



Register of Foreign Ownership of Agricultural Land Amendment (Water) Act 2016

No. 96, 2016

**An Act to amend the law relating to foreign
interests, acquisitions and takeovers, and for
related purposes**

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**An Act to amend the law relating to foreign
interests, acquisitions and takeovers, and for
related purposes**

[Assented to 7 December 2016]

The Parliament of Australia enacts:

1 Short title

This Act is the *Register of Foreign Ownership of Agricultural Land Amendment (Water) Act 2016*.

2 Commencement

- (1) Each provision of this Act 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 Act	The day this Act receives the Royal Assent.	7 December 2016

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Register of Foreign Ownership of Agricultural Land Act 2015

1 Title

Before “**land**”, insert “**water or**”.

2 Section 1

Before “*Agricultural Land*”, insert “*Water or*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

3 Section 3

Repeal the section, substitute:

3 Simplified outline of this Act

The Commissioner must keep 2 registers under this Act.

The first register is the Register of Foreign Ownership of Agricultural Land, which contains:

- (a) information the Commissioner obtains about foreign persons’ holdings of agricultural land; and
- (b) published statistics derived from that information.

Foreign persons must give notice to the Commissioner of:

- (a) their holdings of agricultural land as at the start of 1 July 2015; and
- (b) later events causing agricultural land to start or cease to be held by foreign persons.

The second register is the Register of Foreign Ownership of Water Entitlements, which contains:

- (a) information the Commissioner obtains about foreign persons' holdings of certain water entitlements and contractual water rights; and
- (b) published statistics derived from that information.

Foreign persons must give notice to the Commissioner of:

- (a) their holdings of such water entitlements and contractual water rights as at the end of 30 November 2017; and
- (b) later events causing such entitlements or rights to start or cease to be held by foreign persons, notice of which must be given annually.

The Commissioner must give the Minister reports, including statistics from each register, for presentation to the Parliament.

The provisions in Schedule 1 to the *Taxation Administration Act 1953* about confidentiality of information control what can be done with information in the registers (apart from the published statistics).

4 Section 4

Insert:

Australian water access entitlement means a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the water resources of an area in the State or Territory.

5 Section 4 (definition of cease)

Repeal the definition, substitute:

cease:

- (a) in relation to holding a freehold interest in, or a right to occupy, agricultural land—has a meaning affected by section 6; or

- (b) in relation to holding a registrable water entitlement or a contractual water right—has a meaning affected by section 6A.

6 Section 4

Insert:

contract includes a deed.

contractual water right of a person means a contractual right that the person holds (alone or jointly) to all or part of another person's:

- (a) registrable water entitlement; or
- (b) water allocation; or
- (c) right of a kind specified in the rules.

7 Section 4 (definition of *Register*)

Repeal the definition.

8 Section 4

Insert:

registrable water entitlement has the meaning given by section 5A.

9 Section 4 (definition of *registration trigger time*)

Repeal the definition, substitute:

registration trigger time:

- (a) in relation to a right held by a person to occupy land under a lease or licence—means the latest of the following times:
 - (i) the time the person started to hold the right;
 - (ii) the time the person became a foreign person;
 - (iii) the time the land became agricultural land;
 - (iv) the start of 1 July 2015; or
- (b) in relation to a contractual water right held by a person—means the latest of the following times:
 - (i) the time the person started to hold the right;
 - (ii) the time the person became a foreign person;
 - (iii) the start of 1 December 2017.

10 Section 4 (definition of *start*)

Repeal the definition, substitute:

start:

- (a) in relation to holding a freehold interest in, or a right to occupy, land—has a meaning affected by section 6; or
- (b) in relation to holding a registrable water entitlement or a contractual water right—has a meaning affected by section 6A.

11 Section 4

Insert:

water allocation means the specific volume of water allocated to an Australian water access entitlement in a given period.

water resource means:

- (a) surface water or ground water; or
- (b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it).

An expression used in this definition that is also used in the *Water Act 2007* has the same meaning as in that Act.

12 After section 5

Insert:

5A Meaning of *registrable water entitlement*

- (1) A *registrable water entitlement* of a person is any of the following rights that the person holds (alone or jointly):
 - (a) an irrigation right (within the meaning of the *Water Act 2007*) that relates to a water resource in Australia;
 - (b) a right (including an Australian water access entitlement) conferred by or under a law of a State or Territory to do either or both of the following:
 - (i) to hold water from a water resource in Australia;
 - (ii) to take water from a water resource in Australia.
- (2) However, a *registrable water entitlement* does not include:

- (a) stock and domestic rights; or
- (b) riparian rights; or
- (c) water allocations; or
- (d) a right of a kind specified in the rules.

13 After section 6

Insert:

6A Starting and ceasing to hold water entitlements and rights

Starting

- (1) A person starts to hold a registrable water entitlement or a contractual water right even if:
 - (a) the person starts to hold the entitlement or right jointly with one or more other persons; or
 - (b) the person already holds or has previously held another registrable water entitlement or contractual water right.

Ceasing

- (2) A person ceases to hold a registrable water entitlement, or contractual water right, even if the person continues to hold another such entitlement or right.

This section is not limiting

- (3) This section does not limit when a person starts or ceases to hold a registrable water entitlement or contractual water right.

14 At the end of section 11

Add:

- (7) This Act also has the effect it would have if each reference to a water resource were expressly confined to a water resource within a Territory.

15 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Register of Foreign Ownership of Agricultural Land

16 Section 12

Omit “the Register”, substitute “this register”.

17 Section 13 (heading)

Repeal the heading, substitute:

13 Commissioner must keep this register

18 Section 14 (heading)

Repeal the heading, substitute:

14 Parts of this register

19 Subsections 14(1) and (3)

Omit “the Register”, substitute “this register”.

20 Section 15 (heading)

Repeal the heading, substitute:

15 Commissioner may add information to basic part of this register

21 Section 15

Omit “the Register any”, substitute “this register any”.

22 Section 15 (note 1)

Omit “the Register”, substitute “this register”.

23 Section 16 (heading)

Repeal the heading, substitute:

16 Commissioner may correct or update information in this register

24 Section 16

Omit “the Register”, substitute “this register”.

25 Section 17 (heading)

Repeal the heading, substitute:

17 Statistical part of this register to be published on website

26 Section 17

Omit “the Register”, substitute “this register”.

27 After Part 3

Insert:

Part 3A—Register of Foreign Ownership of Water Entitlements

30A Simplified outline of this Part

The Commissioner must keep a Register of Foreign Ownership of Water Entitlements, in 2 parts.

The basic part contains information the Commissioner obtains about foreign persons’ holdings of certain water entitlements and contractual water rights.

The statistical part, which must be published on a website, contains statistics derived from the information in the basic part.

The Commissioner may correct and update this register.

30B Commissioner must keep this register

The Commissioner must keep a Register of Foreign Ownership of Water Entitlements.

30C Parts of this register

- (1) The Commissioner must keep this register in 2 separate parts:
 - (a) the basic part; and
 - (b) the statistical part.
- (2) The basic part must contain:
 - (a) all the information obtained by the Commissioner under Part 3B; and
 - (b) any information added under section 30D; and
 - (c) any corrections or updates of information described in paragraph (a) or (b) that are made under section 30E.
- (3) The statistical part must contain statistics derived by the Commissioner from information in the basic part of this register, and any corrections or updates of those statistics.
- (4) The statistics in the statistical part must not identify, or be reasonably capable of being used to identify, a person.

30D Commissioner may add information to basic part of this register

The Commissioner may add to the basic part of this register any information obtained by the Commissioner (other than information obtained under Part 3B) relating to:

- (a) the holding by a foreign person at the end of 30 November 2017 of an entitlement or right described in subsection 30H(1); or
- (b) an event that is described in Subdivision B of Division 3 of Part 3B and that occurs on or after 1 December 2017.

Note 1: Information obtained under Part 3B must be included in the basic part of this register.

Note 2: Although the information described in this section is information about matters that must be notified to the Commissioner under Part 3B, the Commissioner may obtain that information in other ways, such as by the exercise of powers under section 33 of this Act or Division 353 in Schedule 1 to the *Taxation Administration Act 1953*.

30E Commissioner may correct or update information in this register

The Commissioner may correct or update information in the basic part, or the statistical part, of this register.

30F Statistical part of this register to be published on website

The Commissioner must publish on a website the statistical part of this register.

Part 3B—Requirements to give information about foreign holdings of water entitlements

Division 1—Simplified outline of this Part

30G Simplified outline of this Part

Foreign persons who will hold, or who hold, certain water entitlements or contractual water rights at the end of 30 November 2017 must give the Commissioner notice of those holdings.

If an event occurs on or after 1 December 2017 causing such entitlements or rights to start or cease to be held by a particular foreign person, the person must give the Commissioner notice of the event. Such notices must be given annually.

If a person required to give notice dies or is wound up before doing so, the person's executor or liquidator must give the notice. An agent may give notice for a person.

The rules may provide for exemptions from these requirements.

Division 2—Foreign holdings of water entitlements or contractual water rights on 30 November 2017

30H Notification of foreign persons' holdings of water entitlements or contractual water rights as on 30 November 2017

- (1) This section applies if a foreign person will hold, or holds, either of the following at the end of 30 November 2017:
 - (a) a registrable water entitlement;
 - (b) a contractual water right under a contract whose remaining term (including any extension or renewal) is (at the end of 30 November 2017) reasonably likely to exceed 5 years.
- (2) The person must give notice of the holding to the Commissioner in the approved form during the period:
 - (a) starting on 1 July 2017; and
 - (b) ending on the later of:
 - (i) 30 November 2017; and
 - (ii) the 30th day after the day the person starts to hold that entitlement or right.

Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* contains rules about giving notices in the approved form. Subdivision 286-C in that Schedule provides for an administrative penalty for failure to give notice in the approved form on time.

Note 2: Division 4 requires or permits other persons to give notice of the event in some cases.

Note 3: The rules may provide for exemptions from requirements of this Part (see section 30U).

30J Notification of changes to these holdings that occur before 1 December 2017

If:

- (a) a person gives notice of a holding under section 30H; and
 - (b) an event of a kind described in section 30M, 30P or 30Q occurs in relation to the holding before 1 December 2017;
- the person must give the Commissioner notice, in the approved form, of the event before the later of:
- (c) 1 December 2017; and

(d) the end of 30 days after the occurrence of the event.

Division 3—Changes in foreign holdings of water entitlements or contractual water rights

Subdivision A—Requirement to notify of events affecting foreign holding of these entitlements or rights

30K Notification of changes of foreign persons' holdings of water entitlements or contractual water rights

- (1) A person must give the Commissioner notice, in the approved form, of the events described in Subdivision B that:
- (a) involve the person; and
 - (b) occur during a financial year; and
 - (c) relate to a registrable water entitlement or a contractual water right.

The person must do so before the end of 30 days after the end of the financial year.

Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* contains rules about giving notices in the approved form. Subdivision 286-C in that Schedule provides for an administrative penalty for failure to give notice in the approved form on time.

Note 2: If the person's notice misses an event occurring during the financial year, a further notice will need to be given.

Note 3: Division 4 requires or permits other persons to give notice of the events in some cases.

Note 4: The rules may provide for exemptions from requirements of this Part (see section 30U).

- (2) Subsection (1) applies to:
- (a) the period starting on 1 December 2017 and ending on 30 June 2018 as if that period were a financial year; and
 - (b) the 2018-19 financial year and each later financial year.

Exceptions

- (3) Subsection (1) does not apply to:
- (a) a person if the person is not a foreign person:

- (i) at the end of the financial year; and
- (ii) at the end of the previous financial year; or
- (b) an entitlement or right if the person does not hold the entitlement or right:
 - (i) at the end of the financial year; and
 - (ii) at the end of the previous financial year.

Subdivision B—Events that must be notified

30L Foreign person starting to hold a water entitlement or contractual water right

One event is that a foreign person starts to hold:

- (a) a registrable water entitlement; or
- (b) a contractual water right under a contract whose term (including any extension or renewal) after the person starts to hold the right is reasonably likely to exceed 5 years.

30M Foreign person ceasing to hold a water entitlement or contractual water right

Another event is that a foreign person ceases to hold:

- (a) a registrable water entitlement; or
- (b) a contractual water right under a contract whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

30N Becoming a foreign person while holding a water entitlement or contractual water right

Another event is that a person becomes a foreign person while holding:

- (a) a registrable water entitlement; or
- (b) a contractual water right under a contract whose term (including any extension or renewal) after the person becomes a foreign person is reasonably likely to exceed 5 years.

30P Ceasing to be a foreign person while holding a water entitlement or contractual water right

Another event is that a person ceases to be a foreign person while holding:

- (a) a registrable water entitlement; or
- (b) a contractual water right under a contract whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

30Q Change to certain characteristics of a water entitlement or contractual water right

Another event is a change to the volume of water, or to the share of a water resource, referred to in either of the following rights held by a foreign person:

- (a) a registrable water entitlement;
- (b) a contractual water right under a contract whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

Division 4—Giving of notice by agents

30R Requirement for executors and administrators to give notice for persons who die

If a person who is required by section 30H, 30J or 30K to give notice dies before giving the notice, the executor or administrator of the person's estate must give notice in accordance with that section.

30S Requirement for corporate liquidators to give notice

If a person who is required by section 30H, 30J or 30K to give notice is a corporation and is wound up before giving the notice, the liquidator of the corporation must give notice in accordance with that section.

30T Agents may give notice

A person required by section 30H, 30J, 30K, 30R or 30S to give notice is taken to have complied with the requirement if someone else gives notice, in accordance with that section, on the person's behalf.

Division 5—Exemptions from requirements to give notice

30U Rules may exempt from requirements to give notice

The rules may provide that this Part, or specified provisions of this Part, do not apply in relation to either all persons or persons specified by the rules, either generally or in circumstances specified by the rules.

28 Section 31

After "Part 3", insert "or 3B".

29 Section 31

Omit:

<p>This Act ceases to have effect at the end of 1 December 2016 unless, before then, an Act has provided for a register of foreign ownership of water entitlements.</p>

30 Section 33 (heading)

Repeal the heading, substitute:

33 Offshore information notices for persons who may have obligations under Part 3 or 3B

31 Subparagraphs 33(a)(i) and (ii)

After "Part 3", insert "or 3B".

32 Paragraph 34(1)(b)

Repeal the paragraph, substitute:

(b) includes statistics derived by the Commissioner from:

- (i) information in the basic part of the Register of Foreign Ownership of Agricultural Land kept under section 13; and
- (ii) information in the basic part of the Register of Foreign Ownership of Water Entitlements kept under section 30B.

33 Section 34A

Repeal the section.

34 Transitional—sunset provision

Operation after the sunset date

- (1) If this Act commences after 1 December 2016, the *Register of Foreign Ownership of Agricultural Land Act 2015* and any rules under that Act are taken to have continued in effect during the period (the **transition period**):
 - (a) starting at the end of 1 December 2016; and
 - (b) ending just before that commencement.
- (2) However, that Act and those rules continue in effect during and after the transition period as if:
 - (a) each period of 30 days applying to a person under section 20, 27 or 28 of that Act immediately before the transition period:
 - (i) paused at the start of the transition period; and
 - (ii) resumed immediately after the end of the transition period; and
 - (b) each period of 30 days that started applying to a person under section 20, 27 or 28 of that Act during the transition period:
 - (i) paused immediately after it started applying to the person; and
 - (ii) resumed immediately after the end of the transition period.
- (3) Subitems (1) and (2) have effect despite:
 - (a) subsection 34A(1) of that Act (as in force on 1 December 2016); and
 - (b) section 7 of the *Acts Interpretation Act 1901*.

Announcement about new register

- (4) If, before this Act commences, no announcement was made under subsection 34A(2) of the *Register of Foreign Ownership of Agricultural Land Act 2015*, the Minister must announce, by notifiable instrument, that the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* now provides for a Register of Foreign Ownership of Water Entitlements.

34 Before section 35

Insert:

34A Productivity Commission inquiry—Parts 3A and 3B

- (1) Before the end of the period of 3 years after the commencement of this section, the Minister administering the *Productivity Commission Act 1998* (the **Productivity Minister**) must, under paragraph 6(1)(a) of that Act, refer to the Productivity Commission for inquiry the matter of the effectiveness of the scheme set out in Parts 3A and 3B of this Act, including an assessment of the costs and benefits of that scheme.
- (2) In referring the matter to the Productivity Commission for inquiry, the Productivity Minister must:
- (a) under paragraph 11(1)(b) of the *Productivity Commission Act 1998*, specify that the Productivity Commission must submit its report on the inquiry to the Productivity Minister within 5 years of the commencement of this section; and
 - (b) under paragraph 11(1)(d) of that Act, require the Productivity Commission to make recommendations in relation to the matter.
- Note: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.
- (3) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, the matter mentioned in subsection (1) of this section is taken to be a matter relating to industry, industry development and productivity.

Part 2—Other amendments

Foreign Acquisitions and Takeovers Act 1975

35 Subsection 99(2)

Omit “the Treasurer”, substitute “each of the Treasurer and the Commissioner of Taxation”.

36 After subsection 99(2)

Insert:

- (2A) The Treasurer may, in writing, delegate to:
- (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department;
- the Treasurer’s powers and functions under Part 4 of the Regulatory Powers Act as an authorised applicant in relation to the civil penalty provisions of this Act.
- (2B) The Commissioner of Taxation may, in writing, delegate to an SES employee, or acting SES employee, in the Australian Taxation Office the Commissioner’s powers and functions under Part 4 of the Regulatory Powers Act as an authorised applicant in relation to the civil penalty provisions of this Act.
- (2C) In exercising powers or performing functions delegated under subsection (2A) or (2B), a delegate must comply with any directions of the delegator.

37 Subsection 100(4)

Omit “the Secretary”, substitute “each of the Secretary and the Commissioner of Taxation”.

38 After subsection 100(4)

Insert:

- (4A) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary’s powers

and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).

- (4B) The Commissioner of Taxation may, in writing, delegate to an SES employee, or acting SES employee, in the Australian Taxation Office the Commissioner's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4C) In exercising powers or performing functions delegated under subsection (4A) or (4B), a delegate must comply with any directions of the delegator.

Taxation Administration Act 1953

39 Subsection 355-55(1) in Schedule 1 (table item 6, column headed "The record is made for or the disclosure is to ...", after paragraph (a))

Insert:

(aa) water; or

40 Subsection 355-55(1) in Schedule 1 (table item 6)

After "Register of Foreign Ownership of Agricultural Land", insert "or Register of Foreign Ownership of Water Entitlements".

41 Subsection 355-65(8) in Schedule 1 (table item 7, column headed "The record is made for or the disclosure is to ...", after paragraph (a))

Insert:

(aa) water; or

42 Subsection 355-65(8) in Schedule 1 (table item 7)

After "Register of Foreign Ownership of Agricultural Land", insert "or Register of Foreign Ownership of Water Entitlements".

43 Application of amendments

The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to records and disclosures of information made on or after the commencement of this Part, whether the information was obtained before, on or after the commencement of this Part.

*[Minister's second reading speech made in—
House of Representatives on 12 October 2016
Senate on 8 November 2016]*

(141/16)
