

# EXPOSURE DRAFT

2016

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016**

**No.     , 2016**

*(Treasury)*

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

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1  
2 **A Bill for an Act to amend the law relating to**  
3 **foreign interests, acquisitions and takeovers, and**  
4 **for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

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

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table  
11 commences, or is taken to have commenced, in accordance with  
12 column 2 of the table. Any other statement in column 2 has effect  
13 according to its terms.  
14

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day this Act receives the Royal Assent.	

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

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

21 **3 Schedules**

22 Legislation that is specified in a Schedule to this Act is amended or  
23 repealed as set out in the applicable items in the Schedule

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1 concerned, and any other item in a Schedule to this Act has effect  
2 according to its terms.

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2 *Register of Foreign Ownership of Agricultural Land Amendment* No. , 2016  
*(Water) Bill 2016*

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Amendments **Schedule 1**  
Main amendments **Part 1**

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1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Register of Foreign Ownership of Agricultural Land Act*  
4 *2015*

5 **1 Title**

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

7 **2 Section 1**

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

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

13 **3 Section 3**

14 Repeal the section, substitute:

15 **3 Simplified outline of this Act**

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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.

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## Schedule 1 Amendments

### Part 1 Main amendments

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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 these water entitlements and contractual water rights as at the start of 1 December 2017; and
- (b) later events causing these entitlements or rights to start or cease to be held by foreign persons.

The Commissioner must regularly give the Minister a report, 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).

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#### 4 Section 4

Insert:

***annual water allocation*** means the specific volume of water allocated to an Australian water access entitlement in a given 12-month period.

***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:

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Amendments **Schedule 1**  
Main amendments **Part 1**

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- 1                    *cease*:  
2                    (a) in relation to holding a freehold interest in, or a right to  
3                    occupy, agricultural land—has a meaning affected by  
4                    section 6; or  
5                    (b) in relation to holding a registrable water entitlement, or a  
6                    contractual water right—has a meaning affected by  
7                    section 6A.

## 8    **6 Section 4**

9                    Insert:

10                   *contract* includes a deed.

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

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

## 15    **7 Section 4 (definition of *Register*)**

16                   Repeal the definition.

## 17    **8 Section 4**

18                   Insert:

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

## 20    **9 Section 4 (definition of *registration trigger time*)**

21                   Repeal the definition, substitute:

22                   *registration trigger time*:

- 23                   (a) in relation to a right held by a person to occupy land under a  
24                   lease or licence—means the latest of the following times:  
25                   (i) the time the person started to hold the right;  
26                   (ii) the time the person became a foreign person;  
27                   (iii) the time the land became agricultural land;  
28                   (iv) the start of 1 July 2015; or  
29                   (b) in relation to a contractual water right held by a person—  
30                   means the latest of the following times:

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## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (i) the time the person started to hold the right;  
2 (ii) the time the person became a foreign person;  
3 (iii) the time the other person started to hold the registrable  
4 water entitlement, or the right of the kind specified in  
5 the rules, to which the contractual water right relates;  
6 (iv) the start of 1 December 2017.

#### 7 **10 Section 4 (definition of *start*)**

8 Repeal the definition, substitute:

9 *start*:

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

#### 15 **11 Section 4**

16 Insert:

17 *water resource* means:

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

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

#### 23 **12 After section 5**

24 Insert:

#### 25 **5A Meaning of *registrable water entitlement***

- 26 (1) A *registrable water entitlement* of a person is any of the following  
27 rights that the person holds (alone or jointly):  
28 (a) an irrigation right (within the meaning of the *Water Act*  
29 *2007*) that relates to a water resource in Australia;

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Amendments **Schedule 1**  
Main amendments **Part 1**

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- 1 (b) a right (including an Australian water access entitlement)  
2 conferred by or under a law of a State or Territory to do  
3 either or both of the following:  
4 (i) to hold water from a water resource in Australia;  
5 (ii) to take water from a water resource in Australia.
- 6 (2) However, a **registrable water entitlement** does not include:  
7 (a) stock and domestic rights; or  
8 (b) riparian rights; or  
9 (c) an annual water allocation; or  
10 (d) a right of a kind specified in the rules.

## 11 **13 After section 6**

12 Insert:

### 13 **6A Starting and ceasing to hold water entitlements and rights**

#### 14 *Starting*

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

#### 21 *Ceasing*

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

#### 25 *This section is not limiting*

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

## 28 **14 At the end of section 11**

29 Add:

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## Schedule 1 Amendments

### Part 1 Main amendments

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

#### 4 **15 Part 2 (heading)**

5 Repeal the heading, substitute:

### 6 **Part 2—Register of Foreign Ownership of** 7 **Agricultural Land**

#### 8 **16 Section 12**

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

#### 10 **17 Section 13 (heading)**

11 Repeal the heading, substitute:

#### 12 **13 Commissioner must keep this register**

#### 13 **18 Section 14 (heading)**

14 Repeal the heading, substitute:

#### 15 **14 Parts of this register**

#### 16 **19 Subsections 14(1) and (3)**

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

#### 18 **20 Section 15 (heading)**

19 Repeal the heading, substitute:

#### 20 **15 Commissioner may add information to basic part of this register**

#### 21 **21 Section 15**

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

#### 23 **22 Section 15 (note 1)**

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

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Amendments **Schedule 1**  
Main amendments **Part 1**

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1     **23 Section 16 (heading)**

2             Repeal the heading, substitute:

3     **16 Commissioner may correct or update information in this register**

4     **24 Section 16**

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

6     **25 Section 17 (heading)**

7             Repeal the heading, substitute:

8     **17 Statistical part of this register to be published on website**

9     **26 Section 17**

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

11    **27 After Part 3**

12            Insert:

13    **Part 3A—Register of Foreign Ownership of Water**  
14            **Entitlements**  
15

16    **30A Simplified outline of this Part**

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

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

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

24            The Commissioner may correct and update this register.

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## Schedule 1 Amendments

### Part 1 Main amendments

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1       **30B Commissioner must keep this register**

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

4       **30C Parts of this register**

5               (1) The Commissioner must keep this register in 2 separate parts:

6                       (a) the basic part; and

7                       (b) the statistical part.

8               (2) The basic part must contain:

9                       (a) all the information obtained by the Commissioner under  
10                       Part 3B; and

11                       (b) any information added under section 30D; and

12                       (c) any corrections or updates of information described in  
13                       paragraph (a) or (b) that are made under section 30E.

14               (3) The statistical part must contain statistics derived by the  
15                       Commissioner from information in the basic part of this register,  
16                       and any corrections or updates of those statistics.

17               (4) The statistics in the statistical part must not identify, or be  
18                       reasonably capable of being used to identify, a person.

19       **30D Commissioner may add information to basic part of this**  
20       **register**

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

24                       (a) the holding by a foreign person at the start of 1 December  
25                       2017 of an entitlement or right described in  
26                       subsection 30H(1); or

27                       (b) an event that is described in Subdivision B of Division 3 of  
28                       Part 3B and that occurs after the start of 1 December 2017.

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

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Amendments **Schedule 1**  
Main amendments **Part 1**

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

6 **30E Commissioner may correct or update information in this**  
7 **register**

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

10 **30F Statistical part of this register to be published on website**

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

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

15 **Division 1—Simplified outline of this Part**

16 **30G Simplified outline of this Part**

17 Foreign persons who will hold, or who hold, certain water  
18 entitlements or contractual water rights at the start of 1 December  
19 2017 must give the Commissioner notice of those holdings.

20 If an event happens after the start of 1 December 2017 causing  
21 such entitlements or rights to start or cease to be held by a  
22 particular foreign person, the person must give the Commissioner  
23 notice of the event.

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

27 The rules may provide for exemptions from these requirements.

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 **Division 2—Foreign holdings of water entitlements or**  
2 **contractual water rights on 1 December 2017**

3 **30H Notification of foreign persons' holdings of water entitlements**  
4 **or contractual water rights as on 1 December 2017**

- 5 (1) This section applies if a foreign person will hold, or holds, either of  
6 the following at the start of 1 December 2017:  
7 (a) a registrable water entitlement;  
8 (b) a contractual water right under a contract whose remaining  
9 term (including any extension or renewal) is (at the start of  
10 1 December 2017) reasonably likely to exceed 5 years.
- 11 (2) The person must give notice of the holding to the Commissioner in  
12 the approved form before the later of:  
13 (a) 1 December 2017; and  
14 (b) the end of 30 days after the day the person starts to hold that  
15 entitlement or right.

16 Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act*  
17 *1953* contains rules about giving notices in the approved form.  
18 Subdivision 286-C in that Schedule provides for an administrative  
19 penalty for failure to give notice in the approved form on time.

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

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

- 24 (3) The person must not give the notice before 1 July 2017.

25 **30J Notification of changes to these holdings that occur before**  
26 **1 December 2017**

- 27 If:  
28 (a) a person gives notice of a holding under section 30H; and  
29 (b) an event of a kind described in Subdivision B of Division 3  
30 occurs in relation to the holding before 1 December 2017;  
31 the person must give the Commissioner notice, in the approved  
32 form, of the event before the later of:



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Amendments **Schedule 1**  
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- 1 (c) 1 December 2017; and  
2 (d) the end of 30 days after the occurrence of the event.

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

5 **Subdivision A—Requirement to notify Commissioner of events**  
6 **affecting foreign holding of these entitlements or**  
7 **rights**

8 **30K Notification of changes of foreign persons' holdings of water**  
9 **entitlements or contractual water rights**

10 A person must give the Commissioner notice, in the approved  
11 form, of an event described in Subdivision B involving the person  
12 and occurring after the start of 1 December 2017. The person must  
13 do so before the end of 30 days after the occurrence of the event.

14 Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act*  
15 *1953* contains rules about giving notices in the approved form.  
16 Subdivision 286-C in that Schedule provides for an administrative  
17 penalty for failure to give notice in the approved form on time.

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

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

22 **Subdivision B—Events that must be notified**

23 **30L Foreign person starting to hold a water entitlement or**  
24 **contractual water right**

25 One event is that a foreign person starts to hold:

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

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 **30M Foreign person ceasing to hold a water entitlement or**  
2 **contractual water right**

3 Another event is that a foreign person ceases to hold:

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

9 **30N Becoming a foreign person while holding a water entitlement or**  
10 **contractual water right**

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

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

18 **30P Ceasing to be a foreign person while holding a water**  
19 **entitlement or contractual water right**

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

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

27 **30Q Right becoming a water entitlement or contractual water right**  
28 **while held by a foreign person**

29 Another event is that, while a foreign person holds a right at a  
30 particular time, the right becomes:

- 31 (a) a registrable water entitlement; or
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Amendments **Schedule 1**  
Main amendments **Part 1**

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- 1 (b) a contractual water right under a contract whose remaining  
2 term (including any extension or renewal) is (at that time)  
3 reasonably likely to exceed 5 years.

4 **30R Right ceasing to be a water entitlement or contractual water**  
5 **right while held by a foreign person**

6 Another event is that a right held by a foreign person ceases to be:

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

12 **30S Change to the characteristics of a water entitlement or**  
13 **contractual water right**

- 14 (1) Another event is a change to the volume of water referred to in  
15 either of the following rights held by a foreign person:  
16 (a) a registrable water entitlement;  
17 (b) a contractual water right under a contract whose term  
18 (including any extension or renewal) after the registration  
19 trigger time was (at that time) reasonably likely to exceed 5  
20 years.
- 21 (2) Another event is a change to a characteristic of a kind specified in  
22 the rules that is a characteristic of either of the following rights  
23 held by a foreign person:  
24 (a) a registrable water entitlement;  
25 (b) a contractual water right under a contract whose term  
26 (including any extension or renewal) after the registration  
27 trigger time was (at that time) reasonably likely to exceed 5  
28 years.

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## Schedule 1 Amendments

### Part 1 Main amendments

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1 **Division 4—Giving of notice by agents**

2 **30T Requirement for executors and administrators to give notice for**  
3 **persons who die**

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

8 **30U Requirement for corporate liquidators to give notice**

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

13 **30V Agents may give notice**

14 A person required by section 30H, 30J, 30K, 30T or 30U to give  
15 notice is taken to have complied with the requirement if someone  
16 else gives notice, in accordance with that section, on the person's  
17 behalf.

18 **Division 5—Exemptions from requirements to give notice**

19 **30W Rules may exempt from requirements to give notice**

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

24 **28 Section 31**

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

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Amendments **Schedule 1**  
Main amendments **Part 1**

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1 **29 Section 31**

2 Omit “This Act ceases to have effect at the end of 1 December 2016  
3 unless, before then, an Act has provided for a register of foreign  
4 ownership of water entitlements.”.

5 **30 Section 33 (heading)**

6 Repeal the heading, substitute:

7 **33 Offshore information notices for persons who may have**  
8 **obligations under Part 3 or 3B**

9 **31 Subparagraphs 33(a)(i) and (ii)**

10 After “Part 3”, insert “or 3B”.

11 **32 Paragraph 34(1)(b)**

12 Repeal the paragraph, substitute:

- 13 (b) includes statistics derived by the Commissioner from:
- 14 (i) information in the basic part of the Register of Foreign  
15 Ownership of Agricultural Land kept under section 13;  
16 and
  - 17 (ii) information in the basic part of the Register of Foreign  
18 Ownership of Water Entitlements kept under  
19 section 30B.

# EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Other amendments

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1 **Part 2—Other amendments**

2 *Taxation Administration Act 1953*

3 **33 Subsection 355-55(1) in Schedule 1 (table item 6, column**  
4 **headed “The record is made for or the disclosure is to**  
5 **...”, after paragraph (a))**

6 Insert:

7 (aa) water; or

8 **34 Subsection 355-55(1) in Schedule 1 (table item 6)**

9 After “Register of Foreign Ownership of Agricultural Land”, insert “or  
10 Register of Foreign Ownership of Water Entitlements”.

11 **35 Subsection 355-65(8) in Schedule 1 (table item 7, column**  
12 **headed “The record is made for or the disclosure is to**  
13 **...”, after paragraph (a))**

14 Insert:

15 (aa) water; or

16 **36 Subsection 355-65(8) in Schedule 1 (table item 7)**

17 After “Register of Foreign Ownership of Agricultural Land”, insert “or  
18 Register of Foreign Ownership of Water Entitlements”.

19 **37 Application of amendments**

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