



Foreign Acquisitions and Takeovers Amendment (Register of Foreign Ownership and Other Matters) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 19 June 2023

David Hurley
Governor-General

By His Excellency's Command

Dr Jim Chalmers
Treasurer

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1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Register of Foreign Ownership and Other Matters) Regulations 2023*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the Register commencement day (within the meaning of the <i>Foreign Acquisitions and Takeovers Act 1975</i>).	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Further requirements to register, relationship with other notification requirements, exemptions and other matters

Foreign Acquisitions and Takeovers Regulation 2015

1 After Part 5A

Insert:

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).

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.
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.

Schedule 1 Amendments

Part 1 Further requirements to register, relationship with other notification requirements, exemptions and other matters

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 ...
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.

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
 - (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

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- (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 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.

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- (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:
- (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:

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- (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).

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)).

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.

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.

Part 2—Replicating existing exemptions

Foreign Acquisitions and Takeovers Regulation 2015

2 After section 22

Insert:

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.

3 Subsection 27(1)

After “an interest in securities, assets, a trust, Australian land or a tenement”, insert “, or a registrable water interest, (the **interest**)”.

Part 3—Application and transitional provisions

Foreign Acquisitions and Takeovers Regulation 2015

4 In the appropriate position in Part 7

Insert:

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.

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:

- (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.