a security as mentioned in subparagraph (1)(a)(ii):

(a) an interest in Australian land that, at the time of the acquisition, is national security land;

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(b) a legal or equitable interest in an exploration tenement in respect of Australian land that, at the time of the acquisition, is national security land;
(c) an interest in an asset of a national security business;
(d) an interest in securities in an entity that carries on a national security business;

the Act does not apply in relation to the interest only if the entity that acquires the interest is covered by subparagraph (1)(b)(v).

Interests acquired by foreign government investors

(3) For an interest acquired by a foreign government investor by way of enforcement of a security as mentioned in subparagraph (1)(a)(ii), the Act does not apply in relation to the interest only if:
(a) for a foreign government investor that is an ADI or a subsidiary of an ADI:
(i) 12 months have not passed since the acquisition of the interest; or
(ii) at least 12 months have passed since the acquisition of the interest and the foreign government investor is making a genuine attempt to dispose of the interest; or
(b) otherwise:
(i) 6 months have not passed since the acquisition of the interest; or
(ii) at least 6 months have passed since the acquisition of the interest and the foreign government investor is making a genuine attempt to dispose of the interest.

Note: Examples of the kinds of actions that may constitute a genuine attempt to dispose of an interest include deciding on the method of disposal, and complying with any requirements of a law that apply before the interest can be disposed of.

Relationship between subsections (2), (2A) and (3)

(4) Subsections (2), (2A) and (3) do not limit each other.

Note: The effect of this section is that:
(a) acquisitions of interests mentioned in this section are not significant actions or notifiable actions; and
(b) such interests are to be disregarded for other purposes, such as in determining whether a person holds a substantial interest in an entity or is a subsidiary of another entity.

27A Revenue streams from mining or production tenements

(1) The Act does not apply in relation to an interest in Australian land if:
(a) the Australian land is a mining or production tenement; and
(b) the interest is a right to have profits or income that will or may be derived from the use of, or dealings in, the tenement paid to, or applied or accumulated for the benefit of, the person holding the interest; and
(c) the interest is not a proprietary right, and does not give the person holding the interest a right to occupy the land, or to control or influence who enters or occupies the land.

(2) However, subsection (1) does not apply if:

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(a) the interest is an asset of a national security business; or
(b) the interest is in respect of Australian land that is national security land.

27B Exploration tenements acquired by non-government foreign investors

The Act does not apply in relation to an interest in an exploration tenement if:
(a) the entity that holds or acquires the interest is a foreign person who is not a foreign government investor; and
(b) the exploration tenement is not in respect of Australian land that is national security land.

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Division 3—Exemptions for certain actions

Subdivision A—Application of this Division

28 Application of this Division

(1) This Division applies to the provisions of the Act, other than:

(a) the definition of ***foreign person*** in section 4 of the Act; and

(b) any other provision of the Act to the extent that it relates to that definition.

The provisions of the Act that this Division applies to are the ***excluded provisions***.

Note: The effect of this Division is that acquisitions of interests of a kind mentioned in this Division are not significant actions, notifiable actions or notifiable national security actions, but are taken into account for the purposes of the definition of ***foreign person*** in section 4 of the Act.

(2) This Division does not apply in respect of an action that is a reviewable national security action.

Subdivision B—General exemptions

29 Devolution

The excluded provisions do not apply in relation to an acquisition of an interest in securities, assets, a trust or Australian land that is acquired by devolution by operation of law, other than as a result of:

(a) the operation of section 18A of the Act (increasing percentage of interests without acquiring additional interests in securities); or

(b) an arrangement under Part 5.1 or 5.3A of the *Corporations Act 2001*.

30 Certain interests held by foreign custodian corporations

(1) The excluded provisions do not apply in relation to an acquisition of an interest (the ***subject interest***) in securities, assets, a trust, Australian land or a tenement by a foreign person if:

(a) the foreign person is a corporation that is in the business of providing custodian services to other persons in relation to the holding of interests in securities, assets, trusts, Australian land or tenements; and

(b) the foreign person acquires the subject interest in the course of the foreign person's business of providing such services; and

(c) the subject interest is a legal interest; and

(d) the equitable interests (other than a right covered by subsection (2)) in the securities, assets, trust, land or tenement are not held by the foreign person; and

(e) if voting rights are associated with the subject interest—the foreign person exercises those voting rights only at, or in accordance with, the direction of:

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(i) another person that is providing custodian services to a person in relation to the holding of the subject interest; or

(ii) the holder of an equitable interest in the securities, assets, trust, land or tenement that is receiving custodian services that are related to that equitable interest.

(2) For the purposes of paragraph (1)(d), this subsection covers a right to be indemnified for any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, in the provision or purported provision of the custodian services referred to in paragraph (1)(a) or (e).

31 Australian businesses carried on by or land acquired from government

(1) The excluded provisions do not (subject to subsection (2)) apply in relation to an Australian business that is carried on (whether alone or together with one or more other persons) by, or an acquisition of an interest in Australian land from, any of the following persons:

(a) the Commonwealth, a State, a Territory or a local governing body;

(b) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory;

(c) an entity wholly owned by the Commonwealth, a State, a Territory, a local governing body or a body corporate covered by paragraph (b).

(2) However, subsection (1) does not apply in relation to:

(a) an acquisition of an interest by a foreign government investor; or

(b) an acquisition of an interest in Australian land if the interest is, or includes, an interest in any of the following infrastructure:

(i) public infrastructure, except in relation to public roads;

(ii) infrastructure for existing or proposed roads, existing or proposed railways, or existing or proposed inter-modal transfer facilities, within the National Land Transport Network (within the meaning of the *National Land Transport Act 2014*);

(iii) infrastructure for existing or proposed roads, existing or proposed railways, or existing or proposed inter-modal transfer facilities, that are designated under a law of a State or Territory as either significant or controlled by the State or Territory;

(iv) the infrastructure (or part of the infrastructure) of a telecommunications network;

(v) a nuclear facility; or

Note: The infrastructure mentioned in this paragraph is relevant to national security.

(c) an acquisition of an interest in Australian land that, at the time of the acquisition, is national security land; or

(d) an Australian business the assets of which include:

(i) an interest in Australian land to which paragraph (b) or (c) applies; or

(ii) a legal or equitable interest in an exploration tenement in respect of Australian land that, at the time the relevant action is taken in relation to the Australian business, is national security land; or

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(e) an Australian business that is a national security business.

Subdivision C—Actions relating to entities

32 Investments in financial sector companies

(1) The excluded provisions do not (subject to subsection (2)) apply in relation to an acquisition of an interest in shares if the shares are in a financial sector company (within the meaning of the *Financial Sector (Shareholdings) Act 1998*).

(2) This section does not apply in relation to an acquisition of an interest by a foreign government investor.

33 Compulsory acquisitions and compulsory buy-outs

The excluded provisions do not apply in relation to an acquisition of an interest in securities if:

(a) the securities are acquired under a compulsory acquisition or compulsory buy-out; and

(b) the acquisition is not one that is taken to occur because of the operation of section 18A of the Act (increasing percentage of interests without acquiring additional interests in securities).

34 Convertible instruments that include a requirement for loss absorption if entity becomes non-viable

The excluded provisions do not apply in relation to an acquisition of an interest in securities if:

(a) the securities are Additional Tier 1 Capital or Tier 2 Capital instruments (within the meaning of the *Prudential Standard APS 111—Capital Adequacy: Measurement of Capital*, as in force at the time this section commences); and

(b) the securities have not been converted into ordinary shares.

Note: The *Prudential Standard APS 111—Capital Adequacy: Measurement of Capital* is made under subsection 11AF(1) of the *Banking Act 1959*.

Subdivision D—Actions relating to Australian land etc.

35 Acquisitions by persons with a close connection to Australia

Acquisitions of any land by persons with a close connection to Australia

(1) The excluded provisions do not apply in relation to an acquisition of an interest in Australian land by any of the following persons:

(a) an Australian citizen not ordinarily resident in Australia;

(b) a foreign person that is an Australian corporation and would not be a foreign person if interests held directly in it by any one or more of the following persons were disregarded:

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(i) a person to whom either of paragraphs (a) and (c) applies;
(ii) a person covered by a previous application of this paragraph;

(c) a foreign person that is the trustee of a resident trust at the time of the acquisition and would not be a foreign person if interests held directly in it by any one or more of the following persons were disregarded:
(i) a person to whom either of paragraphs (a) and (b) applies;
(ii) a person covered by a previous application of this paragraph;

(d) a charity operating in Australia primarily for the benefit of persons ordinarily resident in Australia.

Note: ***Charity*** is defined in the *Charities Act 2013*.

Acquisitions of interests in agricultural land by spouses and de facto partners of Australian citizens

(2) The excluded provisions do not apply in relation to an acquisition of an interest in agricultural land by a foreign person if both of the following apply:
(a) the person is the spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*) of an Australian citizen;
(b) the interest is held by the person and his or her spouse or partner as joint tenants.

Note: A similar exemption applies in relation to residential land (see subsection 38(3)).

36 Acquisitions by funds and schemes

The excluded provisions do not apply in relation to an acquisition of:
(a) an interest in Australian land; or
(b) an interest in a tenement; or
(c) an interest in securities in a mining, production or exploration entity;
by any of the foreign persons mentioned in column 1 of the following table in the circumstances mentioned in column 2 of the table.

Acquisitions by funds and schemes

Item	Column 1 Foreign person	Column 2 Circumstances
1	A life company operating in Australia or a subsidiary of such a life company	The acquisition is made by way of investment of its statutory funds (within the meaning of the *Life Insurance Act 1995*) primarily for the benefit of owners of policies who are ordinarily resident in Australia
2	A body corporate that is: (a) a general insurer (other than a life company) operating in Australia; or (b) a subsidiary of such a general insurer	The acquisition: (a) is made from the reserves of the body corporate; and (b) is consistent with the body corporate's obligations under the *Insurance Act 1973*

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Acquisitions by funds and schemes		
Item	**Column 1** **Foreign person**	**Column 2** **Circumstances**
3	An Australian business that maintains a superannuation fund for its employees (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) primarily for the benefit of the members of the fund, or their dependants, who are ordinarily resident in Australia	The acquisition is made as an investment of all or part of the assets of that fund
4	A responsible entity of a managed investment scheme registered under section 601EB of the *Corporations Act 2001*	The acquisition is primarily for the benefit of scheme members ordinarily resident in Australia

37 Acquisition in certain circumstances

(1) The excluded provisions do not apply in relation to an acquisition of an interest in Australian land by a foreign person if a subsection of this section applies in relation to the acquisition.

Securities in listed Australian land entities and stapled securities

(2) All of the following apply:
- (a) the acquisition is of an interest in Australian land that is an acquisition of an interest in shares or units in a land entity;
- (b) the land entity is or will be listed for quotation in the official list of a stock exchange (whether or not in Australia);
- (c) after the acquisition, the foreign person, alone or together with one or more associates, holds an interest of less than 10% in the land entity;
- (d) the foreign person is not in a position:
  - (i) to influence or participate in the central management and control of the land entity; or
  - (ii) to influence, participate in or determine the policy of the land entity.

(3) All of the following apply:
- (a) the acquisition is of an interest in Australian land that is an acquisition of an interest in shares or units in a land entity;
- (b) the interest in the shares or units can only be transferred together with interests in one or more securities in another entity;
- (c) the interest in the securities in the other entity is covered by subsection (2).

Securities in unlisted Australian land entities

(4) All of the following apply:
- (a) the acquisition is of an interest in Australian land that is an acquisition of an interest in shares or units in a land entity;

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(b) the land entity is not, and will not be, listed for quotation in the official list of a stock exchange (whether or not in Australia);

(c) after the acquisition, the foreign person, alone or together with one or more associates, holds an interest of less than 10% in the land entity;

(d) the foreign person is not in a position:

(i) to influence or participate in the central management and control of the land entity; or

(ii) to influence, participate in or determine the policy of the land entity;

(f) the land entity carries on a business that does not include (other than incidentally) investing directly or indirectly in established dwellings.

Acquisitions for diplomatic or consular purposes

(5) Both of the following apply:

(a) the foreign person is:

(i) a foreign government or a separate government entity; or

(ii) an entity (within the ordinary meaning of the term) in which a foreign government holds a substantial interest;

(b) the acquisition is of an interest in commercial land or residential land to be used exclusively as any of the following:

(i) a diplomatic mission or consular post;

(ii) a diplomatic residence or the residence of the head of a consular post.

38 Acquisitions of interests in residential land

(1) The excluded provisions do not apply in relation to an acquisition of an interest in residential land by a foreign person if a subsection of this section applies in relation to the acquisition.

Acquisitions by persons with connection to Australia

(2) The foreign person meets any of the following conditions:

(a) the foreign person is, at the time of acquisition, the holder of a permanent visa (within the meaning of the *Migration Act 1958*);

(b) the foreign person is, at the time of acquisition, the holder of a special category visa (within the meaning of that Act);

(c) if the foreign person had entered Australia lawfully immediately before the acquisition, he or she would have been entitled to the grant, on presentation of a passport, of a special category visa (within the meaning of that Act);

(d) the foreign person is an Australian corporation and would not be a foreign person if interests held directly in it by any one or more of the following persons were disregarded:

(i) a person to whom any of paragraphs (a), (b), (c) and (e) applies;

(ii) a person to whom any of paragraphs 35(1)(a) to (c) applies;

(iii) a person covered by a previous application of this paragraph;

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(e) the foreign person is the trustee of a resident trust at the time of the acquisition, and would not be a foreign person if interests held directly in it by any one or more of the following persons were disregarded:
  (i) a person to whom any of paragraphs (a) to (d) of this subsection applies;
  (ii) a person to whom any of paragraphs 35(1)(a) to (c) applies;
  (iii) a person covered by a previous application of this paragraph.

Acquisitions of interests in residential land by spouses and de facto partners of Australian citizens etc.

(3) Both of the following apply:
  (a) the person is the spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*) of:
    (i) a person who is, at the time of acquisition, an Australian citizen; or
    (ii) a person who is, at the time of acquisition, the holder of a permanent visa (within the meaning of the *Migration Act 1958*); or
    (iii) a person who is, at the time of acquisition, the holder of a special category visa (within the meaning of that Act); or
    (iv) a person who, if the person had entered Australia lawfully immediately before the acquisition, would have been entitled to the grant, on presentation of a passport, of a special category visa (within the meaning of that Act);
  (b) the interest is held by the person and his or her spouse or partner as joint tenants.

Acquisitions of interests in residential timeshare schemes

(4) Both of the following apply:
  (a) the acquisition is of an interest in a timeshare scheme that relates to residential land;
  (b) the foreign person's total entitlement, alone or together with one or more associates, under the timeshare scheme to access the land is no more than 4 weeks in any year.

Acquisition of interests in residential land used for residential care, retirement villages and certain forms of student accommodation

(5) All of the following apply:
  (a) the land is used for:
    (i) premises that provide for residential care; or
    (ii) a retirement village; or
    (iii) premises that provide accommodation to students in connection with an education institution that is not a school;
  (b) the foreign person is not a foreign government investor;
  (c) the value of the land acquired is less than:

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(i) if the land is covered by paragraphs 52(6)(b) and (c)—the value prescribed by item 3 of the table in subsection 52(5); or

(ii) otherwise—the value prescribed by item 4 of the table in subsection 52(5).

Note: A value prescribed by an item in the table in subsection 52(5) may be indexed under section 58.

Certain acquisition of interests in residential land used as retirement villages

(6) All of the following apply:

(a) the foreign person has an existing interest in the land;

(b) the land is used for a retirement village that the foreign person owns;

(c) the foreign person increases their existing interest in the land by acquiring an interest in a dwelling contained in the retirement village.

39 Acquisitions of certain easements

The excluded provisions do not apply in relation to an acquisition of a legal or equitable interest in an easement if:

(a) the following conditions are met:

(i) the interest is acquired by a foreign person other than a foreign government investor;

(ii) the easement is not an easement in gross; or

(b) the following conditions are met:

(i) the easement is an easement in gross;

(ii) the easement is created for the purposes of a public utility providing products or services to the public;

(iii) the public utility that acquires the interest is authorised by or under a law of the Commonwealth, a State or a Territory to provide those products or services.

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Division 4—Other exemptions

Subdivision A—Exemptions relating to particular actions

40 Action relating to agribusinesses and agricultural land for certain investors

Relevant agreement country investors—exemption in relation to agribusinesses

(1) Paragraphs 40(2)(a) and 41(2)(a) (significant action in relation to agribusinesses) of the Act, and any other provision of the Act to the extent that it relates to those paragraphs, do not apply in relation to relevant agreement country investors.

Note: An action covered by subsection (1) may still be a notifiable national security action, see section 55B of the Act.

Thresholds for agricultural land acquired by certain investors

(2) A relevant agreement country investor, or an enterprise or national of Thailand (other than a foreign government investor), who takes an action relating to an interest in agricultural land may, for the purposes of subsections 52(2) and (3) of the Act, disregard the fact that the land is agricultural land.

Note 1: The effect of this subsection is that the threshold test in, and the thresholds prescribed for the purposes of, subsection 52(3) (and not subsection 52(2)) of the Act apply in relation to the land.

Note 2: Agricultural land that is not used wholly and exclusively for a primary production business may also be residential land or commercial land.

Wind or solar power station owners and operators

(2A) An owner or operator, or an associate of an owner or operator, of a wind or solar power station, who takes an action relating to an interest in agricultural land for the sole purpose of acquiring or operating a wind or solar power station already located on the land (whether on or beneath the surface) may, for the purposes of subsections 52(2) and (3) of the Act, disregard the fact that the land is agricultural land.

Land entities

(3) A relevant agreement country investor, or an enterprise or national of Thailand (other than a foreign government investor), who takes an action relating to an interest in agricultural land that is used wholly and exclusively for a primary production business may, for the purposes of section 13 of this instrument, disregard the fact that the land is agricultural land.

Note: The effect of this subsection is that such land is disregarded entirely in working out whether an entity is a land entity for the purposes of that section.

(4) To avoid doubt, an action taken in relation to an interest in agricultural land that is used wholly and exclusively for a primary production business includes an action taken by acquiring a security in a land entity that holds agricultural land that is used wholly and exclusively for a primary production business.

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41 Exemptions for certain acquisitions

(1) This section applies for the following provisions:

(aa) section 55B of the Act (meaning of ***notifiable national security action***);

(a) Division 3 of Part 2 of the Act (meaning of ***notifiable action***);

(b) Part 4 of the Act (notices required for notifiable actions and notifiable national security actions, and may be given of other actions);

(c) any other provision of the Act or the regulations to the extent that it relates to any of those provisions.

(2) The provisions specified in subsection (1) of this section do not apply in relation to a person's acquisition of an interest in securities in an entity (including securities in a land entity) if:

(a) the person's acquisition of the interest is under, and the interest has not been previously offered for issue under, any of the following:

(i) a rights issue (within the meaning of the *Corporations Act 2001*);

(ii) a rights issue (within the meaning of a law of a foreign country or a part of a foreign country) if the issue is regulated by a law of that foreign country or that part of a foreign country;

(iii) an issue of securities that is similar to a rights issue (within the meaning of the *Corporations Act 2001*) and is an issue of a kind covered by an instrument made by ASIC under that Act; or

(b) all of the following apply:

(i) the entity is listed for quotation in the official list of a stock exchange in Australia;

(ii) that listing is the entity's primary listing in an official list of a stock exchange;

(iii) the person's acquisition is under a dividend reinvestment plan, a bonus share plan, a distribution reinvestment plan or a switching facility; or

(c) all of the following apply:

(i) immediately before the person's acquisition, the person holds an interest of a particular percentage (the person's ***allowable percentage***) in the entity;

(ii) the person's acquisition is of a kind whereby additional interests in the entity are only made available for acquisition by each holder of existing interests in the entity in a proportion equal to the percentage interest that such a holder holds in the entity immediately before the acquisition;

(iii) the portion acquired by the person, and all of the person's associates, of those additional interests made available to all holders of existing interests in the entity, expressed as a percentage, is no more than the person's allowable percentage;

(iv) at the time of the person's acquisition, the person has no reasonable grounds to believe that the percentage interest that the person will hold in the entity after the last of the acquisitions of those additional interests will exceed the person's allowable percentage.

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Note 1: Paragraph (c) only applies if the percentage of additional interests that will be acquired by the person and the person's associates is less than or equal to the person's percentage interest in the entity immediately before the person's acquisition.

Note 2: Paragraph (c) can apply, for example, if the person holds a 100% interest in the entity both before and after the person's acquisition. In that case, the additional interest acquired by the person may be the only additional interest of the kind mentioned in subparagraph (c)(ii).

Note 3: The additional interests mentioned in subparagraphs (c)(iii) and (iv) are the additional interests available for acquisition as described in subparagraph (c)(ii).

41A Exemption—foreign persons in which foreign custodian corporations have interests

(1) This section applies in relation to the following provisions:
  (a) section 55B of the Act (meaning of ***notifiable national security action***);
  (b) Division 3 of Part 2 of the Act (meaning of ***notifiable action***);
  (c) Part 4 of the Act (notices required for notifiable actions and notifiable national security actions, and may be given of other actions);
  (d) any other provision of the Act or the regulations to the extent that it relates to either of those provisions.

(2) The provisions mentioned in subsection (1) do not apply in relation to any action taken by a foreign person if, when the action is taken:
  (a) the foreign person is a corporation, the trustee of a trust or the general partner of a limited partnership (see subsection 18(1)); and
  (b) an interest or part of an interest (the ***custodian share***) in that corporation, trust or limited partnership is held by a corporation of the kind mentioned in paragraph 30(1)(a) (the ***foreign custodian corporation***); and
  (c) the custodian share is held in the course of the foreign custodian corporation's business of providing the custodian services mentioned in paragraph 30(1)(a); and
  (d) the foreign person would not be a foreign person if:
    (i) in a case in which there is only one foreign custodian corporation to which paragraphs (b) and (c) apply—that foreign custodian corporation did not hold the custodian share to which paragraph (c) applies; or
    (ii) in a case in which there are 2 or more foreign custodian corporations to which paragraphs (b) and (c) apply—none of those foreign custodian corporations held the custodian shares to which paragraph (c) applies.

Example: Foreign custodian corporations are foreign persons (see paragraph 30(1)(a)). A foreign custodian corporation (***Corporation FC***) holds a total interest of 25% in another corporation (***Corporation F***). No other foreign person holds an interest in Corporation F. Corporation FC's interest makes Corporation F a foreign person because it is a substantial interest (at least 20%).

15% of Corporation FC's interest in Corporation F is a custodian share to which paragraph (2)(c) applies. That paragraph does not apply to 10% of the interest. Corporation F would not be a foreign person if it were not for the custodian share held by Corporation FC (see paragraph (2)(d)).

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The provisions mentioned in subsection (1) do not apply in relation to any action taken by Corporation F.

41B Exemption from requirement to notify after no objection notification or exemption certificate is given

Sections 98C, 98D and 98E of the Act do not apply in relation to a core Part 3 action that is any of the following:

(a) an acquisition of an interest in residential land;

(b) an acquisition of an interest in commercial land.

Note: ***Core Part 3 action*** is defined in section 4 of the Act.

Subdivision B—Exemption certificates

42 Exemption certificate for businesses or entities

(1) A foreign person may apply for a certificate under this section (a ***businesses or entities certificate***) if the foreign person or any other foreign person proposes to acquire one or more kinds of interests in the assets of an Australian business or the securities of an entity.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that acquisitions of those kinds of interests by that foreign person are not contrary to the national interest.

(3) The certificate must specify:

(a) the foreign person, who may not yet be incorporated or established, to whom the certificate relates (or will relate); and

(b) the kinds of interests to which the certificate relates; and

(c) whether the acquisition of any of those kinds of interests:

(i) does not give rise to a notifiable action; or

(ii) neither gives rise to a significant action nor a notifiable action.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of subsection 45(3) of the Act, an action is not a ***significant action*** if:

(a) the action is an acquisition by a foreign person of an interest in assets of an Australian business or securities of an entity; and

(b) the foreign person is specified in a businesses or entities certificate; and

(c) the interest is of a kind specified in the certificate; and

(d) the acquisition of the interest is specified in the certificate as not giving rise to a significant action; and

(e) the conditions (if any) specified in the certificate are met.

(5) For the purposes of subsection 49(2) of the Act, an action is not a ***notifiable action*** if:

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(a) the action is an acquisition by a foreign person of an interest in assets of an Australian business or securities of an entity; and
(b) the foreign person is specified in an Australian businesses or entities certificate; and
(c) the interest is of a kind specified in the certificate; and
(d) the conditions (if any) specified in the certificate are met.

43 Exemption certificates for certain interests in tenements and mining, production or exploration entities

(1) A foreign person may apply for a certificate under this section (a ***tenements and mining, production or exploration entities certificate***) if the foreign person or any other foreign person proposes to acquire:
(a) either:
(i) one or more kinds of interests in a tenement; or
(ii) one or more kinds of interests in securities in a mining, production or exploration entity; and
(b) those kinds of interests are not interests in Australian land.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that acquisitions of those kinds of interests by that foreign person are not contrary to the national interest.

(3) The certificate must specify:
(a) the person (who may not yet be incorporated or established) to whom the certificate relates; and
(b) the kinds of interests to which the certificate relates.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a ***significant action*** or a ***notifiable action*** if:
(a) the action is an acquisition by a foreign person of an interest in securities or in a tenement; and
(b) the foreign person is specified in a tenements and mining, production or exploration entities certificate; and
(c) the interest is of a kind specified in the certificate; and
(d) the conditions (if any) specified in the certificate are met.

43A Exemption certificates for residential land (near-new dwelling interests)

(1) A person may apply for a certificate under this section (a ***residential land (near-new dwelling interests) certificate***) if:
(a) the person has acquired, or will acquire, an interest in Australian land; and
(b) the person has built, or proposes to build, new dwellings on that land; and

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(c) some or all of the interests in those dwellings are, or may become, near-new dwelling interests; and

(d) the person proposes to dispose of the near-new dwelling interests to foreign persons.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the disposal of the near-new dwelling interests to foreign persons is not contrary to the national interest.

(3) The certificate must specify:

(a) the person (who may not yet be incorporated or established) to whom the certificate relates; and

(b) that the certificate covers interests that are, or could be, near-new dwelling interests.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a ***significant action*** or a ***notifiable action*** if:

(a) the action is a foreign person acquiring a near-new dwelling interest; and

(b) the acquisition was from a person (the ***specified person***) who was specified in a residential land (near-new dwelling interests) certificate; and

(c) the interest is specified in the certificate; and

(d) the specified person provided the foreign person with a copy of that certificate before the foreign person acquired the interest; and

(e) either:

(i) the conditions (if any) specified in the certificate were met; or

(ii) the foreign person is not, at the time of the action, aware that one or more of the conditions specified in the certificate have not been met.

43B Exemption certificates for residential land (other than established dwellings)

(1) A foreign person may apply for a certificate under this section (a ***residential land (other than established dwellings) certificate***) if the foreign person or any other foreign person proposes to acquire only one of the following:

(a) an interest in a new dwelling;

(b) a near-new dwelling interest;

(c) an interest in vacant residential land.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the acquisition of those kinds of interests by that foreign person is not contrary to the national interest.

(3) The certificate must specify:

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(a) the person to whom the certificate relates; and
(b) the kind of interest to which the certificate relates.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a ***significant action*** or a ***notifiable action*** if:
(a) the action is an acquisition by a foreign person of an interest in Australian land; and
(b) the foreign person is specified in a residential land (other than established dwellings) certificate; and
(c) the interest is of the 3 kinds specified in the certificate; and
(d) the conditions (if any) specified in the certificate are met.

43BA Exemption certificates for actions that would otherwise be notifiable national security actions

(1) A foreign person may apply for a certificate under this section if the foreign person proposes to take:
(a) an action that is a notifiable national security action; or
(b) one or more kinds of actions that are notifiable national security actions.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the taking of the action, or the kinds of actions, by that foreign person is not contrary to national security.

(3) The certificate must specify:
(a) the foreign person to whom the certificate relates; and
(b) the action or kinds of actions to which the certificate relates.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of subsection 55B(3) of the Act, an action is not a ***notifiable national security action*** if:
(a) the action is proposed to be taken by a foreign person and would, but for this section, be a notifiable national security action; and
(b) the foreign person is specified in an exemption certificate in force under this section; and
(c) the action or the kind of action is specified in the certificate; and
(d) any conditions specified in the certificate are met, other than a condition imposing an obligation to report to the Treasurer in the 30 day period before the certificate expires.

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43BB Exemption certificates for actions that would otherwise be reviewable national security actions

(1) A foreign person may apply for a certificate under this section if the foreign person proposes to take:

(a) an action that is a reviewable national security action; or

(b) one or more kinds of actions that are reviewable national security actions.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the taking of the action, or the kinds of actions, by the foreign person is not contrary to national security.

(3) The certificate must specify:

(a) the foreign person to whom the certificate relates; and

(b) the action or kinds of actions to which the certificate relates.

Note: For other things that the certificate may specify, see section 60 of the Act.

(4) For the purposes of section 55G of the Act, an action is not a ***reviewable national security action*** if:

(a) the action is proposed to be taken by a foreign person and would, but for this section, be a reviewable national security action; and

(b) the foreign person is specified in an exemption certificate in force under this section; and

(c) the action or the kind of action is specified in the certificate; and

(d) any conditions specified in the certificate are met, other than a condition imposing an obligation to report to the Treasurer in the 30 day period before the certificate expires.

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Division 4A—Exemptions relating to vacancy fees

43C Application of this Division

This Division applies in relation to the following provisions:

(a) subsection 115C(1) of the Act (liability for vacancy fees);

(b) any other provision of the Act (except sections 115D and 115G) to the extent that it relates to that subsection.

The provisions of the Act that this Division applies to are the ***excluded provisions***.

43D Exemption—residentially occupied

(1) Subject to subsection (4), if a foreign person acquires an interest in residential land on which a dwelling is situated, the excluded provisions do not apply to the foreign person in relation to a vacancy year in the circumstances covered by subsection (2).

(2) The circumstances covered by this subsection are that, during the vacancy year, the dwelling was residentially occupied for fewer than 183 days for either or both of the following reasons:

(a) the dwelling was incapable of being occupied as a residence;

(b) a person (who may or may not be the foreign person) ordinarily occupying the dwelling as a residence was absent from the dwelling to receive medical care, or residential care (within the meaning of the *Aged Care Act 1997*), that is supported by evidence.

(3) Without limiting paragraph (2)(a), a dwelling is incapable of being occupied as a residence if:

(a) the dwelling is damaged, unsafe or is otherwise unsuitable to be occupied as a residence; or

(b) the dwelling is undergoing substantial repairs or renovations; or

(c) occupation of the dwelling as a residence is prohibited, or made impracticable, by an order of a court or tribunal or a law of the Commonwealth, a State or a Territory.

(4) The excluded provisions apply to the foreign person in relation to a vacancy year if the foreign person is taken to be liable to pay a vacancy fee for that year under section 115C of the Act as a result of subsection 115D(3) of the Act.

Note: Subsection 115D(3) of the Act provides that a foreign person is liable to pay a vacancy fee, regardless of the number of days in a vacancy year the foreign person's dwelling was residentially occupied, if the Commissioner of Taxation is satisfied the person has not given a vacancy fee return to the Commissioner as required under section 115D of the Act.

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Division 5—Exemptions from other specified provisions

44 Land that is not agricultural land

(1) For the purposes of subsection 37(3) of the Act, the kind of land that is not agricultural land at a particular time is land:

(a) in relation to which one or more conditions in this section are met at that time; and

(b) that, subject to subsection (2), is not being used wholly or predominantly at that time for a primary production business.

Note: Section 4 of the Act defines ***agricultural land*** as land in Australia that is used, or that could reasonably be used, for a primary production business. That definition, as modified by this section, applies in this instrument as well as in the Act (see section 13 of the *Legislation Act 2003*).

(2) Paragraph (1)(b) does not apply in relation to land that meets the condition in subsection (13).

Land whose zoning requires approval for primary production businesses

(3) The zoning of the land requires any of the following (a ***government authority***) to approve the use of the land for any primary production business:

(a) the Commonwealth, a State or a Territory;

(b) a Commonwealth, State or Territory body;

(c) a local governing body.

Note: Land is agricultural land if the zoning of the land allows use for one kind of primary production business without approval, but requires approval for another kind of primary production business.

(4) The land meets the following conditions:

(a) the zoning of the land allows use for a primary production business;

(b) an application has been made to a government authority for:

(i) the land to be rezoned as land whose zoning does not allow use for a primary production business; or

(ii) approval for a mine, oil or gas well, quarry, or other similar operation under a mining or production tenement, (a ***mining operation***) to be established on the land; or

(iii) approval to locate infrastructure relating to a mining operation on the land; or

(iv) approval for waste from a mining operation to be stored on the land; or

(v) an approval (including accreditation) for establishing or operating a wind or solar power station to be located on the land (whether on or beneath the surface);

(c) the application is yet to be finally determined and has not been withdrawn or otherwise disposed of.

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Note: Examples of infrastructure relating to a mining operation include infrastructure for processing the material extracted by the operation and accommodation for miners.

Land used in relation to mining operations

(5) The land is used wholly or predominantly:
  (a) for a mining operation; or
  (b) to locate infrastructure relating to a mining operation; or
  (c) to store waste from a mining operation.

(6) An approval (that is not a mining or production tenement) of a government authority is in force allowing any or all of the following:
  (a) a mining operation to be established or operated on the land;
  (b) infrastructure relating to a mining operation to be located on the land;
  (c) waste from a mining operation to be stored on the land.

(7) The land was acquired solely, or is used wholly or predominantly, to meet a condition of an approval mentioned in subsection (6) that relates to other land.

Land used for wind or solar power station

(7A) The land is used wholly or predominantly for a wind or solar power station located on the land (whether on or beneath the surface).

(7B) An approval of a government authority (including accreditation) is in force allowing a wind or solar power station to be established or operated on the land (whether on or beneath the surface).

(7C) The land was acquired solely, or is used wholly or predominantly, to meet a condition of an approval mentioned in subsection (7B) that relates to other land.

Land used for protecting or conserving the environment

(8) The land is used, under a law of the Commonwealth, a State or a Territory or a legally binding agreement, wholly or predominantly for the purposes of the protection or conservation of the environment.

(9) The land is used wholly or predominantly for the purposes of a wildlife sanctuary or for rehabilitating animals.

Land within industrial estates

(10) The land is located within an area that has been approved by a government authority as an industrial estate.

Small areas of land

(11) The area of the land is 1 hectare or less.

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Tourism, education and outdoor recreation facilities

(12) The use of the land has been approved by a government authority for providing facilities for tourism, outdoor education or outdoor recreation to the public.

Primary production businesses relating to submerged plants and animals etc.

(13) The only primary production business that the land is or could reasonably be used for is:

(a) a business mentioned in paragraph (d) or (e) of the definition of ***primary production business*** in subsection 995-1(1) of the *Income Tax Assessment Act 1997*; or

(b) a business of cultivating or propagating under water (whether or not all of the time) plants, fungi or their products or parts; or

(c) a business of maintaining animals under water (whether or not all of the time) for the purpose of selling them or their bodily produce.

Note: Paragraph (13)(a) covers the businesses of conducting operations relating directly to taking or catching fish or culturing pearls or other aquatic life.

45 Meaning of *associate*—exemptions

Consortiums

(1) Paragraph 6(1)(b) of the Act does not apply to a person (the ***first person***) to the extent that:

(a) the first person holds an interest in a body established for the purposes of a consortium with one or more other persons (the ***consortium partners***); and

(b) the first person, and its associates, do not hold a substantial interest or an aggregate substantial interest in the body; and

(c) none of the consortium partners that are foreign persons, and their associates, hold a substantial interest or an aggregate substantial interest in the body.

Note: Under paragraph 6(1)(b) of the Act, 2 persons who act in concert are associates. The effect of this subsection is that partners in a consortium are not associates if none of the partners, or their associates, that are foreign persons hold a substantial interest or an aggregate substantial interest in the body established for the purposes of the consortium.

(2) Subsection (1) is to be disregarded in determining whether a person is an associate for the purposes of paragraphs (1)(b) and (c).

Foreign government investors

(5) Paragraph 6(1)(l) of the Act does not apply to a foreign government investor mentioned in:

(a) subparagraph (1)(b)(ii), (c)(ii) or (d)(ii) of the definition of ***foreign government investor*** in section 17 of this instrument; or

(b) paragraph (1)(e) of that definition to the extent that it relates to any of those subparagraphs.

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46 Meaning of *foreign person*—potential voting power and future rights

(1) This section applies for paragraphs (b), (c), (d) and (e) of the definition of ***foreign person*** in section 4 of the Act, to the extent that that definition applies for the purposes of the following:

(a) item 8 of the table in subsection 67(2) of the Act (orders prohibiting proposed significant action);

(b) item 3 of the table in subsection 67(3) of the Act (additional orders);

(c) item 7 of the table in subsection 69(2) of the Act (disposal orders);

(d) item 9 of the table in subsection 79D(2) (orders prohibiting proposed actions);

(e) item 3 of the table in subsection 79D(3) (additional orders);

(f) item 7 of the table in subsection 79E(2) (disposal orders);

(g) Part 4 of the Act (notices required for notifiable actions and notifiable national security actions, and may be given of other actions).

Note 1: Paragraphs (b), (c), (d) and (e) of the definition of ***foreign person*** cover corporations and trustees of trusts in which foreign persons hold substantial interests or aggregate substantial interests.

Note 2: The items mentioned in paragraphs (a) to (f) of this subsection relate to acquisitions of interests in Australian land.

(2) The provisions specified in subsection (1) of this section do not apply in relation to an interest in a security that a person holds that is part of a substantial interest or an aggregate substantial interest in an entity because:

(a) the person is in a position to control a specified percentage of the potential voting power of the entity; or

(b) the person would hold at least a specified percentage of the issued securities in the entity if securities in the entity were issued as a result of the exercise of some or all rights of a kind mentioned in paragraph 15(1)(b) or (c) of the Act.

47 Meaning of *foreign person*—disregarding small holdings of securities in primary listed entities

(1) Paragraphs (c) and (e) of the definition of ***foreign person*** in section 4 of the Act do not apply in relation to an interest in securities in an entity if:

(a) the entity is listed for quotation in the official list of a stock exchange in Australia; and

(b) that listing is the entity's primary listing in an official list of a stock exchange; and

(c) the interest, together with any interests held by any associates of the person, is not a substantial holding (within the meaning of the *Corporations Act 2001*).

Note 1: Paragraphs (c) and (e) of the definition of ***foreign person*** cover corporations and trustees of trusts in which foreign persons hold aggregate substantial interests.

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Note 2: The interests that are taken into account in working out whether a person has a substantial holding may be modified by ASIC under the *Corporations Act 2001* (see for example section 601QA of that Act).

(2) However, an interest mentioned in subsection (1) is to be taken into account for the purposes of working out the percentage of that or any other interest in the entity.

Note: The effect of this section is that an interest of, for example, 2% held by a foreign person is to be disregarded for the purposes of determining whether 2 or more foreign persons hold an aggregate substantial interest in an entity. However, the interest is to be taken into account in working out the percentage of any interest in the entity.

48 Tracing of substantial interests in corporations, trusts and unincorporated limited partnerships

Subsection 19(3) of the Act does not apply in relation to a significant action or notifiable action taken by a foreign government investor.

Note: The effect of this section is that, for an action taken by a foreign government investor, section 19 of the Act (tracing of substantial interests in corporations, trusts and unincorporated limited partnerships) applies in the circumstances specified in subsection 19(3) of the Act.

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Part 4—Thresholds

49 Simplified outline of this Part

Certain actions are only significant actions or notifiable actions if the threshold test is met. This Part prescribes values for that test.

There is a single threshold value for action taken in relation to agribusinesses.

For entities (being corporations or unit trusts) and Australian businesses other than agribusinesses, the threshold value depends on who takes the action and whether the action is taken in relation to a sensitive business.

The threshold value for land depends on who takes the action, the kind of land in relation to which the action is taken and other circumstances. Some land has no threshold value.

Most of the threshold values prescribed under this Part are indexed each year (see Part 5A).

50 Certain actions taken in relation to agribusiness

The following table prescribes a value for section 51 of the Act (agribusinesses) to the extent that that section relates to item 1 of the table in that section.

Threshold value for certain actions taken in relation to agribusinesses

Item	For action taken by ...	the value (in millions of dollars) is ...
1	any foreign person	60

Note: A value prescribed by this section is indexed under section 58.

51 Taking action in relation to entities and businesses

(1) Subject to subsections (2) and (3), the following table prescribes values for section 51 of the Act (entities and businesses) to the extent that that section relates to items 2 to 5 of the table in that section.

Threshold value for entities and businesses

Item	For action taken by …	the value (in millions of dollars) is …
1	an agreement country or region investor where the action relates to: (a) an entity, or a subsidiary of an entity, that is not carrying on a sensitive business or a trustee of a trust that does not	1,192

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Section 51

Threshold value for entities and businesses		
Item	**For action taken by …**	**the value (in millions of dollars) is …**
	hold assets of a sensitive business; or (b) a business that is not a sensitive business	
2	any foreign person in any other circumstances	275

Note: A value prescribed by this section is indexed under section 58.

(2) The following table prescribes values for the purposes of section 51 of the Act to the extent that that section relates to items 2 to 3 of the table (entities) in that section.

Threshold value for entities		
Item	**For action taken by …**	**the value (in millions of dollars) is …**
1	an enterprise, or a national, of the Republic of India (other than a foreign government investor) where: (a) the action relates to an entity that: (i) is not carrying on a sensitive business and does not hold assets of a sensitive business; and (ii) is carrying on a business that supplies a service through a commercial presence in Australia; and (b) no subsidiary, or holding entity, of the entity carries on a sensitive business or holds assets of a sensitive business; and (c) either: (i) the entity derives earnings from carrying on the business and the amount of those earnings before interest and tax, derived in the most recent financial year for which the financial accounts of the entity have been audited, exceeds 50% of the amount of the total earnings for the entity; or (ii) the entity uses assets to carry on the business and the value of those assets exceeds 50% of the total asset value for the entity	500

(3) The following table prescribes values for the purposes of section 51 of the Act to the extent that that section relates to items 4 and 5 (Australian businesses) of the table in that section.

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Threshold value for Australian businesses		
Item	**For action taken by …**	**the value (in millions of dollars) is …**
1	an enterprise, or a national, of the Republic of India (other than a foreign government investor) where: (a) the action relates to an Australian business that: (i) is not a sensitive business; and (ii) supplies a service through a commercial presence in Australia; and (b) the Australian business uses assets to supply the service and the value of those assets exceeds 50% of the value of the total assets of the business	500

(4) For the purposes of subsections (2) and (3), ***commercial presence*** and ***supply of a service*** have the same meaning as in the Australia-India Economic Cooperation and Trade Agreement, done at Melbourne and New Delhi on 2 April 2022, as in force from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

52 Land

Land without threshold value

(1) For subsection 52(1) of the Act, the following land is prescribed:

(a) residential land, except residential land covered by subsection (2) of this section;

(b) commercial land that is vacant;

(c) a mining or production tenement, except a tenement being acquired by a relevant agreement country investor;

(d) land (including land otherwise covered by subsection (4) or (5) of this section) acquired by a foreign government investor;

(e) land held by an Australian land corporation or the trustee of an Australian land trust (except an agricultural land corporation or an agricultural land trust) if:

(i) the interest in Australian land that is acquired by a foreign person is an interest in a share in the corporation or a unit in the trust; and

(ii) the land is not covered by subsection (3) of this section.

Residential land not covered by subsection (1)

(2) Residential land is covered by this subsection if:

(a) the land is also commercial land that is not vacant; and

(b) the area of land that is residential land (excluding any commercial residential premises) is less than 10% of the total area of the land; and

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(c) the value of the land that is residential land (excluding any commercial residential premises) is less than 10% of the total value of the land; and

(d) a reasonable assessment of the area and value of the land was made in determining that the land is covered by paragraphs (b) and (c).

Note: The threshold for land covered by this subsection is in the table in subsection (5).

Land held by Australian land corporation or trustee not covered by subsection (1)

(3) Land held by an Australian land corporation or the trustee of an Australian land trust is covered by this subsection if:

(a) the total value of interests in the following land held by the corporation or trustee is less than 10% of the value of the total assets of the corporation or trustee:

(i) residential land, except interests in land covered by subsection (3A);

(ii) commercial land that is vacant;

(iii) a mining or production tenement; and

(b) a reasonable assessment of the value of the interests was made in determining that the land is covered by paragraph (a).

Note: The threshold for land covered by this subsection is in the table in subsection (5).

(3A) The following land is covered by this subsection:

(a) residential land covered by paragraph 38(5)(a);

(b) residential land covered by subsection (2) of this section.

Threshold value for agricultural land

(4) The following table prescribes a value for paragraph 52(2)(b) of the Act (agricultural land).

Threshold value for agricultural land

Item	For this kind of land …	the value (in millions of dollars) is …
1	agricultural land that is being acquired by a foreign person	15
2	agricultural land that is held by an agricultural land corporation or an agricultural land trust if the interest that is being acquired by a foreign person is an interest in a share in the corporation or a unit in the trust	15

Note: The threshold test and thresholds relating to agricultural land do not apply in relation to land acquired by a relevant agreement country investor or an enterprise or national (other than a foreign government investor) of Thailand (see subsection 40(2)).

Threshold value for any other land

(5) The following table prescribes values for paragraph 52(3)(b) of the Act (any other land).

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Threshold value for any other land		
Item	**For this kind of land …**	**the value (in millions of dollars) is …**
1	land described in paragraph 52(3)(a) of the Act if the land: (a) is being acquired by an agreement country or region investor; and (b) is not covered by item 1A	1,192
1A	land described in paragraph 52(3)(a) of the Act that: (a) meets all the conditions mentioned in subsection (6) of this section; and (b) is being acquired by an agreement country or region investor where the entity is an enterprise or resident of the region of Hong Kong, China	60
2	land described in paragraph 52(3)(a) of the Act that is: (a) being acquired by an enterprise or national of Thailand (other than a foreign government investor); and (b) used wholly and exclusively for a primary production business	50
3	land described in paragraph 52(3)(a) of the Act that: (a) meets all the conditions mentioned in subsection (6) of this section; and (b) is being acquired by a foreign person (except an agreement country or region investor)	60
3A	land described in paragraph 52(3)(a) of the Act that: (a) is commercial land that is not vacant; and (b) is not covered by item 3 of this table; and (c) is being acquired by an enterprise, or a national, of the Republic of India: (i) that is not a foreign government investor; and (ii) that a reasonable person would conclude (having regard to all the circumstances) genuinely intends to use the land, as soon as practical after it is acquired and throughout the period that the enterprise or national holds the interest in the land, predominantly for the supply of a service through a commercial presence in Australia	500
4	land described in paragraph 52(3)(a) of the Act if: (a) the land is not covered by item 3 of this table; and (b) the land is held by an Australian land corporation or the trustee of an Australian land trust; and (c) the interest in Australian land that is acquired by a foreign person (except an agreement country or region investor) is an interest in a share in the corporation or a unit in the trust; and (d) the land is covered by subsection (3) of this section	275
5	land described in paragraph 52(3)(a) of the Act that is being	275

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Threshold value for any other land		
Item	**For this kind of land …**	**the value (in millions of dollars) is …**
	acquired by any foreign person in any circumstances other than those mentioned in another item of this table	

Note 1: A value prescribed by this section (except by subsection (4) and item 2 of the table in this subsection) is indexed under section 58.

Note 2: Section 71 deals with the threshold value for land described in paragraph 52(3)(b) of the Act being acquired by an agreement country or region investor where the entity is an enterprise or national of Peru.

Conditions for lower threshold

(6) For the purposes of items 1A and 3 of the table in subsection (5), the conditions are the following:

(a) the land is commercial land that is not vacant;

(b) the interest in the land being acquired gives a right to occupy the land or to be involved in the central management and control of the entity that holds the land;

(c) any one or more of the following applies at the time the interest in the land is acquired:

(i) the land will be leased to the Commonwealth, a State, a Territory or a Commonwealth, State or Territory body, except land leased to bodies covered by subsection (6A);

(ii) the land will be fitted out specifically for a business of a kind mentioned in subsection (7);

(iii) the land will be fitted out specifically to store, handle or dispose of biological agents on the List of Security-sensitive Biological Agents (within the meaning of the *National Health Security Act 2007*);

(iv) an authorisation under a law of the Commonwealth, a State or a Territory will allow materials that are regulated under that law to be produced or stored on the land;

(vi) a mining operation will operate on the land;

(vii) a stored communication (within the meaning of the *Telecommunications (Interception and Access) Act 1979*) will be stored on the land;

(viii) the failure of part of a network unit (within the meaning of the *Telecommunications Act 1997*) on the land will result in telephony or internet services not being provided on other land;

(ix) servers critical to an ADI (within the meaning of the *Banking Act 1959*) or a stock exchange in Australia will be located on the land;

(x) public infrastructure will be located on the land.

(6A) This subsection covers a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) other than the following bodies:

(a) the Australian Nuclear Science and Technology Organisation;

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(b) Comcare (the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988*);

(c) the CSC (short for Commonwealth Superannuation Corporation) within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*;

(d) the Commonwealth Scientific and Industrial Research Organisation;

(e) the Reserve Bank of Australia.

(7) For the purpose of subparagraph (6)(c)(ii), the businesses are:

(a) a business of a kind covered by paragraph 22(2)(b) (sensitive businesses); or

(b) a business of providing storage of bulk data.

(8) For the purposes of item 3A of the table in subsection (5), ***commercial presence*** and ***supply of a service*** have the same meaning as in the Australia-India Economic Cooperation and Trade Agreement, done at Melbourne and New Delhi on 2 April 2022, as in force from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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Part 5—Significant actions and notifiable actions

Division 1—Simplified outline of this Part

54 Simplified outline of this Part

Sections 44 (meaning of ***significant action***) and 48 (meaning of ***notifiable action***) of the Act allow this regulation to prescribe additional significant actions and notifiable actions.

The threshold test, and the requirement for a change in control, set out in the Act do not apply in relation to actions prescribed under this Division.

The additional significant actions prescribed by this Part relate to Australian media businesses and acquisitions by foreign government investors.

Division 3 prescribes additional matters in relation to the significant actions and notifiable actions prescribed by this Part and in relation to exemption certificates.

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Division 2—Prescribing significant actions and notifiable actions

55 Investments in Australian media businesses

An action is a ***significant action*** and a ***notifiable action*** if the action is a foreign person acquiring a direct interest in an entity or business that wholly or partly carries on an Australian media business.

56 Actions by foreign government investors

(1) An action is a ***significant action*** and a ***notifiable action*** if the action is a foreign government investor:
  (a) acquiring a direct interest in an Australian entity or Australian business; or
  (b) starting an Australian business; or
  (c) acquiring:
    (i) a legal or equitable interest in a tenement; or
    (ii) an interest of at least 10% in securities in a mining, production or exploration entity.

(2) A person acquires an interest in a tenement even if:
  (a) the person has previously acquired an interest in a tenement; or
  (b) the interest is an increase in the amount of an existing interest of the person in a tenement.

Note: Not all interests in tenements are interests in Australian land. A similar rule applies in relation to interests in Australian land (see subsection 12(3) of the Act).

Exception—subsidiaries of foreign government investors

(3) Paragraph (1)(a) does not apply in relation to an acquisition of a direct interest in an Australian entity by a foreign government investor if the foreign government investor acquires the direct interest in the Australian entity by establishing a new wholly-owned subsidiary.

Exception—non-material interests in businesses that are not sensitive businesses or national security businesses

(4) Paragraph (1)(a) does not apply in relation to an acquisition of a direct interest in an Australian entity by a foreign government investor if:
  (a) the foreign government investor acquires the direct interest in the Australian entity by acquiring an interest in securities in a foreign entity; and
  (b) the total asset value for the foreign entity is less than 5% of the value of the total assets of that entity; and
  (c) the total asset value is less than $60 million; and
  (d) none of the assets taken into account in working out the total asset value are assets of a sensitive business or a national security business.

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Note 1: The total asset value only takes into account assets in Australia (see section 20). The total assets of the entity mentioned in paragraph (4)(b) may include assets that are outside Australia.

Note 2: The total asset value prescribed by paragraph 56(4)(c) is indexed under section 58.

Exception—acquisition of initial interest by entity established by consortium

(5) Paragraph (1)(a) does not apply in relation to an acquisition of an initial direct interest in an Australian entity by a foreign government investor if the entity is established by one or more persons for the purposes of the entity making a later acquisition that is a significant action and a notifiable action.

Exception—increasing percentage of interests without acquiring additional interests in securities

(6) Paragraph (1)(a) does not apply in relation to an acquisition of a direct interest in an Australian entity that is taken to occur because of the operation of section 18A of the Act if the foreign government investor held a direct interest in the entity immediately before the acquisition occurred.

(7) Subparagraph (1)(c)(ii) does not apply in relation to an acquisition of an interest in securities in a mining, production or exploration entity that is taken to occur because of the operation of section 18A of the Act if the foreign government investor held an interest of 10% or more in securities in the entity immediately before the acquisition occurred.

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Division 3—Other provisions relating to significant actions and notifiable actions

57 Orders prohibiting proposed acquisitions and disposal orders

(1) For the purposes of item 9 of the table in subsection 67(2) and item 10 of the table in subsection 79D(2) of the Act, the Treasurer may make an order prohibiting:

(a) for an acquisition of an interest mentioned in section 55 or paragraph 56(1)(a) or (c) of this instrument—the whole or a part of the acquisition; and

(b) for a foreign government investor starting an Australian business—the investor starting the whole or a part of the Australian business.

(2) For the purposes of item 8 of the table in subsection 69(2) and item 8 of the table in subsection 79E(2) of the Act, the Treasurer may make an order directing:

(a) for an acquisition of an interest mentioned in section 55 or paragraph 56(1)(a) or (c) of this instrument—a specified person to dispose of that interest within a specified period to one or more persons approved in writing by the Treasurer; or

(b) for a foreign government investor starting an Australian business—specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.

(3) Subsections 69(3) to (5) of the Act apply in relation to an order mentioned in this section in the same way as they apply to an equivalent order mentioned in the table in subsection 69(2) of the Act.

(4) Subsections 79E(3) to (5) of the Act apply in relation to an order mentioned in this section in the same way as they apply to an equivalent order mentioned in the table in subsection 79E(2) of the Act.

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Part 5A—Indexation

58 Indexation of values prescribed by Parts 4 and 5

(1) For subsection 139(2) of the Act, a value prescribed in a section of Part 4 (except in subsection 52(4) or item 2 of the table in subsection 52(5)) and Part 5 of this instrument is to be indexed each calendar year. This section explains how to work out the value (the ***indexed value***) for a calendar year.

Note: Subsection 52(4) prescribes the threshold value for agricultural land. Item 2 of the table in subsection 52(5) prescribes the threshold value for certain land being acquired by an enterprise or national of Thailand (other than a foreign government investor).

Indexation

(2) The indexed value for the year is worked out in accordance with the formula:

$$\frac{\text{Existing value for the year} \times \text{GDP implicit price deflator value for the year}}{100}$$

Rounding

(3) If an indexed value worked out under subsection (2) is not a multiple of $1,000,000, the indexed value is rounded to the nearest multiple of $1,000,000 (rounding up if the indexed value ends in $500,000).

Indexation only to increase values

(4) However, if the value worked out under subsection (2) for a year (after any rounding under subsection (3)) is less than the existing value for the year, the indexed value for the year is that existing value.

Changes by the Australian Bureau of Statistics

(5) Values are to be worked out under this section:

(a) using only the index numbers published in terms of the most recently published index reference period for the GDP implicit price deflator value; and

(b) disregarding GDP implicit price deflator values that are published in substitution for previously published GDP implicit price deflator values (except where the substituted numbers are published to take account of changes in the index reference period).

Definitions

(6) In this instrument:

existing value for a year means:

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(a) if a value specified in a section of this Part has not been previously increased under this section—the original value; or

(b) otherwise—the indexed value for the previous year.

GDP implicit price deflator value for a calendar year means the GDP implicit price deflator value that was published by the Australian Bureau of Statistics in the publication *Australian System of National Accounts* (cat. 5204.0) for the last financial year that ended before the calendar year.

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Part 5B—Register of Foreign Ownership of Australian Assets

Division 1—Simplified outline of this Part

58A Simplified outline of this Part

Foreign persons have additional register requirements to those in Division 3 of Part 7A of the Act (see the additional requirements in Division 2 of this Part).

Some of these additional requirements relate to actions covered by Part 5 of this instrument. The other additional requirements relate to actions covered by exemption certificates.

Some other notification requirements for actions will only apply if there are no register requirements for those actions (see Division 3 of this Part).

Register requirements in Part 7A of the Act, or in this Part, will not apply in relation to some kinds of interests in Australian land or to some persons (see the exemptions in Division 4 of this Part).

The Registrar may appoint certain ATO staff to be infringement officers, and the Treasurer may extend the time for giving register notices (see Division 5 of this Part).

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Division 2—Requirements to give register notices to the Registrar

Subdivision A—Actions covered by Part 5

58B Requirement to give register notice—actions covered by Part 5

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if:

(a) the foreign person takes an action that is a significant action, or a notifiable action, under section 55 or subsection 56(1) of this instrument; and

(b) the foreign person is aware, or ought reasonably to be aware, that the action has been taken.

Note: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, the following table has effect.

When registered circumstances exist and cease

Item	A registered circumstance under this section exists in relation to the foreign person if …	The registered circumstance ceases if …
1	section 55 of this instrument (acquiring a direct interest in an entity or business carrying on an Australian media business) applies to the action.	(a) the foreign person no longer holds an interest of any percentage in the entity or business mentioned in section 55; or (b) the Australian media business ceases to be an Australian media business; or (c) the Australian media business ceases to be carried on; or (d) in the case of a direct interest in an entity—the entity ceases to exist.
2	paragraph 56(1)(a) of this instrument (a foreign government investor acquiring a direct interest in an Australian entity or Australian business) applies to the action.	(a) the foreign person no longer holds an interest of any percentage in the Australian entity or Australian business mentioned in paragraph 56(1)(a); or (b) the Australian entity or Australian business ceases to be an Australian entity or an Australian business; or (c) in the case of a direct interest in an Australian entity—the Australian entity ceases to exist; or (d) in the case of a direct interest in an Australian business—the Australian business ceases to be carried on; or (e) the foreign person ceases to be a foreign government investor.

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When registered circumstances exist and cease		
Item	**A registered circumstance under this section exists in relation to the foreign person if …**	**The registered circumstance ceases if …**
3	paragraph 56(1)(b) of this instrument (a foreign government investor starting an Australian business) applies to the action.	(a) the foreign person no longer carries on the Australian business mentioned in paragraph 56(1)(b); or (b) the Australian business ceases to be an Australian business; or (c) the Australian business ceases to be carried on; or (d) the foreign person ceases to be a foreign government investor.
4	subparagraph 56(1)(c)(i) of this instrument (a foreign government investor acquiring an interest in a tenement) applies to the action.	(a) the foreign person ceases to hold the interest in the tenement mentioned in subparagraph 56(1)(c)(i); or (b) the foreign person ceases to be a foreign government investor.
5	subparagraph 56(1)(c)(ii) of this instrument (a foreign government investor acquiring an interest of at least 10% in securities in a mining, production or exploration entity) applies to the action.	(a) the foreign person no longer holds an interest of any percentage in the mining, production or exploration entity mentioned in subparagraph 56(1)(c)(ii); or (b) the mining, production or exploration entity ceases to be a mining, production or exploration entity; or (c) the mining, production or exploration entity ceases to exist; or (d) the foreign person ceases to be a foreign government investor.

(3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under an item of the table in subsection (2).

Note: The requirement to give a register notice under subsection (1) applies whether or not an interest is an equitable interest. However, a notice of an action that relates only to an equitable interest does not cause a registered circumstance to exist under the table.

Registrable event day

(4) For the purposes of paragraph 130ZU(1)(b) of the Act, the registrable event day for a register notice under this section is the later of:

(a) the day on which the foreign person takes the action; and

(b) the day on which the foreign person first becomes aware, or ought reasonably to become aware, that the action has been taken.

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Change in interest in an entity or business

(5) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1, 2 or 5 of the table in subsection (2) of this section.

Application—Register commencement day

(6) This section applies to actions taken on or after the Register commencement day.

Subdivision B—Actions covered by exemption certificates

58C Requirement to give register notice—actions relating to entities that would be significant actions or notifiable actions if not covered by exemption certificates

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

(a) is an acquisition by the foreign person of an interest in securities of an entity, and is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates); or

(b) is an acquisition by the foreign person of an interest in securities in a mining, production or exploration entity, and is neither a significant action nor a notifiable action only because of subsection 43(4) of this instrument (about exemption certificates); or

(c) is an acquisition by the foreign person:

(i) of a direct interest in an entity that wholly or partly carries on an Australian media business; or

(ii) (as a foreign government investor) of a direct interest in an Australian entity;

and is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates).

Note 1: For paragraph (a) or (b), if the person is a foreign government investor, the action may also be one to which subparagraph 56(1)(c)(ii) of this instrument applies.

Note 2: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZH(2) to (5) of the Act apply in relation to the action as if:

(a) the foreign person had given the register notice under subsection 130ZH(1) of the Act in relation to the action; and

(b) if subparagraph (1)(c)(i) of this section applies to the action—the entity mentioned in that subparagraph were an Australian entity that is an agribusiness at all times while it wholly or partly carries on an Australian media business; and

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(c) if subparagraph (1)(c)(ii) of this section applies to the action—the entity mentioned in that subparagraph need not be an agribusiness; and

(d) for the purposes of 130ZH(4) of the Act—paragraph 130ZH(1)(a) of the Act applies in relation to the action.

Note: If paragraph (1)(a) or (b) applies to the action, paragraph 40(2)(b) (acquiring interests in securities in entity) of the Act applies to the action.

(3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZH(2) of the Act (as that table item applies because of subsection (2) of this section).

58D Requirement to give register notice—actions relating to businesses that would be significant actions or notifiable actions if not covered by exemption certificates

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

(a) is an acquisition by the foreign person:

(i) of an interest in assets of an Australian business; or

(ii) of a direct interest in a business that wholly or partly carries on an Australian media business; or

(iii) (as a foreign government investor) of a direct interest in an Australian business; and

(b) is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZI(2) to (5) of the Act apply in relation to the action as if:

(a) the foreign person had given the register notice under subsection 130ZI(1) of the Act in relation to the action; and

(b) if subparagraph (1)(a)(ii) of this section applies to the action—the first-mentioned business in that subparagraph were an agribusiness at all times while it wholly or partly carries on an Australian media business; and

(c) if subparagraph (1)(a)(iii) of this section applies to the action—the business mentioned in that subparagraph need not be an agribusiness; and

(d) for the purposes of 130ZI(4) of the Act—paragraph 130ZI(1)(a) of the Act applies in relation to the action.

Note: If subparagraph (1)(a)(i) applies to the action, paragraph 41(2)(b) (acquiring interests in assets of Australian business) of the Act applies to the action.

(3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in

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subsection 130ZI(2) of the Act (as that table item applies because of subsection (2) of this section).

58E Requirement to give register notice—actions that would be notifiable national security actions if not covered by exemption certificates

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

(a) is an action to which paragraph 55B(1)(a), (b) or (c) of the Act applies; and

(b) is not a notifiable national security action only because of subsection 43BA(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZK(2) to (5) of the Act apply in relation to the action as if:

(a) the foreign person had given the register notice under subsection 130ZK(1) of the Act in relation to the action; and

(b) subsection 130ZK(4) of the Act provided that the registrable event day for the register notice were the day on which the foreign person takes the action.

(3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 2 or 3 of the table in subsection 130ZK(2) of the Act (as that table item applies because of subsection (2) of this section).

58F Requirement to give register notice—actions relating to entities that would be reviewable national security actions if not covered by exemption certificates

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

(a) is an action to which paragraphs 55D(1)(a) to (c), or (2)(a) to (c), of the Act apply; and

(b) is not a reviewable national security action only because of subsection 43BB(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZL(2) to (5) of the Act apply in relation to the action as if:

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(a) the foreign person had given the register notice under subsection 130ZL(1) of the Act in relation to the action; and

(b) for the purposes of 130ZL(4) of the Act—paragraph 130ZL(1)(a) of the Act applies in relation to the action.

(3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 of the table in subsection 130ZL(2) of the Act (as that table item applies because of subsection (2) of this section).

58G Requirement to give register notice—actions relating to businesses that would be reviewable national security actions if not covered by exemption certificates

(1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

(a) is an action to which paragraphs 55E(1)(a) to (c), or (2)(a) and (b), of the Act apply; and

(b) is not a reviewable national security action only because of subsection 43BB(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be combined into a single register notice (see paragraph 130ZZ(2)(j) of the Act).

(2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZM(2) to (5) of the Act apply in relation to the action as if:

(a) the foreign person had given the register notice under subsection 130ZM(1) of the Act in relation to the action; and

(b) subsection 130ZM(4) of the Act provided that the registrable event day for the register notice were the day on which the foreign person takes the action.

(3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZM(2) of the Act (as that table item applies because of subsection (2) of this section).

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Division 3—Relationship with other notification provisions

58H Some other notification requirements only apply for actions that do not require register notices

(1) For the purposes of paragraph 98C(1)(c) of the Act, a requirement that must be met for subsection 98C(2) of the Act to apply to a person in relation to a core Part 3 action is that the core Part 3 action is not an action for which the person must give the Registrar a register notice for the purposes of Part 7A of the Act.

(2) For the purposes of paragraph 98D(1)(c) of the Act, a requirement that must be met for subsection 98D(2) of the Act to apply to a person in relation to a core Part 3 action is that the core Part 3 action is not an action for which the person must give the Registrar a register notice for the purposes of Part 7A of the Act.

(3) For the purposes of paragraph 98E(1)(e) of the Act, a requirement that must be met for subsection 98E(2) of the Act to apply to a person in relation to a core Part 3 action is that the core Part 3 action is not an action for which the person must give the Registrar a register notice for the purposes of Part 7A of the Act.

Note: This subsection may not apply in transitional cases (see subsection 81(2)).

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Division 4—Exemptions

58J Exemption for Register purposes for certain kinds of interests in Australian land

For the purposes of paragraph 37(1)(b) of the Act, Part 7A of the Act does not apply in relation to a kind of interest in Australian land that is not one of the following:

(a) a freehold interest in Australian land;

(b) an interest as lessee in a lease giving rights to occupy agricultural land if the term of the lease (including any extension or renewal) is reasonably likely, at the time the interest is acquired, to exceed 5 years;

(c) a legal interest as lessee in a lease giving rights to occupy:

(i) commercial land; or

(ii) residential land;

if the term of the lease (including any extension or renewal) is reasonably likely, at the time the interest is acquired, to exceed 5 years;

(d) an interest in a mining or production tenement;

(e) an interest in a security in an entity that owns Australian land, being a security that entitles the holder to a right to occupy a dwelling of a kind known as a flat or home unit situated on the land;

(f) an interest in a share in an Australian land corporation or agricultural land corporation;

(g) an interest in a unit in an Australian land trust or agricultural land trust;

(h) if the trustee of an Australian land trust or agricultural land trust is a corporation—an interest in a share in that corporation.

Note: Part 7A of the Act continues to apply to interests in exploration tenements, as these interests are not interests in Australian land.

58K Exemption for Register purposes for certain persons becoming foreign persons

For the purposes of subsection 37(1) of the Act, section 130ZC of the Act does not apply to an interest a person holds when becoming a foreign person if the person would not need to give a register notice to the Registrar for the purposes of Part 7A of the Act if the person were to acquire that interest while a foreign person.

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Division 5—Other matters

58L Appointment of infringement officers for section 130ZV of the Act

For the purposes of subsection 100(3A) of the Act, a kind of person who the Registrar may appoint under that subsection is a person who holds, or performs the duties of, an APS Level 6 position, or an equivalent or higher position, within the Australian Taxation Office.

58M Treasurer may extend time for giving register notices

(1) For the purposes of section 130Z of the Act, the Treasurer may, by legislative instrument, make provision for and in relation to extending the period in paragraph 130W(2)(b) of the Act in which a register notice must be given to the Registrar.

(2) Without limiting subsection (1), an instrument under that subsection may do any of the following:

(a) provide for extensions that apply only if conditions are met, and provide for the Treasurer to impose such conditions generally, or in particular cases;

(b) provide for extensions that apply to specified persons;

(c) confer a power to make a decision of an administrative character on the Treasurer.

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Part 6—Other provisions

59 Simplified outline of this Part

This Part prescribes matters for various provisions of the Act, including in relation to time limits and modifications for the purposes of section 18A of the Act (increasing percentage of interests without acquiring additional interests in securities).

60 Time limit for making decisions on exemption certificates

For paragraph 61(1)(a) of the Act, the period prescribed is 30 days.

Note: The Treasurer must make a decision whether to grant an application for an exemption certificate before the end of that 30-day period or that period as extended under the Act.

60A Time limit for national security review of actions

For the purposes of subsection 66A(2) of the Act, the time prescribed is 10 years.

61 Time limit for taking actions specified in no objection notifications

For paragraph 76(4)(a) of the Act, the period prescribed is 12 months.

Note: An action to which a no objection notification relates must be taken before the end of that 12-month period or that period as extended under the Act.

61A Time limit for taking action specified in notice imposing conditions

For the purposes of paragraph 79H(6)(a) of the Act, the period prescribed is 12 months.

Note: An action to which a notice imposing conditions relates must be taken before the end of that 12-month period or that period as extended under the Act.

62 Modification of the Act—increasing percentage of interests without acquiring additional interests in securities

(1) For the purposes of subsection 18A(6) of the Act, the Act applies in relation to actions or proposed actions that are taken to occur because of the operation of subsection 18A(1) or (2) of the Act with the modifications prescribed by this section.

Australian land

(2) The Act applies as if section 12 of the Act (which deals with the meaning of ***interest*** in Australian land) were omitted.

Note: The effect of this subsection is that a person's acquisition, or proposed acquisition, of an interest in securities because of the operation of section 18A of the Act does not lead

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to the person acquiring, or proposing to acquire, an interest in Australian land. As a consequence, the person does not take, or propose to take:

(a) a significant action because of paragraph 43(a) of the Act; or

(b) a notifiable action because of paragraph 47(2)(c) of the Act; or

(c) a notifiable national security action because of paragraph 55B(1)(d) of the Act; or

(d) a reviewable national security action because of paragraph 55F(a) of the Act.

Maximum civil penalties

(3) The following provisions of the Act apply as if the maximum penalty specified in the provision were 5,000 penalty units (or 50,000 penalty units if the person who contravenes the relevant civil penalty provision is a corporation):

(a) subsection 89(3) (contravening orders under Part 3 of the Act);

(b) subsection 91(4) (failing to give notice);

(c) subsection 93(3) (contravening conditions in no objection notifications);

(d) subsection 93(6) (contravening conditions in notice imposing conditions);

(e) subsection 98B(3) (false or misleading information and documents).

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Part 7—Application and transitional provisions

63 Simplified outline of this Part

This Part contains application and transitional provisions for this instrument.

64 Values determined before this section commences

To avoid doubt, a reference in section 23 (value of assets of entities or businesses) to the most recent financial statement of an entity includes a reference to a financial statement audited or reviewed before this section commences.

67 Application of *Foreign Acquisitions and Takeovers Amendment (Government Infrastructure) Regulation 2016*

Paragraphs 31(2)(b) and (c), as amended by the *Foreign Acquisitions and Takeovers Amendment (Government Infrastructure) Regulation 2016*, do not apply in relation to an agreement that:

(a) relates to the acquisition of an interest in Australian land, or to an Australian business; and

(b) was entered into before 31 March 2016.

68 Amendments made by the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017*

The amendments of this instrument made by the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017* apply in relation to an action taken on or after the commencement of those Regulations.

69 Application of *Foreign Acquisitions and Takeovers Amendment (Amendments of Singapore-Australia Free Trade Agreement) Regulations 2017*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Amendments of Singapore-Australia Free Trade Agreement) Regulations 2017* apply in relation to significant actions, and notifiable actions, taken on or after the day the amending Agreement referred to in paragraph (b) of item 1 of the table in subsection 2(1) of those Regulations enters into force for Australia.

70 Application of the *Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) Regulations 2017*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) Regulations 2017* apply in relation to an

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acquisition of residential land by a foreign person if subsection 115C(1) of the Act would otherwise apply in relation to the acquisition.

71 Application of the *Foreign Acquisitions and Takeovers Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2018*

(1) The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2018* apply in relation to an action taken on or after the commencement of those Regulations.

(2) However, for the purposes of subsection 52(5), those amendments do not so apply in relation to land that:
  (a) is described in paragraph 52(3)(a) of the Act; and
  (b) meets all the conditions mentioned in subsection 52(6) of this instrument.

(3) Subsection (2) does not apply in relation to an action taken during any period the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018, is in force for both Australia and Peru.

Note: That Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

72 Application of the *Foreign Acquisitions and Takeovers Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* apply in relation to an action that:
  (a) is taken by an entity (within the ordinary meaning of the term) that:
    (i) is an enterprise or a national of a country other than Australia; and
    (ii) is not a foreign government investor; and
  (b) is taken both:
    (i) on or after the commencement of those Regulations; and
    (ii) during the period the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018, is in force for that other country.

Note: That Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

73 Application of the *Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019* apply in relation to an action taken on or after the commencement of those Regulations.

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74 Application of the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020*

(1) The amendments made by the amending regulations apply in relation to an action taken on or after the announcement time, unless the action is covered by an agreement entered into before the announcement time.

(2) In applying subsection (1), disregard subsection 15(5) of the Act (about provisions of agreements that are not currently binding).

Saving provision for restrictive conditions in exemption certificates

(3) Despite the repeal of subsections 52(6), (6A) and (7) of this instrument by the amending regulations, those subsections continue to apply, on and after the announcement time, in relation to an exemption certificate covered by subsection (4), as if the repeal had not happened.

(4) This subsection covers an exemption certificate if:
  (a) the certificate was in force at the announcement time; and
  (b) a condition specified in the certificate referred to subsection 52(6), (6A) or (7) of this instrument.

Definitions

(5) In this section:

amending regulations means the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020.*

announcement time means 10.30 pm, by legal time in the Australian Capital Territory, on 29 March 2020.

75 Application of the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020* apply in relation to an action taken on or after the commencement of those Regulations.

76 Application of the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020*

Application of Schedule 2 (Passive investments)

(1) The amendments made by Schedule 2 to the amending regulations apply in relation to an action taken, or proposed to be taken, on or after 1 January 2021, unless:
  (a) the action is notified to the Treasurer before 1 January 2021; or
  (b) the Treasurer has given a no objection notification in relation to the action before 1 January 2021; or

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(c) an exemption certificate, given by the Treasurer before 1 January 2021 in relation to the action, is in force; or

(d) the Treasurer has made an order under Division 2 of Part 3 of the Act in relation to the action before 1 January 2021.

Application of Schedule 3 (Reinstating monetary thresholds)

(2) The amendments made by Schedule 3 to the amending regulations apply in relation to an action taken on or after 1 January 2021.

(3) Section 58 (about indexation) applies on and after 1 January 2021.

Application of Schedule 4 (Integrity amendments)

(4) The amendments of section 27 of this instrument made by Schedule 4 to the amending regulations apply in relation to a moneylending agreement entered into on or after 1 January 2021.

(5) The amendment of subsection 31(1) of this instrument made by Schedule 4 to the amending regulations applies on and after 1 January 2021 in relation to an agreement that relates to the acquisition of an interest in Australian land, or to an Australian business, whether the agreement is entered into before, on or after that date.

(6) The amendment of subsection 31(2) of this instrument made by Schedule 4 to the amending regulations applies in relation to an agreement that relates to the acquisition of an interest in Australian land, or to an Australian business, if the agreement is entered into on or after 1 January 2021.

Application of Schedule 6 (Technical amendments)

(7) The amendments made by Schedule 6 to the amending regulations apply in relation to an action taken, or proposed to be taken, on or after 1 January 2021.

Definitions

(8) In this section:

amending regulations means the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020*.

77 Application of the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*

Application of amendments about moneylending agreements

(1) The amendments made by Part 1 of Schedule 1 to the amending regulations apply in relation to moneylending agreements entered into on or after 1 April 2022.

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Application of other amendments

(2) The amendments made by Parts 2 to 6 of Schedule 1 to the amending regulations apply in relation to an action taken, or proposed to be taken, on or after 1 April 2022.

Definitions

(3) In this section:

amending regulations means the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*.

78 Application of the *Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) Regulations 2022*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) Regulations 2022* apply in relation to an action taken on or after the commencement of those Regulations.

79 Application of the *Foreign Acquisitions and Takeovers Amendment (UK Free Trade Agreement) Regulations 2022*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (UK Free Trade Agreement) Regulations 2022* apply in relation to an action taken on or after the commencement of those Regulations.

80 Application of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022*

The amendments of this instrument made by Division 12 of Schedule 1 to the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022* apply in relation to an action taken, or proposed to be taken, on or after the commencement of that Division.

81 Application of the *Foreign Acquisitions and Takeovers Amendment (Register of Foreign Ownership and Other Matters) Regulations 2023*

Application of extension of exemption for moneylending agreements

(1) The amendment of subsection 27(1) made by Part 2 of Schedule 1 to the *Foreign Acquisitions and Takeovers Amendment (Register of Foreign Ownership and Other Matters) Regulations 2023* applies on or after the commencement of that Part in relation to:

(a) moneylending agreements entered into before, on or after that commencement; and

(b) registrable water interests that start to be held before, on or after that commencement.

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Transitional—continuing other notification requirements for situations relating to core Part 3 actions taken before the Register commencement day

(2) Disregard subsection 58H(3) for a person in relation to a core Part 3 action if:

(a) subsection 98C(2) or 98D(2) of the Act (the ***other notification provision***) applies to the person in relation to the core Part 3 action; and

(b) the person complies with the other notification provision in relation to the core Part 3 action.

Note 1: This is for the case where:

(a) the person has already complied with subsection 98C(2) or 98D(2) of the Act in relation to the core Part 3 action by giving the Treasurer a notice under that subsection; and

(b) a situation mentioned in subsection 98E(2) of the Act then arises in relation to the core Part 3 action.

This subsection confirms the person needs to comply with subsection 98E(3) of the Act and notify the Treasurer about that situation.

Note 2: This is only relevant for some core Part 3 actions taken before the Register commencement day, as subsection 58H(1) or (2) prevents compliance with subsection 98C(2) or 98D(2) of the Act for certain core Part 3 actions taken after that day.

Transitional—register requirements for certain core Part 3 actions taken before the Register commencement day

(3) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if:

(a) subsection 98C(2) or 98D(2) of the Act (the ***other notification provision***) applies to the person in relation to a core Part 3 action that:

(i) is taken before the Register commencement day; and

(ii) is an action of a kind for which the person would need to give the Registrar a register notice for the purposes of Part 7A of the Act if the action were taken on or after the Register commencement day; and

(b) the 30-day period the person has to comply with the other notification provision in relation to the core Part 3 action starts before the Register commencement day; and

(c) the person fails to so comply with the other notification provision before the Register commencement day; and

(d) in the case where:

(i) a situation mentioned in subsection 98E(2) of the Act arises in relation to the core Part 3 action; and

(ii) that situation results in the person no longer holding any part of an interest that relates to the core Part 3 action; and

(iii) subsection 98E(3) of the Act applies to the person in relation to that situation;

the person fails to comply with subsection 98E(3) of the Act in relation to that situation before the Register commencement day.

Note 1: Paragraph (d) means the register notice does not need to be given under this subsection if a related situation arises that:

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(a) results in the person no longer holding any part of an interest; and

(b) has been notified to the Treasurer in compliance with subsection 98E(3) of the Act.

If that happens, the obligation to comply with subsection 98C(2) or 98D(2) of the Act in relation to the core Part 3 action continues on and after the Register commencement day.

Note 2: If a register notice must be given under this subsection, the obligation to comply with the other notification provision (or to comply with subsection 98E(3) of the Act for a related situation) ceases because that other notification provision ceases to apply (see section 58H of this instrument).

(4) For the purposes of paragraphs 130ZU(1)(c) and (d) of the Act, if a foreign person gives a register notice under subsection (3) of this section on a particular day (the ***register notification day***) in relation to a core Part 3 action, then:

(a) a registered circumstance under this subsection exists in relation to the foreign person that is the same as the registered circumstance that would notionally exist if the person were to take the core Part 3 action:

(i) in the same way; and

(ii) on the Register commencement day; and

(b) the registered circumstance ceases if a situation arises (or has arisen) that would cause that notional registered circumstance to cease if the situation were to arise in the same way on:

(i) if the situation actually arises on or before the register notification day—the register notification day; or

(ii) if the situation actually arises on a later day—that later day.

(5) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance under subsection (4) of this section if section 130ZN of the Act would have applied to that notional registered circumstance.

(6) For the purposes of paragraph 130ZU(1)(b) of the Act, the registrable event day for a register notice under subsection (3) of this section is the Register commencement day.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Foreign Acquisitions and Takeovers Regulation 2015 (SLI No. 217, 2015)	27 Nov 2015 (F2015L01854)	1 Dec 2015 (s 2(1) item 1)	
Treasury Legislation Amendment (China–Australia Free Trade Agreement) Regulation 2015 (SLI No. 218, 2015)	27 Nov 2015 (F2015L01859)	Sch 1: 20 Dec 2015 (s 2(1) item 2)	—
Foreign Acquisitions and Takeovers Amendment (Government Infrastructure) Regulation 2016	30 Mar 2016 (F2016L00429)	31 Mar 2016 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017	29 June 2017 (F2017L00811)	24 June 2017 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Amendments of Singapore-Australia Free Trade Agreement) Regulations 2017	20 Nov 2017 (F2017L01500)	1 Dec 2017 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) Regulations 2017	19 Dec 2017 (F2017L01671)	15 Dec 2017 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2018	28 Sept 2018 (F2018L01376)	11 Feb 2020 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018	2 Oct 2018 (F2018L01389)	30 Dec 2018 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019	16 Dec 2019 (F2019L01624)	17 Jan 2020 (s 2(1) item 1)	—

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020	17 Apr 2020 (F2020L00435)	18 Apr 2020 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020	3 Sept 2020 (F2020L01131)	4 Sept 2020 (s 2(1) item 1)	—
Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020	10 Dec 2020 (F2020L01568)	1 Jan 2021 (s 2(1) item 1)	—
Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021	25 June 2021 (F2021L00848)	Sch 1 (item 15): 8 Dec 2021 (s 2(1) item 3)	—
Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021	17 Dec 2021 (F2021L01841)	Sch 1 (item 10): 18 Dec 2021 (s 2(1) item 2)	—
Foreign Acquisitions and Takeovers Amendment Regulations 2022	31 Mar 2021 (F2022L00465)	1 Apr 2022 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) Regulations 2022	24 Nov 2022 (F2022L01506)	29 Dec 2022 (s 2(1) item 1)	—
Foreign Acquisitions and Takeovers Amendment (UK Free Trade Agreement) Regulations 2022	24 Nov 2022 (F2022L01507)	31 May 2023 (s 2(1) item 1)	—
Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022	12 Dec 2022 (F2022L01627)	Sch 1 (items 11, 12, 17–19): 13 Dec 2022 (s 2(1) item 2)	—
Foreign Acquisitions and Takeovers Amendment (Register of Foreign Ownership and Other Matters) Regulations 2023	23 June 2023 (F2023L00849)	1 July 2023 (s2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LIA s 48D
s 5	am No 218, 2015; F2016L00429; F2017L00811; F2017L01500; F2017L01671; F2018L01376; F2018L01389; F2019L01624
	ed C8
	am F2020L00435; F2020L01568; F2022L00465; F2022L01507; F2022L01627
s 6	rep F2020L01568
s 7	am No 218, 2015; F2019L01624
s 8	am No 218, 2015
s 8AA	ad F2020L01568
s 8A	ad F2019L01624
s 9A	ad No 218, 2015
	am F2019L01624
s 10	am F2017L00811
	rep F2020L01568
Part 2	
s 13A	ad F2020L01568
	am F2022L00465
s 14	am F2020L01568; F2022L01627
s 16	am F2022L01627
s 17	am F2020L01568
	ed C11
s 18	am F2020L01568
s 22A	ad F2023L00849
Part 3	
Division 1	
s 26	am F2017L01671; F2020L01568
Division 2	
s 27	am F2020L01568; F2022L00465; F2023L00849
s 27A	ad F2020L01568
s 27B	ad F2020L01568
Division 3	
Division 3 heading	rs F2020L01568
Subdivision A	
s 28	am F2020L01568
Subdivision B	
s 29	am F2020L01568
s 30	am F2022L00465

Endnote 4—Amendment history

Provision affected	How affected
s 31	am F2016L00429; F2020L01568
Subdivision C	
Subdivision C heading	rs F2020L01568
s 33	am F2020L01568
Subdivision D	
Subdivision D heading	rs F2020L01568
s 37	am F2017L00811; F2022L00465
s 38	am F2017L00811; F2020L00435; F2020L01568
Division 4	
Division 4 heading	rs F2020L01568
Subdivision A	
Subdivision A heading	rs F2020L01568
s 40	am F2017L00811; F2017L01500; F2020L00435; F2020L01568
s 41	am F2020L01568; F2022L00465
s 41A	ad F2017L00811
	am F2020L01568; F2022L00465
s 41B	ad F2020L01568
Subdivision B	
s 42	rs F2017L00811
s 43	am F2017L00811
s 43A	ad F2017L00811
s 43B	ad F2017L00811
s 43BA	ad F2020L01568
s 43BB	ad F2020L01568
Division 4A	
Division 4A	ad F2017L01671
s 43C	ad F2017L01671
s 43D	ad F2017L01671
Division 5	
s 44	am F2017L00811
s 45	am F2020L01568
s 46	am F2020L01568
s 48	am F2020L01568
Part 4	
Part 4	rs F2020L01568
s 49	rs F2020L00435
	am F2020L01131
	rs F2020L01568
s 50	rep F2020L00435
	ad F2020L01568

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Endnote 4—Amendment history

Provision affected	How affected
s 51	am F2019L01624
	rs F2020L00435; F2020L01568
	am F2022L01506
s 52	am F2017L00811; F2017L01500; F2019L01624
	rs F2020L00435
	am F2020L01131
	rs F2020L01568
	am F2022L01506
s 53	am F2017L01500
	rep F2020L00435
Part 5	
Division 2	
s 55	am F2022L00465
s 56	am F2017L00811; F2020L01568
Division 3	
s 57	am F2020L01568
Part 5A	
Part 5A	ad F2020L01568
s 58	rep F2017L00811
	ad F2020L01568
Part 5B	
Part 5B	ad F2023L00849
Division 1	
s 58A	ad F2023L00849
Division 2	
Subdivision A	
s 58B	ad F2023L00849
Subdivision B	
s 58C	ad F2023L00849
s 58D	ad F2023L00849
s 58E	ad F2023L00849
s 58F	ad F2023L00849
s 58G	ad F2023L00849
Division 3	
s 58H	ad F2023L00849
Division 4	
s 58J	ad F2023L00849
s 58K	ad F2023L00849
Division 5	
s 58L	ad F2023L00849

Endnote 4—Amendment history

Provision affected	How affected
s 58M	ad F2023L00849
Part 6	
s 59	am F2020L01568
s 60	am F2021L00848
s 60A	ad F2020L01568
s 61	am F2020L01568
s 61A	ad F2020L01568
s 62	rs F2020L01568
Part 7	
s 65	rep F2020L01568
s 66	rep F2021L01841
s 67	ad F2016L00429
s 68	ad F2017L00811
s 69	ad F2017L01500
s 70	ad F2017L01671
s 71	ad F2018L01376
s 72	ad F2018L01389
s 73	ad F2019L01624
	ed C7
s 74	ad F2020L00435
s 75	ad F2020L01131
s 76	ad F2020L01568
s 77	ad F2022L00465
s 78	ad F2022L01506
s 79	ad F2022L01507
s 80	ad F2022L01627
s 81	ad F2023L00849