

# EXPOSURE DRAFT

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Inserts for

## Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023: Register of Foreign Ownership of Australian Assets

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.		
2. Schedule #	The day after this instrument is registered.	
3.		

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## **Schedule #—Foreign acquisitions and takeovers registration and other amendments**

### **Part 1—Further requirements to register, relationship with other notification requirements, and exemptions**

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

##### **1 After Part 5A**

Insert:

### **Part 5B—Register of Foreign Ownership of Australian Assets**

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

##### **58A Simplified outline of this Part**

Foreign persons have additional register requirements to those in Division 3 of Part 7A of the Act (see the additional requirements in Division 2 of this Part).

Some of these additional requirements relate to actions covered by Part 5 of this instrument. The other additional requirements relate to actions covered by exemption certificates.

Some other notification requirements for actions will only apply if:

- (a) there are register requirements for those actions; and
- (b) those register requirements have not been met;

(see Division 3 of this Part).

Register requirements in Part 7A of the Act, or in this Part, will not apply in relation to all kinds of interests in Australian land (see the exemption in Division 4 of this Part).

#### **Division 2—Requirements to give register notices to the Registrar**

##### **Subdivision A—Actions covered by Part 5**

##### **58B Requirement to give register notice—actions covered by Part 5**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if:
  - (a) the foreign person takes an action that is a significant action under section 55 or subsection 56(1) of this instrument, and:
    - (i) a no objection notification or a notice imposing conditions has been given in relation to the action, and has not been revoked; or
    - (ii) before the action was taken, the Treasurer gave the foreign person a notice under subsection 66A(4) of the Act; or

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- (b) a no objection notification or a notice imposing conditions is given in relation to an action of the foreign person that:
  - (i) has already been taken; and
  - (ii) was a significant action under section 55 or subsection 56(1) of this instrument; or
- (c) the foreign person takes an action that is a notifiable action under section 55 or subsection 56(1) of this instrument.

Note: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, the following table has effect.

<b>When registered circumstances exist and cease</b>		
<b>Item</b>	<b>A registered circumstance under this section exists in relation to the foreign person if ...</b>	<b>The registered circumstance ceases if ...</b>
1	section 55 of this instrument (acquiring a direct interest in an entity or business carrying on an Australian media business) applies to the action.	<ul style="list-style-type: none"><li>(a) the foreign person no longer holds an interest of any percentage in the entity or business mentioned in section 55; or</li><li>(b) the Australian media business ceases to be an Australian media business; or</li><li>(c) the Australian media business ceases to be carried on; or</li><li>(d) in the case of a direct interest in an entity—the entity ceases to exist.</li></ul>
2	paragraph 56(1)(a) of this instrument (a foreign government investor acquiring a direct interest in an Australian entity or Australian business) applies to the action.	<ul style="list-style-type: none"><li>(a) the foreign person no longer holds an interest of any percentage in the Australian entity or Australian business mentioned in paragraph 56(1)(a); or</li><li>(b) the Australian entity or Australian business ceases to be an Australian entity or an Australian business; or</li><li>(c) in the case of a direct interest in an Australian entity—the Australian entity ceases to exist; or</li><li>(d) in the case of a direct interest in an Australian business—the Australian business ceases to be carried on; or</li><li>(e) the foreign person ceases to be a foreign government investor.</li></ul>
3	paragraph 56(1)(b) of this instrument (a foreign government investor starting an Australian business) applies to the action.	<ul style="list-style-type: none"><li>(a) the foreign person no longer carries on the Australian business mentioned in paragraph 56(1)(b); or</li><li>(b) the Australian business ceases to be an Australian business; or</li><li>(c) the Australian business ceases to be carried on; or</li><li>(d) the foreign person ceases to be a foreign government investor.</li></ul>
4	subparagraph 56(1)(c)(i) of this	<ul style="list-style-type: none"><li>(a) the foreign person ceases to hold the interest</li></ul>

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**When registered circumstances exist and cease**

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<b>Item</b>	<b>A registered circumstance under this section exists in relation to the foreign person if ...</b>	<b>The registered circumstance ceases if ...</b>
	instrument (a foreign government investor acquiring an interest in a tenement) applies to the action.	in the tenement mentioned in subparagraph 56(1)(c)(i); or (b) the foreign person ceases to be a foreign government investor.
5	subparagraph 56(1)(c)(ii) of this instrument (a foreign government investor acquiring an interest of at least 10% in securities in a mining, production or exploration entity) applies to the action.	(a) the foreign person no longer holds an interest of any percentage in the mining, production or exploration entity mentioned in subparagraph 56(1)(c)(ii); or (b) the mining, production or exploration entity ceases to be a mining, production or exploration entity; or (c) the mining, production or exploration entity ceases to exist; or (d) the foreign person ceases to be a foreign government investor.

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- (3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under an item of the table in subsection (2).

Note: The requirement to give a register notice under subsection (1) applies whether or not an interest is an equitable interest. However, a notice of an action that relates only to an equitable interest does not cause a registered circumstance to exist under the table.

### *Registrable event day*

- (4) For the purposes of paragraph 130ZU(1)(b) of the Act, the registrable event day for a register notice under this section is:
- (a) if paragraph (1)(a), and item 3 of the table in subsection (2), of this section apply—the first day any notice is given, or any certificate is issued, of a kind mentioned in subsection (5) of this section for the business mentioned in that table item; or
  - (b) if paragraph (1)(b) of this section applies—the day on which the no objection notification or notice imposing conditions is given; or
  - (c) otherwise—the day on which the foreign person takes the action.
- (5) For the purposes of paragraph (4)(a), the kinds of notices or certificates are as follows:
- (a) a notice under subsection 11(3) of the *A New Tax System (Australian Business Number) Act 1999* of an ABN (within the meaning of that Act);
  - (b) a certificate under paragraph 118(1)(c) or 601BD(1)(c) of the *Corporations Act 2001* stating an ACN (within the meaning of that Act).

### *Change in interest in an entity or business*

- (6) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1, 2 or 5 of the table in subsection (2) of this section.

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*Application—Register commencement day*

- (7) This section applies to actions taken on or after the Register commencement day (regardless of when any notification or notice, other than the register notice, mentioned in subsection (1) is given).

## **Subdivision B—Actions covered by exemption certificates**

### **58C Requirement to give register notice—actions relating to land that would be significant actions, notifiable actions, notifiable national security actions or reviewable national security actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action:
- (a) that is an acquisition of an interest to which paragraph 130ZA(1)(a) or (b) of the Act, as affected by section 58L of this instrument, applies (about certain interests in Australian land); and
  - (b) that:
    - (i) is not a significant action only because of subsection 45(1) or (2) of the Act (about exemption certificates); or
    - (ii) is neither a significant action nor a notifiable action only because of section 43A of this instrument (about exemption certificates); or
    - (iii) is an action to which paragraph 55B(1)(d) of the Act applies, and is not a notifiable national security action only because of subsection 43BA(4) of this instrument (about exemption certificates); or
    - (iv) is an action to which paragraphs 55F(a) and (b) of the Act apply, and is not a reviewable national security action only because of subsection 43BB(4) of this instrument (about exemption certificates).

Note 1: Subparagraph (b)(i) includes, for example, an action to which subparagraph 56(1)(c)(i) of this instrument applies that is the acquisition by the person (as a foreign government investor) of a legal interest in a mining or production tenement.

Note 2: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZA(2) to (5) of the Act apply in relation to the action as if the foreign person had given the register notice under subsection 130ZA(1) of the Act in relation to the action.

### **58D Requirement to give register notice—actions relating to tenements that would be significant actions, notifiable actions or notifiable national security actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:

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- (a) is an action to which subparagraph 43(1)(a)(i) of this instrument applies, and is neither a significant action nor a notifiable action only because of subsection 43(4) of this instrument (about exemption certificates); or
- (b) is an action to which paragraph 55B(1)(e) of the Act applies, and is not a notifiable national security action only because of subsection 43BA(4) of this instrument (about exemption certificates).

Note 1: For paragraph (a), if the person is a foreign government investor, the action may also be one to which subparagraph 56(1)(c)(i) of this instrument applies.

Note 2: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZB(2), (3), (4) and (6) of the Act apply in relation to the action as if:
  - (a) the foreign person had given the register notice under subsection 130ZB(1) of the Act in relation to the action; and
  - (b) *interest* has the same meaning in relation to a tenement covered by:
    - (i) subparagraph 43(1)(a)(i) of this instrument; or
    - (ii) paragraph 55B(1)(e) of the Act;as it has in relation to Australian land.

## **58E Requirement to give register notice—actions relating to entities that would be significant actions or notifiable actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:
  - (a) is an acquisition by the foreign person of an interest in securities of an entity, and is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates); or
  - (b) is an acquisition by the foreign person of an interest in securities in a mining, production or exploration entity, and is neither a significant action nor a notifiable action only because of subsection 43(4) of this instrument (about exemption certificates); or
  - (c) is an acquisition by the foreign person:
    - (i) of a direct interest in an entity that wholly or partly carries on an Australian media business; or
    - (ii) (as a foreign government investor) of a direct interest in an Australian entity;and is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates).

Note 1: For paragraph (a) or (b), if the person is a foreign government investor, the action may also be one to which subparagraph 56(1)(c)(ii) of this instrument applies.

Note 2: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action

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mentioned in subsection (1) of this section, subsections 130ZH(2) to (5) of the Act apply in relation to the action as if:

- (a) the foreign person had given the register notice under subsection 130ZH(1) of the Act in relation to the action; and
- (b) if subparagraph (1)(c)(i) of this section applies to the action—the entity mentioned in that subparagraph were an Australian entity that is an agribusiness at all times while it wholly or partly carries on an Australian media business; and
- (c) if subparagraph (1)(c)(ii) of this section applies to the action—the entity mentioned in that subparagraph need not be an agribusiness; and
- (d) for the purposes of 130ZH(4) of the Act—paragraph 130ZH(1)(a) of the Act applies in relation to the action.

Note: If paragraph (1)(a) or (b) applies to the action, paragraph 40(2)(b) (acquiring interests in securities in entity) of the Act applies to the action.

- (3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZH(2) of the Act (as that table item applies because of subsection (2) of this section).

## **58F Requirement to give register notice—actions relating to businesses that would be significant actions or notifiable actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:
  - (a) is an acquisition by the foreign person:
    - (i) of an interest in assets of an Australian business; or
    - (ii) of a direct interest in a business that wholly or partly carries on an Australian media business; or
    - (iii) (as a foreign government investor) of a direct interest in an Australian business; and
  - (b) is neither a significant action nor a notifiable action only because of section 42 of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZI(2) to (5) of the Act apply in relation to the action as if:
  - (a) the foreign person had given the register notice under subsection 130ZI(1) of the Act in relation to the action; and
  - (b) if subparagraph (1)(a)(ii) of this section applies to the action—the first-mentioned business in that subparagraph were an agribusiness at all times while it wholly or partly carries on an Australian media business; and
  - (c) if subparagraph (1)(a)(iii) of this section applies to the action—the business mentioned in that subparagraph need not be an agribusiness; and
  - (d) for the purposes of 130ZI(4) of the Act—paragraph 130ZI(1)(a) of the Act applies in relation to the action.

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Note: If subparagraph (1)(a)(i) applies to the action, paragraph 41(2)(b) (acquiring interests in assets of Australian business) of the Act applies to the action.

- (3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZI(2) of the Act (as that table item applies because of subsection (2) of this section).

## **58G Requirement to give register notice—actions that would be notifiable national security actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:
  - (a) is an action to which paragraph 55B(1)(a), (b) or (c) of the Act applies; and
  - (b) is not a notifiable national security action only because of subsection 43BA(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZK(2) to (5) of the Act apply in relation to the action as if:
  - (a) the foreign person had given the register notice under subsection 130ZK(1) of the Act in relation to the action; and
  - (b) subsection 130ZK(4) of the Act provided that the registrable event day for the register notice were:
    - (i) if the register notice relates to item 1 of the table in subsection 130ZK(2) of the Act—the first day any notice is given, or any certificate is issued, of a kind mentioned in subsection (3) of this section for the business mentioned in that table item; or
    - (ii) otherwise—the day on which the foreign person takes the action.
- (3) For the purposes of subparagraph (2)(b)(i), the kinds of notices or certificates are as follows:
  - (a) a notice under subsection 11(3) of the *A New Tax System (Australian Business Number) Act 1999* of an ABN (within the meaning of that Act);
  - (b) a certificate under paragraph 118(1)(c) or 601BD(1)(c) of the *Corporations Act 2001* stating an ACN (within the meaning of that Act).
- (4) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 2 or 3 of the table in subsection 130ZK(2) of the Act (as those table items apply because of subsection (2) of this section).

## **58H Requirement to give register notice—actions relating to entities that would be reviewable national security actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:



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- (a) is an action to which paragraphs 55D(1)(a) to (c), or (2)(a) to (c), of the Act apply; and
- (b) is not a reviewable national security action only because of subsection 43BB(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZL(2) to (5) of the Act apply in relation to the action as if:
  - (a) the foreign person had given the register notice under subsection 130ZL(1) of the Act in relation to the action; and
  - (b) for the purposes of 130ZL(4) of the Act—paragraph 130ZL(1)(a) of the Act applies in relation to the action.
- (3) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 of the table in subsection 130ZL(2) of the Act (as that table item applies because of subsection (2) of this section).

## **58J Requirement to give register notice—actions relating to businesses that would be reviewable national security actions if not covered by exemption certificates**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if the foreign person takes an action that:
  - (a) is an action to which paragraphs 55E(1)(a) to (c), or (2)(a) and (b), of the Act apply; and
  - (b) is not a reviewable national security action only because of subsection 43BB(4) of this instrument (about exemption certificates).

Note: The data standards may provide for register notices under multiple provisions to be given in a single notice (see paragraph 130ZZ(2)(j) of the Act).

- (2) For the purposes of paragraphs 130ZU(1)(b), (c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section, subsections 130ZM(2) to (5) of the Act apply in relation to the action as if:
  - (a) the foreign person had given the register notice under subsection 130ZM(1) of the Act in relation to the action; and
  - (b) subsection 130ZM(4) of the Act provided that the registrable event day for the register notice were:
    - (i) if the register notice relates to item 4 of the table in subsection 130ZM(2) of the Act—the first day any notice is given, or any certificate is issued, of a kind mentioned in subsection (3) of this section for the business mentioned in that table item; or
    - (ii) otherwise—the day on which the foreign person takes the action.
- (3) For the purposes of subparagraph (2)(b)(i), the kinds of notices or certificates are as follows:
  - (a) a notice under subsection 11(3) of the *A New Tax System (Australian Business Number) Act 1999* of an ABN (within the meaning of that Act);

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- (b) a certificate under paragraph 118(1)(c) or 601BD(1)(c) of the *Corporations Act 2001* stating an ACN (within the meaning of that Act).
- (4) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZM(2) of the Act (as those table items apply because of subsection (2) of this section).

## **Division 3—Relationship with other notification provisions**

### **58K Some other notification requirements only apply for actions that require registry notices, and where such registry notices are not given**

- (1) For the purposes of paragraph 98C(1)(c) of the Act, requirements that must be met for subsection 98C(2) of the Act to apply to a person in relation to a core Part 3 action are that:
  - (a) the core Part 3 action is of a kind for which register notices must be given to the Registrar for the purposes of Part 7A of the Act; and
  - (b) the person has not already given such a register notice to the Registrar for the action.
- (2) For the purposes of paragraph 98D(1)(c) of the Act, requirements that must be met for subsection 98D(2) of the Act to apply to a person in relation to a core Part 3 action are that:
  - (a) the core Part 3 action is of a kind for which register notices must be given to the Registrar for the purposes of Part 7A of the Act; and
  - (b) the person has not already given such a register notice to the Registrar for the action.
- (3) For the purposes of paragraph 98E(1)(e) of the Act, requirements that must be met for subsection 98E(2) of the Act to apply to a person in relation to a core Part 3 action are that:
  - (a) the core Part 3 action is of a kind for which register notices must be given to the Registrar for the purposes of Part 7A of the Act; and
  - (b) the person has not already given such a register notice to the Registrar for the action.

## **Division 4—Exemptions**

### **58L Exemption for Register purposes for certain kinds of interests in Australian land**

For the purposes of paragraph 37(1)(b) of the Act, Part 7A of the Act does not apply in relation to a kind of interest in Australian land that is not one of the following:

- (a) a freehold interest in Australian land;
- (b) an interest as lessee in a lease giving rights to occupy Australian land if the term of the lease (including any extension or renewal) is reasonably likely, at the time the interest is acquired, to exceed 5 years;
- (c) an interest in a mining or production tenement.

Note 1: This exemption extends to regulations made for the purposes of Part 7A of the Act (for example, section 58C of this instrument).

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Note 2: Part 7A of the Act continues to apply to interests in exploration tenements, as these interests are not interests in Australian land.

## Part 2—Replicating existing exemptions

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 2 After section 22

Insert:

##### 22A Rights that are not registrable water entitlements

- (1) For the purposes of paragraph 26A(2)(d) of the Act, a right held by an irrigation infrastructure operator (within the meaning of the *Water Act 2007*) is not a **registrable water entitlement** to the extent that this right:
  - (a) is a right to hold or take water from a water resource for another person who has an irrigation right (within the meaning of the *Water Act 2007*); or
  - (b) is a right to deliver water to water users, including water lost in transit from its source to end users due to seepage, leakage, evaporation or other similar effects.
- (2) Subsection (1) applies to rights that start to be held before, on or after the commencement of this section.

#### 3 Subsection 27(1)

After “an interest in securities, assets, a trust, Australian land or a tenement”, insert “, or a registrable water interest, (the *interest*)”.