





# Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020

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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 10 December 2020

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg  
Treasurer

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## 1 Name

This instrument is the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020*.

## 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	1 January 2021.	1 January 2021

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—National security

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5 (definition of *acquire*)

Repeal the definition.

#### 2 Section 5

Insert:

*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;
  - (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*.

#### 3 Section 5 (definition of *exploration tenement*)

Repeal the definition.

#### 4 Section 5

Insert:

*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 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.

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

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

## **5 Section 5 (definition of *interest*)**

Repeal the definition.

## **6 Section 5**

Insert:

**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.

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

## **7 Section 5 (definition of *starts an Australian business*)**

Repeal the definition.

## **8 Section 6**

Repeal the section.

## **9 After section 8**

Insert:

### **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
- (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.

## 10 Section 10

Repeal the section.

## 11 Section 26

Omit:

Division 3 exempts the acquisition of certain interests from being significant actions or notifiable actions. Those interests are, however, taken into account in determining whether a person is a foreign person for the purposes of the Act.

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

substitute:

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.

## **12 Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

### **Division 3—Exemptions for certain actions**

## **13 Section 28**

Before “This Division”, insert “(1)”.

## **14 Section 28 (note)**

Omit “or notifiable actions”, substitute “, notifiable actions or notifiable national security actions”.

## **15 At the end of section 28**

Add:

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

## **16 Subdivision C of Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

### **Subdivision C—Actions relating to entities**

## **17 Subdivision D of Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

### **Subdivision D—Actions relating to Australian land etc.**

## **18 Division 4 of Part 3 (heading)**

Repeal the heading, substitute:

### **Division 4—Other exemptions**

## **19 Subdivision A of Division 4 of Part 3 (heading)**

Repeal the heading, substitute:

## **Subdivision A—Exemptions relating to particular actions**

### **20 At the end of subsection 40(1)**

Add:

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

### **21 Before paragraph 41(1)(a)**

Insert:

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

### **22 Paragraph 41(1)(b)**

Repeal the paragraph, substitute:

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

### **23 Paragraph 41(1)(c)**

Omit “to the extent that it relates to either”, substitute “or the regulations to the extent that it relates to any”.

### **24 Subsection 41A(1)**

Repeal the subsection, substitute:

- (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.

### **25 At the end of Subdivision B of Division 4 of Part 3**

Add:

#### **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.

### **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.

### **26 Paragraph 46(1)(d)**

Repeal the paragraph, substitute:

- (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).

**27 Subsection 46(1) (note 2)**

Omit “to (c)”, substitute “to (f)”.

**28 Subsection 56(4) (heading)**

Repeal the heading, substitute:

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

**29 Paragraph 56(4)(d)**

After “sensitive business”, insert “or a national security business”.

**30 Subsection 57(1)**

Omit “For item 9 of the table in subsection 67(2)”, substitute “For the purposes of item 9 of the table in subsection 67(2) and item 10 of the table in subsection 79D(2)”.

**31 Subsection 57(2)**

Omit “For item 8 of the table in subsection 69(2)”, substitute “For the purposes of item 8 of the table in subsection 69(2) and item 8 of the table in subsection 79E(2)”.

**32 At the end of section 57**

Add:

- (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.

**33 After section 60**

Insert:

**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.

**34 Section 61 (note)**

Repeal the note, substitute:

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.

**35 After section 61**

Insert:

**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.

## Schedule 2—Passive investments

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5

Insert:

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

*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.

#### 2 Section 17

Omit “For”, substitute “(1) For the purposes of”.

#### 3 Subparagraph 17(b)(i)

Omit “, alone or together with one or more associates,”.

#### 4 Subparagraph 17(b)(ii)

Omit “, together with any one or more associates,”.

#### 5 Subparagraph 17(c)(i)

Omit “, alone or together with one or more associates,”.

#### 6 Subparagraph 17(c)(ii)

Omit “, together with any one or more associates,”.

#### 7 Paragraph 17(d)

Repeal the paragraph, substitute:

- (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

#### 8 At the end of section 17

Add:

- (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 the 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
  - (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.

### **9 Subparagraph 18(1)(b)(i)**

Omit “an interest of at least 20%”, substitute “a substantial interest”.

### **10 Paragraph 45(5)(a)**

Omit “subparagraph (b)(ii)”, substitute “subparagraph (1)(b)(ii)”.

### **11 Paragraph 45(5)(b)**

Omit “paragraph (e)”, substitute “paragraph (1)(e)”.

## Schedule 3—Reinstating monetary thresholds

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5

Insert:

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

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

#### 2 After subsection 38(4)

Insert:

*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:
    - (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.

#### 3 After subsection 40(1)

Insert:

*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.

**4 Part 4**

Repeal the Part, substitute:

**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.

<b>Threshold value for certain actions taken in relation to agribusinesses</b>		
<b>Item</b>	<b>For action taken by ...</b>	<b>the value (in millions of dollars) is ...</b>
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**

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.

### Schedule 3 Reinstating monetary thresholds

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 hold assets of a sensitive business; or (b) a business that is not a sensitive business	1,192
2	any foreign person in any other circumstances	275

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

## 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
  - (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).

<b>Threshold value for agricultural land</b>		
<b>Item</b>	<b>For this kind of land ...</b>	<b>the value (in millions of dollars) is ...</b>
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).

<b>Threshold value for any other land</b>		
<b>Item</b>	<b>For this kind of land ...</b>	<b>the value (in millions of dollars) is ...</b>
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:	50

**Schedule 3** Reinstating monetary thresholds

<b>Threshold value for any other land</b>		
<b>Item</b>	<b>For this kind of land ...</b>	<b>the value (in millions of dollars) is ...</b>
	(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	
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
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 acquired by any foreign person in any circumstances other than those mentioned in another item of this table	275

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*);

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- (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;
- (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.

## **5 Paragraph 56(4)(c)**

Omit “\$55 million”, substitute “\$60 million”.

## **6 Subsection 56(4) (note)**

Omit “Note”, substitute “Note 1”.

## **7 At the end of subsection 56(4)**

Add:

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

## **8 After Part 5**

Insert:

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

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

**9 Section 65**

Repeal the section.

## **Schedule 4—Integrity amendments**

### **Part 1—Australian businesses carried on by or land acquired from government**

#### *Foreign Acquisitions and Takeovers Regulation 2015*

##### **1 Paragraph 31(1)(b)**

Repeal the paragraph, substitute:

- (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 Paragraph 31(2)(c)**

Repeal the paragraph (including the example), substitute:

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

## **Part 2—Tracing interests through unincorporated limited partnerships**

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### **3 Section 5**

Repeal the following definitions:

- (a) definition of *general partner*;
- (b) definition of *limited partner*;
- (c) definition of *limited partnership*.

#### **4 Subsections 45(3) and (4)**

Repeal the subsections.

#### **5 Section 48 (heading)**

Omit “and trusts”, substitute “, trusts and unincorporated limited partnerships”.

#### **6 Section 48 (note)**

Omit “and trusts”, substitute “, trusts and unincorporated limited partnerships”.

## Part 3—Moneylending agreements

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### **7 Subsection 27(1)**

After “(2)”, insert “, (2A)”.

#### **8 After subsection 27(2)**

Insert:

*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;
- (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).

#### **9 Subsection 27(3) (note 1)**

Omit “Note 1”, substitute “Note”.

#### **10 Subsection 27(3) (note 2)**

Repeal the note.

#### **11 At the end of section 27**

Add:

*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.

## **Part 4—More coordinated information sharing and gathering**

### ***Foreign Acquisitions and Takeovers Regulation 2015***

#### **12 Section 59**

Omit “and authorised disclosures of information”.

#### **13 Section 62**

Repeal the section.

## **Part 5—Increasing percentage of interests without acquiring additional interests in securities**

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### **14 Section 29**

Omit all the words after “other than”, substitute:

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*.

#### **15 Section 33**

Omit all the words after “interest”, substitute:

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).

#### **16 At the end of section 56**

Add:

*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.

#### **17 Section 59**

After “time limits”, insert “and modifications for the purposes of section 18A of the Act (increasing percentage of interests without acquiring additional interests in securities)”.

#### **18 At the end of Part 6**

Add:

## **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 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).

## Schedule 5—Compliance

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### **1 At the end of Subdivision A of Division 4 of Part 3**

Add:

#### **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.

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## **Schedule 6—Technical amendments**

### ***Foreign Acquisitions and Takeovers Regulation 2015***

#### **1 Section 5 (definition of *Australian media business*)**

Repeal the definition, substitute:

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

#### **2 Section 5**

Insert:

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

#### **3 After section 13**

Insert:

#### **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
    - (iii) current issues or events of interest to Australians; 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.

- (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.

#### **4 Subsection 14(3)**

Omit “The value”, substitute “The *value*”.

#### **5 After subsection 14(4)**

Insert:

- (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.

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

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

#### **6 Section 26 (paragraph beginning “Division 2”)**

Omit “that relate to moneylending agreements”.

#### **7 At the end of Division 2 of Part 3**

Add:

#### **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:
- (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:

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- (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.

**8 Section 29 (heading)**

Repeal the heading, substitute:

**29 Devolution**

**9 Section 29**

Omit “will or”.

## **Schedule 7—Application and transitional provisions**

### ***Foreign Acquisitions and Takeovers Regulation 2015***

#### **1 In the appropriate position in Part 7**

Insert:

#### **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
  - (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*.