

EXPOSURE DRAFT

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Inserts for

Foreign Investment Reform (Protecting Australia's National Security) Bill 2020: Register of Foreign Ownership

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Schedule 5	The day after this Act receives the Royal Assent.	
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2.

3.

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Schedule 5—Register of Foreign Ownership of Australian Assets

Foreign Acquisitions and Takeovers Act 1975

1 At the end of section 3

Add:

The Register of Foreign Ownership of Australian Assets is kept under Part 7A.

The Register records certain actions relating to interests acquired, held or disposed of by foreign persons, and a foreign person who takes such an action (which may not be a significant action or a notifiable action, or otherwise covered by this Act) must give a notice to the Registrar. In some circumstances, other people must also give notices to the Register. A civil penalty applies to a failure to give a notice under Part 7A.

2 Section 4

Insert:

Commonwealth body means:

- (a) an Agency (within the meaning of the *Public Service Act 1999*); or
- (b) a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth; or
- (c) a person:
 - (i) holding or performing the duties of an office established by or under a law of the Commonwealth; or
 - (ii) holding an appointment made under a law of the Commonwealth.

data standards means standards determined by the Registrar under section 130ZH.

exploration tenement means any of the following:

- (a) a right (however described) under a law of the Commonwealth, a State or a Territory to recover minerals

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1 (such as coal or ore), oil or gas in Australia or from the
2 seabed or subsoil of the offshore area for the purposes of
3 prospecting or exploring for minerals, oil or gas;

4 (b) a right that preserves a right mentioned in paragraph (a);

5 (c) a lease under which the lessee has a right mentioned in
6 paragraph (a) or (b);

7 (d) an interest in a right mentioned in paragraph (a) or (b) or
8 under a lease mentioned in paragraph (c).

9 **Register** means the Register of Foreign Ownership of Australian
10 Assets kept under section 130D.

11 **Register commencement day** has the meaning given by subsection
12 130B(1).

13 **registrable land** means:

14 (a) land in Australia or the seabed of the offshore area; or

15 (b) a mining or production tenement; or

16 (c) an exploration tenement.

17 **registrable land or water interest** means:

18 (a) an interest (other than an equitable interest) in registrable
19 land; or

20 (b) an interest (other than an equitable interest) in an exploration
21 tenement; or

22 (c) a registrable water entitlement (within the meaning of the
23 *Register of Foreign Ownership of Water or Agricultural*
24 *Land Act 2015*); or

25 (d) a contractual water right (within the meaning of the *Register*
26 *of Foreign Ownership of Water or Agricultural Land Act*
27 *2015*) under a contract whose term (including any extension
28 or renewal) after the person starts to hold the right is
29 reasonably likely to exceed 5 years.

30 **Registrar** means the Commonwealth body appointed under section
31 130C.

32 **3 At the end of subsection 117(1)**

33 Add:

34 ; (e) any notice required to be given to the Registrar by the person
35 under Division 3 or 4 of Part 7A.

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4 At the end of section 118

Add:

; (d) for paragraph 117(1)(e)—5 years after the last day on which the notice is required to be given by the person.

5 After Part 7

Insert:

Part 7A—The Register of Foreign Ownership of Australian Assets

Division 1—Simplified outline of this Part

130A Simplified outline of this Part

The Register of Foreign Ownership of Australian Assets records certain actions relating to interests in land, water, businesses and other assets in Australia.

The Register is kept by the Registrar, which is a Commonwealth body appointed by the Treasurer.

Generally, a foreign person who acquires or disposes of such an interest (other than an equitable interest) must give a notice to the Registrar, to be recorded on the Register. In some circumstances, another person involved in an action or transaction must give a notice. No fee is payable for giving a notice under this Part.

The Register will be required to be kept, and the notice requirements will begin to apply, on the Register commencement day.

A civil penalty applies to a failure to give a notice as required by this Part.

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1 Division 2—The Register of Foreign Ownership of 2 Australian Assets

3 130B Register commencement day

4 (1) This Division (other than this section and section 130C) applies
5 only on and after the day (the *Register commencement day*) that is
6 the earlier of the following days:

- 7 (a) the day declared under subsection (2);
- 8 (b) the day 4 years after the day this section commences.

9 Note: The notice requirements in sections 130H and 130Z also apply only to
10 events occurring on or after the Register commencement day.

11 (2) The Treasurer may, by legislative instrument, declare a day to be
12 the Register commencement day for the purposes of
13 paragraph (1)(a).

14 130C Appointment of the Registrar

15 The Treasurer may, by notifiable instrument, appoint a
16 Commonwealth body to be the Registrar.

17 130D Registrar must keep Register

18 The Registrar must keep a Register of Foreign Ownership of
19 Australian Assets (the *Register*).

20 130E Information to be contained in the Register

21 The Register must contain:

- 22 (a) all the information obtained by the Registrar under Division 3
23 or 4; and
- 24 (b) any information added under section 130F; and
- 25 (c) any corrections or updates of information described in
26 paragraph (a) or (b) that are made under section 130G.

27 130F Registrar may add information to the Register

28 The Registrar may add to the Register any information obtained by
29 the Registrar (other than information obtained under Division 3 or
30 4) relating to the holding by a foreign person of any of the
31 following:

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- 1 (a) a registrable land or water interest;
2 (b) an interest (other than an equitable interest) in an Australian
3 entity;
4 (c) an interest (other than an equitable interest) in an Australian
5 business.

6 Note: Information obtained under Division 3 or 4 must be included in the
7 Register under section 130E.

8 **130G Registrar may correct or update information in the register**

9 The Registrar may correct or update information in the Register.

10 **Division 3—Events that require notice to be given**

11 **Subdivision A—Requirement to give notice to Registrar**

12 **130H Requirement to give notice to Registrar**

- 13 (1) If an event described in a provision of Subdivision B, C or D
14 occurs, either of the following persons must give the Registrar
15 notice of the event:
16 (a) if the provision specifies the person who must give the
17 notice—that person;
18 (b) otherwise—the foreign person mentioned in the provision.
- 19 (2) The person must give the notice:
20 (a) in accordance with the data standards; and
21 (b) before the end of 30 days after the event occurs; and
22 (c) if paragraph (1)(b) applies—even if the person is no longer a
23 foreign person.
- 24 (3) The provisions of Subdivisions B, C and D do not limit each other,
25 and notice of a single event may need to be given under more than
26 one provision or by more than one person.
- 27 *Register commencement day*
- 28 (4) However, subsection (1) applies only to events that occur on or
29 after the Register commencement day.
- 30 (5) To avoid doubt, subsection (4) does not prevent subsection (1)
31 applying to an event that occurs on or after the Register

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1 commencement day but relates to an interest that began to be held
2 before that day.

3 Note: For example, a foreign person who held a registrable land or water
4 interest before the Register commencement day must give a notice if
5 the person ceases to hold the interest, as mentioned in section 130K,
6 on or after that day.

7 **Subdivision B—Events involving registrable land or water** 8 **interests**

9 **130J Foreign person starts to hold registrable land or water interest**

10 One event is that a foreign person starts to hold a registrable land
11 or water interest.

12 **130K Foreign person ceases to hold registrable land or water** 13 **interest**

14 Another event is that a foreign person ceases to hold a registrable
15 land or water interest.

16 **130L Person becomes a foreign person while holding registrable** 17 **land or water interest**

18 Another event is that a person becomes a foreign person while
19 holding a registrable land or water interest.

20 **130M Person ceases to be a foreign person while holding registrable** 21 **land or water interest**

22 Another event is that a person ceases to be a foreign person while
23 holding a registrable land or water interest.

24 **130N Change in nature of interest**

25 Another event is that:

- 26 (a) a foreign person holds a registrable land or water interest;
- 27 and
- 28 (b) the interest is of a kind mentioned in any of the following
29 subparagraphs:
 - 30 (i) an interest in residential land;
 - 31 (ii) an interest in commercial land;

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- 1 (iii) an interest in agricultural land;
2 (iv) an interest in a mining or production tenement;
3 (v) an interest in an exploration tenement; and
4 (c) the interest becomes an interest of a kind mentioned in
5 another subparagraph of paragraph (b).

6 **Subdivision C—Events involving interests in businesses or** 7 **entities**

8 **130P Foreign person acquires interest in entity or business**

9 Another event is that a foreign person takes an action that is a
10 notifiable action under section 47, other than an action that consists
11 of:

- 12 (a) the acquisition of an interest in Australian land; or
13 (b) the acquisition of an equitable interest.

14 **130Q Change in registered interest**

15 (1) Another event is that:

- 16 (a) a foreign person holds an interest (other than an equitable
17 interest) in an Australian entity; and
18 (b) the foreign person, or another person, has previously given a
19 notice to the Registrar in relation to the interest under this
20 Division or Division 4; and
21 (c) as a result of such a notice, the Register records the foreign
22 person as holding an interest in the entity of a particular
23 percentage; and
24 (d) the percentage interest that the foreign person holds in the
25 entity differs from the percentage mentioned in paragraph (c)
26 by 5% or more.

27 Note: For example, if the Register records a foreign person as holding a 30%
28 interest in an Australian entity, the person must give notice to the
29 Registrar if the person's interest in the entity changes to 35% or more
30 or 25% or less.

31 (2) In working out a percentage interest for the purposes of paragraph
32 (1)(d), disregard an equitable interest.

33 **130R Foreign person ceases to hold registered interest**

34 Another event is that:

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- 1 (a) a foreign person holds an interest (other than an equitable
2 interest) in an Australian entity; and
3 (b) the foreign person, or another person, has previously given a
4 notice to the Registrar in relation to the interest under this
5 Division or Division 4; and
6 (c) as a result of such a notice, the Register records the foreign
7 person as holding an interest in the entity; and
8 (d) the foreign person ceases to hold any interest (other than an
9 equitable interest) in the entity.

10 **130S Foreign person ceases to be a foreign person while holding**
11 **registered interest**

12 Another event is that:

- 13 (a) a foreign person holds an interest (other than an equitable
14 interest) in an Australian entity; and
15 (b) the foreign person, or another person, has previously given a
16 notice to the Registrar in relation to the interest under this
17 Division or Division 4; and
18 (c) as a result of such a notice, the Register records the foreign
19 person as holding an interest in the entity; and
20 (d) the foreign person ceases to be a foreign person.

21 **130T Person becomes a foreign person while holding interest in an**
22 **Australian entity**

23 Another event is that:

- 24 (a) a person holds an interest (other than an equitable interest) in
25 an Australian entity; and
26 (b) the person becomes a foreign person; and
27 (c) if the person had acquired the interest immediately after
28 becoming a foreign person, that acquisition would have been
29 a significant action.

30 **Subdivision D—Events covered by no objection notifications or**
31 **exemptions**

32 **130U Person takes action covered by no objection notification**

- 33 (1) Another event is that:
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- 1 (a) a person takes an action that is a significant action under
2 section 40 or 41; and
3 (b) a no objection notification is in effect in relation to the
4 action; and
5 (c) the action does not consist only of the acquisition of an
6 equitable interest.
- 7 (2) The notice under section 130H must be given by:
8 (a) if paragraph 40(2)(a) or 41(2)(a) applies—the person who
9 takes the action; or
10 (b) otherwise—the person to whom the no objection notification
11 was given.

12 **130V A no objection notification is given after an action has** 13 **occurred**

- 14 (1) Another event is that a no objection notification is given in relation
15 to an action that:
16 (a) has already been taken; and
17 (b) was a significant action under section 40 or 41; and
18 (c) did not consist only of the acquisition of an equitable interest.

19 Note: The notice under section 130H must be given before the end of 30
20 days after the no objection notification is given.

- 21 (2) The notice under section 130H must be given by:
22 (a) if paragraph 40(2)(a) or 41(2)(a) applies—the person who
23 took the action; or
24 (b) otherwise—the person to whom the no objection notification
25 is given.
- 26 (3) This section does not apply if the action was taken before the
27 Register commencement day (even if the no objection notification
28 is given on or after that day).

29 **130W Foreign person acquires interest in new dwelling covered by** 30 **exemption**

- 31 Another event is that:
32 (a) an exemption certificate given under section 57 is in effect in
33 relation to an interest (other than an equitable interest); and
34 (b) a foreign person acquires the interest.

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130X Foreign person acquires interest of a kind covered by exemption

Another event is that:

- (a) a foreign person is specified in an exemption certificate given under section 58 as the person to whom the certificate relates; and
- (b) the foreign person acquires an interest (other than an equitable interest) in Australian land of a kind to which the certificate relates.

130Y Foreign person acquires interest in established dwelling covered by exemption

Another event is that:

- (a) a foreign person is specified in an exemption certificate given under section 59 as the person to whom the certificate relates; and
- (b) the foreign person acquires the interest to which the certificate relates; and
- (c) the interest is not an equitable interest.

Division 4—Other notice requirements

130Z Prescribed circumstances

The regulations may prescribe:

- (a) circumstances, occurring on or after the Register commencement day, in which a person specified in the regulations must give notice to the Registrar; and
- (b) when such a notice must be given.

130ZA Requirement for executors and administrators to give notice for persons who die

If a person who is required by section 130H, or by regulations made for the purposes of section 130Z, 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 or those regulations.

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130ZB Requirement for corporate liquidators to give notice

If a person who is required by section 130H, or by regulations made for the purposes of section 130Z, 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 or those regulations.

130ZC Agents may give notice

A person required by section 130H, 130ZA or 130ZB, or by regulations made for the purposes of section 130Z, to give notice is taken to have complied with the requirement if someone else gives notice, in accordance with that section or those regulations, on the person's behalf.

Division 5—Consequences of failing to give notice to Registrar

130ZD Civil penalty for failing to give notice to Registrar

A person who is required to give a notice under section 130H, 130ZA or 130ZB, or by regulations made for the purposes of section 130Z, must comply with the requirement.

Civil Penalty: 250 penalty units.

Division 6—Miscellaneous

130ZE Directions by Treasurer

- (1) The Treasurer may, by legislative instrument, give written directions to the Registrar about the performance of its functions and the exercise of its powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) Without limiting subsection (1), a direction under that subsection may relate to any of the following:

- (a) matters to be dealt with in the data standards;

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- 1 (b) consultation processes to be followed prior to making data
2 standards.
- 3 (3) A direction under subsection (1) must be of a general nature only.
- 4 (4) Subsection (3) does not prevent a direction under subsection (1)
5 from relating to a particular matter to be dealt with in the data
6 standards. However, the direction must not direct the Registrar
7 how to apply the data standards in a particular case.
- 8 (5) The Registrar must comply with a direction under subsection (1).

9 **130ZF Delegation**

- 10 (1) The Registrar may, in writing, delegate all or any of the Registrar's
11 functions or powers under this Part (other than the power to make
12 data standards) to:
- 13 (a) any person to whom it may delegate any of its other
14 functions, as a Commonwealth body, under a law of the
15 Commonwealth; or
- 16 (b) any person of a kind prescribed by the regulations.
- 17 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
18 provisions relating to delegations.
- 19 (2) In performing a delegated function or exercising a delegated
20 power, the delegate must comply with any written directions of the
21 Registrar.

22 **130ZG Report to the Parliament**

- 23 (1) The Registrar must give the Treasurer, for presentation to the
24 Parliament, a report that:
- 25 (a) is on the operation of this Part; and
26 (b) includes statistics derived by the Registrar from information
27 in the Register.
- 28 (2) The statistics in the report must not identify, or be reasonably
29 capable of being used to identify, a person.
- 30 (3) The Commissioner must give the report to the Treasurer as soon as
31 practicable after 30 June each year.
- 32 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
33 contains extra rules about periodic reports.
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1 **130ZH Data standards**

- 2 (1) The Registrar may, by legislative instrument, determine data
3 standards on matters relating to the performance of the Registrar's
4 functions and the exercise of the Registrar's powers.
- 5 (2) Without limiting subsection (1), the data standards may provide for
6 any of the following:
- 7 (a) the manner and form in which notices must be given to the
8 Registrar;
 - 9 (b) how information held by the Registrar is to be authenticated,
10 verified or validated;
 - 11 (c) how information held by the Registrar is to be stored;
 - 12 (d) correction of information held by the Registrar;
 - 13 (e) the manner and form of communication between the
14 Registrar and persons who give information to the Registrar
15 or seek to access information held by the Registrar;
 - 16 (f) integrating or linking information held by the Registrar.