

EXPLANATORY MATERIAL

Foreign Acquisitions and Takeovers Act 1975

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

Section 139 of the *Foreign Acquisitions and Takeovers Act 1975* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020* (the draft Regulations) give further effect to reforms to Australia's foreign investment framework announced by the Government on 5 June 2020. The reforms strengthen the foreign investment framework and ensure the framework keeps pace with emerging risks and global developments.

The reforms build on the amendments the Government made to the foreign investment screening regime in 2015.

Under the reforms individual investments will continue to be reviewed on a case-by-case basis to ensure they are not contrary to the national interest. This is critical to protecting Australia's national interest and national security, and maintaining the Australian public's confidence in the foreign investment regime.

These reforms preserve the core principle underpinning Australia's foreign investment system: Australia welcomes foreign investment for the significant economic benefits it provides.

The reforms will ensure the foreign investment review framework continues to balance:

- maintaining Australia as an attractive place for foreign investment, with a framework that promotes business certainty and delivers timely decisions;
- maintaining public confidence in the integrity of the framework, including compliance; and
- protecting Australia's national interest including national security.

National Security

Risks to Australia's national interest, particularly national security, have increased as a result of a confluence of developments — including rapid technological change and changes in the international security environment.

Rising national security concerns have led many countries to review both their frameworks for screening inward investment and the way in which these frameworks are applied.

Amendments proposed to the Act which were released for consultation between 31 July 2020 and 31 August 2020 will establish a new national security test which amongst other things will:

- Require mandatory notification of ‘notifiable national security actions’. These are actions to take a direct investment in a sensitive ‘national security business’, starting such a business and an investment in ‘national security land’; and
- Allow certain actions – ‘reviewable national security actions’ – which are broadly actions not already captured under the Act to be ‘called in’ for screening on national security grounds.

The draft Regulations support these elements of the national security reforms by establishing two new types of exemption certificates which cover these types of actions. The exemption certificate framework is intended to reduce the regulatory burden for foreign persons. In other words, rather than having to notify before each separate acquisition, an exemption certificate allows a foreign person to apply for an up-front approval for a program of investments without the need to seek separate approvals.

A foreign person will be able to seek an exemption certificate to undertake a program of actions or kinds of actions that would otherwise meet the definition of ‘notifiable national security action’ or ‘reviewable national security action’.

A foreign person will be able to apply for one of these new types of exemption certificates from 1 January 2021.

As part of the national security reforms the Treasurer will also have the ability to review an action that is a reviewable national security action or a significant action that has not been notified. This power is referred to as a ‘call-in’. The draft Regulations impose a time limit on the availability of the Treasurer’s ‘call-in’ power. That is, if the Treasurer does not commence a review within the timeframe included in the draft Regulations, the Treasurer will not be able to later ‘call-in’ the action, even if a national security risk later emerges.

Section 37 of the Act currently provides that Regulations may be made that provide that the Act or certain provisions of the Act do not apply to kinds of:

- Acquisitions or in prescribed circumstances;
- Interests or in prescribed circumstances;
- Australian businesses or in prescribed circumstances; and
- Foreign persons or in prescribed circumstances.

A number of existing provisions in the Principal Regulations provide for exemptions to the Act. Amendments in the draft Regulations clarify where these exemptions will apply to reviewable national security actions or notifiable national security actions.

Streamline less sensitive investment

The current definition of ‘foreign government investor’ under section 17 of the *Foreign Acquisitions and Takeovers Regulation 2015* (the Principal Regulations) is broad and extends to some private institutional investors that manage foreign government funds. Private investment funds with foreign government investors are required to comply with the Act and are subject to a zero dollar screening threshold for most investments.

The draft Regulations will amend the definition of ‘foreign government investor’ so that some entities which are currently classified as ‘foreign government investors’ will no longer meet this definition. Rather the investor will be considered to be a private foreign investor and able to access the higher monetary thresholds available to this class of investors.

The revised definition will be non-discriminatory and apply only where no foreign government has or could be perceived to have influence or control over the investment or operational decisions of the entity or any of its underlying assets.

This new definition will apply to actions taken on or after 1 January 2021.

Monetary thresholds to determine if an action is a significant or notifiable action

As part of the Government’s response to the Coronavirus, the existing monetary thresholds that determine whether an action is a notifiable action or a significant action were lowered to zero dollars. This has meant that since April 2020 all foreign investment into Australia has needed to be approved by the Treasurer before it can proceed.

The draft Regulations propose that the monetary thresholds will be reinstated from 1 January 2021, indexed at the rates the thresholds would have otherwise been had the amendments in response to the Coronavirus not been made.

A final decision as to whether the monetary thresholds will be reinstated at this time will depend on the impact of the Coronavirus on the economy and whether there is an ongoing risk that foreign investment in Australia could occur in ways that would be contrary to the national interest.

Integrity, technical and other amendments

The draft Regulations will make a number of amendments to the *Foreign Acquisitions and Takeovers Regulation 2015* to improve the integrity of the regime and where appropriate simplify the framework. This includes:

- Narrowing the scope of the moneylending exemption where foreign money lenders obtain an interest in a national security business or national security land under a moneylending agreement;
- Excluding as a significant or notifiable action an interest in land acquired by a private investor as a result of obtaining a right in an exploration tenement unless the land is ‘national security land’;

- Updating the definition of ‘Australian media business’ to better reflect the broader means of communication by which media is accessed;
- Removing the exemption that applies to investments that are transferred by will to a foreign person so that a person may require approval from the Treasurer;
- Bringing into the foreign investment framework interests in national security land or the assets of a national security business acquired from a Commonwealth, state or territory government or local government body.;
- Making sure that acquisitions from a statutory body of the Commonwealth, state or territory are not significant or notifiable actions;
- Making amendments to support the amendments to the tracing rules being made to the Act so that the tracing rules can be applied to unincorporated limited partnerships; and
- Exempting the acquisition of revenue streams of mining and production tenements from being a significant or notifiable action.

The integrity and technical amendments will apply to actions taken on or after 1 January 2021.

Details of the draft Regulations are set out in [Attachment A](#).

The draft Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The draft Regulations will commence the day after the Regulations are registered on the Federal Register of Legislation.

Details of the Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020* (the draft Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Foreign Acquisitions and Takeovers Act 1975* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments to the Foreign Acquisitions and Takeovers Regulation 2015

Schedule 1 - National Security

Proposed amendments to the Act will establish new powers for the Treasurer to specifically consider whether certain actions and investments in Australia are contrary to Australia's national security.

The Act establishes a new category of actions - 'notifiable national security actions' - that must be notified to the Treasurer for review regardless of the value of the investment or whether the actions are otherwise notifiable or significant actions.

These actions involve a foreign person acquiring an interest in national security land or a direct interest in a national security business (both defined terms) or starting a national security business.

National security concerns may also be posed by actions that do not need to be notified. Proposed amendments to the Act mean the Treasurer is also able to review actions – 'reviewable national security actions' which are not significant actions, notifiable actions or notifiable national security actions. The Treasurer is also able to review significant actions that are not notified to the Treasurer. The Treasurer may 'call-in' these actions for review, whether or not they are proposed or have been taken.

Time limit on the call-in power

Subsection 37C(2) of the Act provides that regulations may prescribe a period of time in which the Treasurer may use the call-in power. If a review of an action is not commenced within this time period the call-in power cannot be used later.

Item 18 of the draft Regulations provides that the period of time for the call-in power is 10 years from when the action is taken.

The purpose of the time limit is to provide foreign persons with greater certainty as to the Treasurer's powers and to assist in the foreign person's decision as to whether to voluntarily notify.

Exemption certificates

Under section 63 of the Act, regulations may provide for kinds of exemption certificates to be given by the Treasurer.

Item 15 provides for two new types of exemption certificates.

Item 15 inserts new section 43BA into the Principal Regulations to allow the Treasurer to give a foreign person an exemption certificate where the foreign person proposes to take an action that is a notifiable national security action, or one or more kinds of actions that are notifiable national security actions.

In deciding to give the certificate the Treasurer must be satisfied that the taking of the action or kinds of actions by the foreign person is not contrary to national security.

The certificate must specify the foreign person that the certificate is issued to and the actions or kinds of actions covered by the certificate. An action that is covered by the certificate will not be a notifiable national security action and therefore will not be subject to the notification requirements that attach to notifiable national security actions (if the action is also a significant or notifiable action, the obligations that attach to those actions will remain unless an exemption applies).

Example 1

A foreign defence contractor is considering acquiring a program of direct investments in entities that are national security businesses. However, due to the particular circumstances of the contractor and the investments in question (for example, the contractor has obtained an exemption certificate in relation to very similar investments in the past) the contractor considers that the acquisitions are unlikely to be contrary to Australia's national security and applies for an exemption certificate. If the Treasurer agrees that the program of investments is not contrary to national security, the Treasurer may give an exemption certificate.

Item 15 also inserts new section 43BB into the Principal Regulations to allow the Treasurer to give a foreign person an exemption certificate where the foreign person proposes to take an action that is a reviewable national security action, or one or more kinds of actions that are reviewable national security actions.

In deciding to give the certificate the Treasurer must be satisfied that the taking of the action or kinds of actions by the foreign person is not contrary to national security.

The certificate must specify the foreign person that the certificate is issued to and the actions or kinds of actions covered by the certificate. An action that is covered by the certificate will not be a reviewable national security action and therefore not subject to the call-in power.

Example 2

A private foreign investor is proposing to make a number of investments in Australian technology start-ups over the next 12 months. The foreign investor is satisfied that none of the acquisitions will be a significant or notifiable action (because the investments will not exceed the monetary or percentage thresholds) and that none of the acquisitions will be in a national security business. However, the foreign investor will be acquiring influence and control of target businesses that are developing important technologies that may have national security implications (and which therefore may be reviewable national security actions).

To avoid the possibility of later being called in for review on national security grounds, and to enable the investor to make eligible acquisitions without case-by-case screening and provide greater investor certainty, the foreign person decides to seek a time-limited exemption certificate.

Exemptions to the application of the Act

Existing section 28 of the Principal Regulations provides that apart from the definition of foreign person in the Act, the exemptions set out in the Regulations apply to all the other provisions in the Act.

Items 3 and 5 provide that the existing exemptions do not apply to actions that are reviewable national security actions. This means that where the exemptions have applied so that the taking of an interest in certain circumstances is exempt and therefore not a significant action, notifiable action or notifiable national security action, the Treasurer is still able to call-in the action if it poses a national security concern and is within 10 years of the action being taken.

Item 4 updates the note to provide that the exemptions in the Principal Regulations also mean that the acquisition of the proposed action is also not a notifiable national security action.

Items 6, 7, 8 and 9 amend the headings to various provisions to remove references to significant actions and notifiable actions as these are not the only actions the provisions apply to.

Item 10 adds a note to subsection 40(1) of the Principal Regulations to highlight that even though an action may not be a significant action or a notifiable action it may still be a notifiable national security action.

Items 11, 12 and 13 amends the existing exemption that applies to the acquisition of an interest in securities in an entity where the acquisition is under a rights issue. The exemption also applies to notifiable national security actions.

Item 14 extends the exemption that applies to foreign custodian corporations to notifiable national security actions.

Items 16 and 17 provide that when determining whether a direct interest by a foreign government investor in an Australian entity is a significant and notifiable action, where the interest is acquired by acquiring interests in securities in a foreign entity - none of the assets should be in a national security business. This is in addition to the existing provision that the assets should not be in a sensitive business.

Schedule 2 – Passive investments

Under the Act, foreign persons are subject to different monetary thresholds and have to notify of certain actions depending on whether the foreign persons are foreign government investors or ‘private’ foreign investors. Section 56 of the Principal Regulations prescribes actions that are notifiable and significant actions if the actions are taken by a foreign government investor regardless of their value. Various other sections of the Principal Regulations also apply differently to foreign government investors.

Section 17 of the Principal Regulations defines ‘foreign government investor’. Paragraph 17(a) of the Principal Regulations specifies that foreign governments or separate government entities are foreign government investors. Paragraphs 17(b), (c), (d) and (e) of the Principal Regulations specify that corporations, trusts or limited partnerships in which foreign government investors have a prescribed interest are themselves foreign government investors. The prescribed interests are a substantial interest (that is, 20 per cent) for a single foreign government and an aggregate substantial interest (that is, 40 per cent) for all foreign governments in the corporation, trust or limited partnership combined.

The amendments in the draft Regulations remove the aggregate substantial interest cap on the combined interests that multiple foreign governments may hold in a passive investment fund before the fund is itself considered a foreign government investor. This streamlines the investments made by funds that would be considered foreign government investors without these amendments because the funds will be treated as foreign persons who are not foreign government investors under the Act.

If a foreign government investor does not meet the amended definition, the investor will still be able to apply for an exemption certificate for proposed actions or kinds of actions. If granted the investor would effectively be in the same position as if the foreign government investor met the amended definition of aggregate substantial interest, in addition to being exempted from the notification requirements relating to an acquisition of a substantial interest on its own.

Item 1 amends section 5

This item inserts a definition of ‘property’ into the Principal Regulations that is later used in the new subsection 17(2). ‘Property’ is defined broadly to include the widest possible range of potential investments in the streamlining provision for passive investment funds.

Items 2 and 3 amend section 17

These items are a numbering amendment and a minor editorial amendment.

Items 4 and 5 amend paragraph 17(d)

These items amend paragraph 17(d) of the Principal Regulations to use ‘substantial interest’ and ‘aggregate substantial interest’ instead of the percentages that were equivalent to those terms. The definitions of these terms are being amended by items 3, 4 and 5 of Schedule 4 and the integrity amendments to apply to limited partnerships.

Item 6 inserts subsection 17(2)

This subsection removes the aggregate substantial interest cap on the combined interests that foreign government investors may hold in a passive investment fund before the fund is itself considered a foreign government investor.

Paragraph 17(2)(a) removes the cap by providing that the relevant parts of subsection 17(1) which contain the aggregate substantial interest cap do not apply if the conditions imposed by paragraphs 17(2)(b) and 17(2)(c) are met.

Paragraph 17(2)(b) contains the requirement that the investment fund is a passive investment fund. The investment fund needs to be a corporation, a unit trust, or a limited partnership.

Subparagraphs 17(2)(b)(i) and 17(2)(b)(ii) require the foreign person seeking to benefit from the streamlining to be what is commonly understood as an investment fund by specifying that investor contributions should be pooled and that investors should receive a share of the returns. These subparagraphs reflect the broad range of structures, contributions, and investments that are possible for an investment fund while requiring the foreign person to retain the characteristics that are essential for the person to be capable of being a passive investment fund.

Subparagraph 17(2)(b)(iii) requires that investments in the fund be passive because to meet the criteria in this subparagraph the investors must not be able to influence individual investment decisions (for example, the purchase or sale of particular shares or property) or management decisions about individual investments (for example, exercising voting rights in a particular way). However, funds may still be passive if investors have some influence over the broad investment strategy or serve on advisory committees, but are not involved in individual decisions about particular investments. For example, investors requiring the fund to divest from a particular sector, or to only make investments that meet ethical investing criteria would be influencing the investment strategy and the fund may still be eligible for streamlining if the other criteria are met because such influence is not directing each individual investment decision or action necessary to implement the strategy.

Paragraph 17(2)(c) also requires that investors not have indirect influence over the fund (in contrast to the direct influence that is excluded in paragraph 17(2)(b)).

Subparagraph 17(2)(c)(i) requires that investors not have any other interests in the fund besides their investment (e.g. holding a position that does not influence

investments as contemplated by paragraph 17(2)(b) but could allow the investor to control which other entities may join the fund).

Subparagraph 17(2)(c)(ii) requires investors in the fund to not have access to any sensitive information about the fund's investments. Financial information such as expected returns, actual returns, and other financial metrics relevant to the investment may be disclosed to investors. However, non-public, non-financial information about investments that may affect the financial metrics (for example, knowledge of trial outcomes, resignations of key personnel, intellectual property, legal actions) should not be available to investors. If sharing of sensitive information with investors who are foreign government investors could occur, the aggregate substantial interest cap will continue to apply to allow the Treasurer a greater opportunity to consider whether such sharing poses a risk.

Items 7 and 8 amend subsection 45(5)

These items amend cross references to renumbered provisions.

Schedule 6 – Application provision

Item 1 inserts section 75 which provides that the streamlining amendments apply to actions taken on or after 1 January 2021 unless the action was notified, received a no objection notification or an exemption certificate, or was subject to an order by the Treasurer before that date. This section ensures consistent treatment of a fund's foreign government investor status while actions are considered by the Treasurer and avoids retrospective effects on actions that were considered before the streamlining amendments applied.

Schedule 3 - Reinstating the monetary thresholds

The Act establishes a regime for the notification, review and approval of foreign investment in Australia. Regulations made under the Act may specify monetary thresholds above which investments may require notification to the Treasurer for approval.

In April 2020 the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* were made, which amended the monetary value thresholds for significant and notifiable actions to nil from 29 March 2020.

The changes in the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* were made due to the significant impact of the Coronavirus on the Australian economy, which increased the risk of foreign investment in Australia occurring in ways that would be contrary to the national interest. Amending the monetary value thresholds to nil meant a greater number of investments by foreign persons have needed to be notified to the Treasurer. By reviewing more proposed investments the Treasurer was able to impose conditions on those actions that were not in the national interest (or, where risks to the national interest could not be mitigated, not allow the proposed investment to proceed).

The reduction of all monetary value thresholds to nil was a temporary measure intended to be in place for the duration of the Coronavirus.

The draft Regulations propose reversing the changes to the monetary value thresholds for significant and notifiable actions, reinserting the thresholds formerly in place, with the values adjusted for indexation.

Whether these amendments are made will depend on the ongoing impact of the Coronavirus on the economy and whether ongoing safeguards are required to protect Australia's national interest.

Other minor amendments have been made to give effect to the intent of the *Australia-Hong Kong Free Trade Agreement 2019 (A-HKFTA)*, and to ensure that mining and production tenements are treated consistently with residential land and vacant commercial land, in determining whether a transaction involving land held by an Australian land corporation or trustee is subject to a nil threshold.

Item 1 amends section 5

The draft Regulations amend existing section 5 to insert definitions of 'existing value' and 'GDP implicit price deflator value' into the Principal Regulations to support the reinstated monetary thresholds for acquisitions under the Act.

Item 2 amends subsection 38(4)

The draft Regulations amend section 38 of the Principal Regulations to insert subregulation 38(5) which applies monetary thresholds to acquisition of interests in residential land used for residential care, retirement villages and certain forms of student accommodation. This provision was repealed by the amendments made by the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020*, which reduced the monetary value thresholds for significant and notifiable actions to nil.

Item 3 amends subsection 40(1)

The draft Regulations amend existing subsection 40(2) of the Principal Regulations to apply monetary thresholds to acquisitions of interests in agricultural land acquired by a relevant agreement country investor, or an enterprise or national of Thailand (other than a foreign government investor).

The draft Regulations also insert new subregulation 40(2A) into the Principal Regulations to provide that where an owner or operator, or an associate of an owner or operator, of a wind or solar power station, 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, the investor may disregard the fact that the land is agricultural land for the purposes of monetary value thresholds.

Item 4

The draft Regulations amend existing section 49 in the Principal Regulations to provide a simplified outline of Part 4, setting out the operation of the new regulations relating to thresholds.

The draft Regulations also amend existing section 50 in the Principal Regulations to prescribe a threshold value for actions taken about an agribusinesses.

The draft Regulations amend existing section 51 in the Principal Regulations to prescribe threshold values for the purposes of section 51 of the Act.

The draft Regulations amend existing section 52 in the Principal Regulations to prescribe land without a threshold value for the purposes of section 52(1) of the Act.

Items 5, 6 and 7

Existing subsection 56(1) of the Principal Regulations provides that an action is a significant and notifiable action if the action is a foreign government investor acquiring a direct interest in an Australian entity or Australian business. Subparagraph 56(4)(c) provides an exception to this where the total asset value is less than \$55 million, amongst other criteria.

The draft Regulations amend subparagraph 56(4)(c) of the Principal Regulations to raise the specified value in subparagraph 56(4)(c) from \$55 million to \$60 million. This will align s56(4)(c) with the monetary threshold for low-threshold land, which was previously \$55 million and is now \$60 million. This item also provides for the specified value to be indexed, consistent with other threshold values prescribed in the regulations.

Item 8

The draft Regulations insert a new Part 5A into the regulations, to provide for the indexation of values prescribed by Parts 4 and 5.

Schedule 6 – Application provision

The draft Regulations insert new section 75 that provides that the amendments will apply to an action taken on or after 1 January 2021.

The provisions relating to indexation also apply on or after 1 January 2021.

Schedule 4 – Integrity amendments

Statutory corporations

Item 1 amends section 31 of the Principal Regulations to clarify how this provision applies to statutory corporations. These provisions clarify that the excluded provisions do not apply to the acquisition of an interest in an Australian business carried on by, or an acquisition of an interest in Australian land from, a statutory corporation.

Government asset sales and statutory corporations

Item 2 repeals paragraph 31(2)(c) of the Principal Regulations and inserts new paragraphs 31(2)(c)-(e), to provide additional exceptions to the exemption in subsection 31(1).

New paragraph 31(2)(c) provides an exception to the acquisition of an interest in Australian land that is national security land.

New paragraph 31(2)(d) provides exceptions to the acquisition of an Australian business, where the assets of that business include an interest in Australian land that is national security land; where the assets of that business include an interest in an exploration tenement in respect of Australian land that is national security land; or where that land is relevant to paragraph 31(2)(b) of the existing regulations which specify types of infrastructure relevant to national security.

New paragraph 31(2)(e) provides an exception for the acquisition of an Australian business that is a national security business.

The term national security land refers to the Australian land which was described in paragraph 4(b) in the definition of a *notifiable national security action* which was included in the exposure draft of proposed amendments to the Act.

These amendments will apply from 1 January 2021, except where a relevant action has been notified prior to that date.

Definition of general partner, limited partner, and limited partnership

Items 3, 4 and 5 amend section 5 to repeal the definitions of ‘general partner’, ‘limited partner’ and ‘limited partnership’. These definitions are repealed as they are inserted into the Act as part of the reforms and amendments to the tracing rules in s19.

Moneylending exemption and other exemptions in the Principal Regulations

Section 37 of the Act provides that Regulations may be made that provide that the Act or certain provisions of the Act do not apply to kinds of:

- Acquisitions or in prescribed circumstances;
- Interests or in prescribed circumstances;
- Australian businesses or in prescribed circumstances; and
- Foreign persons or in prescribed circumstances.

A number of existing provisions in the Principal Regulations provide for exemptions to the Act.

Section 27 of the Principal Regulations provides that the Act does not apply to an interest in securities, assets, a trust, Australian land or a tenement if the interest is held solely by way of a money lending agreement.

Item 6 amends section 27 to provide that the moneylending exemption does not apply where an interest in an asset of a national security business, national security land, or an interest in an exploration tenement in respect of Australian land that is national security land, is acquired by way of a moneylending agreement. This means that a foreign person will need to notify the Treasurer prior to entering into the money lending agreement.

The term national security land refers to the Australian land which was described in paragraph 4(b) in the definition of a *notifiable national security action* which was included in the exposure draft of proposed amendments to the Act.

These amendments to section 27 will apply to both private foreign investors and foreign government investors, and will apply from 1 January 2021, except where a relevant action has been notified prior to that date.

Schedule 5 – Technical amendments

Definition of Australian media business

Item 1 amends section 5 to extend the definition of ‘Australian media business’.

The current definition of ‘Australia media business’ means an Australian business involved in the publishing of daily newspapers, or broadcasting television or radio, in Australia, including websites from which those newspapers or broadcasts may be accessed. It does not include Australian businesses that only publish or broadcast such content through websites. The new definition includes Australian business that only publish or broadcast such content through the internet.

Revenue streams from mining or production tenements, and exploration tenements acquired by non-government foreign investors

Item 2 inserts new section 27A in the Principal Regulations to provide an exemption from the operation of the Act where an interest acquired is a revenue stream in a mining or production tenement. The exemption does not apply if the interest is an interest in an asset of a national security business or the interest is in respect of Australian land that is national security land.

Item 2 also inserts new regulation 27B to provide an exemption from the operation of the Act where an interest in an exploration tenement is acquired by a foreign person who is not a foreign government investor. However, the exemption does not apply if, the exploration tenement gives in respect of Australian land that is national security land (see the earlier explanation of the definition of national security land).

Interests acquired through will or devolution

Item 3 amends section 29 of the Principal Regulations to repeal the exemption for an acquisition of an interest in securities, assets, a trust or Australian land that is acquired by will. The current regulation 29 of the Regulation provides that the Act does not apply to an acquisition of an interest in securities, assets, a trust or Australian land that is acquired by will or devolution by operation of law (for example, by operation

of a constructive trust). Once the amendments take effect a foreign person will need to notify the Treasurer of an interest acquired through a will.

The exemption will continue to apply for the acquisition of an interest in securities, assets, a trust or Australian land that is acquired by devolution by operation of law, other than as a result of an arrangement under Part 5.1 or 5.3A of the *Corporations Act 2001*.