

EXPOSURE DRAFT



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

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 2020

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

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1 Name

This instrument is the *Foreign Investment Reform (Protecting Australia's National Security) (National Security Business) 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Section 10A

Schedule 1—Amendments

Foreign Acquisitions and Takeovers Regulations 2015

1 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*.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*, except that the reference to “international relations” in that definition means political, military and economic relations with foreign persons and international organisations.

national security business has the meaning given by section 10A.

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

2 At the end of Part 1

Add:

10A 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) subsection (2) is satisfied in relation to the business.
- (2) This subsection is satisfied in relation to a business if:

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- (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 carriage service provider to which the *Telecommunications Act 1997* applies; or
- (d) the business develops or manufactures critical goods that are intended to be for a military end-use by:
 - (i) defence and intelligence personnel in activities relating to Australia's national security; or
 - (ii) the defence force of another country in activities that may affect Australia's national security; or
- (e) the business supplies critical goods that are, or are intended to be, for a military end-use by:
 - (i) defence and intelligence personnel in activities relating to Australia's national security; or
 - (ii) the defence force of another country in activities that may affect Australia's national security; or
- (f) the business develops or manufactures critical technology that is intended to be for a military use by:
 - (i) defence and intelligence personnel in activities relating to Australia's national security; or
 - (ii) the defence force of another country in activities that may affect Australia's national security; or
- (g) the business supplies critical technology that is, or is intended to be, for a military use by:
 - (i) defence and intelligence personnel in activities relating to Australia's national security; or
 - (ii) the defence force of another country in activities that may affect Australia's national security; or
- (h) the business provides, or intends to provide, critical services to:
 - (i) defence and intelligence personnel in activities relating to Australia's national security; or
 - (ii) the defence force of another country in activities that may affect Australia's national security; or
- (i) the business stores or has access to information that has a security classification; or
- (j) 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

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Section 10A

- (k) 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 of:
 - (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
 - (l) the business stores, maintains or has access to personal information of a kind mentioned in paragraph (k) which, if disclosed, could compromise Australia's national security.
- (3) If an activity is carried on by:
- (a) the Commonwealth, a State, a Territory or a local governing body; or
 - (b) an entity wholly owned by the Commonwealth, a State, a Territory or a local governing body;
- the activity is taken to be a business for the purposes of subsection (1).