





# **Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 27 June 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Scott Morrison  
Treasurer

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## 1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017*.

## 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	At the same time as Schedule 1 to the <i>Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining and Other Measures) Act 2017</i> commences.  However, the provisions do not commence at all if that Schedule does not commence.	24 June 2017

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Exemptions

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5

Insert:

*education institution* has the same meaning as in the *Student Assistance Act 1973*.

*residential care* has the same meaning as in the *Aged Care Act 1997*.

*retirement village* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

*school* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

#### 2 Section 5 (definition of *vacant*)

Repeal the definition, substitute:

*vacant*:

- (a) land is *vacant* if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock; but
- (b) despite paragraph (a), land is not *vacant* if a wind or solar power station is located on the surface of the land.

#### 3 Section 5

Insert:

*value*, of an interest in Australian land held by an entity, includes the value of the entity's interest (if any) in a wind or solar power station located on the land (whether on or beneath the surface).

*wind or solar power station* means:

- (a) an accredited power station within the meaning of the *Renewable Energy (Electricity) Act 2000* that is:
  - (i) a wind power station (incorporating one or more wind turbines); or
  - (ii) a solar electricity generation system; or
- (b) any component of such an accredited power station that is taken to be a part of the power station for the purposes of the *Renewable Energy (Electricity) Act 2000*.

Note: For components of a wind or solar power station that are taken to be a part of the power station for the purposes of that Act, see clause 8 or 10 of Schedule 1 to the *Renewable Energy (Electricity) Regulations 2001*.

#### 4 At the end of section 38

Add:

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*Acquisition of interests in residential land used for residential care, retirement villages and certain forms of student accommodation*

- (5) All of the following apply:
- (a) the land is used for:
    - (i) premises that provide for residential care; or
    - (ii) a retirement village; or
    - (iii) premises that provide accommodation to students in connection with an education institution that is not a school;
  - (b) the foreign person is not a foreign government investor;
  - (c) the value of the land acquired is less than:
    - (i) if the land is covered by paragraphs 52(6)(b) and (c)—the value prescribed by item 3 of the table in subsection 52(5); or
    - (ii) otherwise—the value prescribed by item 4 of the table in subsection 52(5).

Note: A value prescribed by an item in the table in subsection 52(5) may be indexed under section 53.

*Certain acquisition of interests in residential land used as retirement villages*

- (6) All of the following apply:
- (a) the foreign person has an existing interest in the land;
  - (b) the land is used for a retirement village that the foreign person owns;
  - (c) the foreign person increases their existing interest in the land by acquiring an interest in a dwelling contained in the retirement village.

## **5 After subsection 40(2)**

Insert:

*Wind or solar power station owners and operators*

- (2A) An owner or operator, or an associate of an owner or operator, of a wind or solar power station, who 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 (whether on or beneath the surface) may, for the purposes of subsections 52(2) and (3) of the Act, disregard the fact that the land is agricultural land.

## **6 At the end of Subdivision A of Division 4 of Part 3**

Add:

### **41A Exemption—foreign persons in which foreign custodian corporations have interests**

- (1) This section applies in relation to the following provisions:
- (a) Division 3 of Part 2 of the Act (meaning of notifiable action);
  - (b) Part 4 of the Act (notice of notifiable actions and significant actions);
  - (c) any other provision of the Act to the extent that it relates to either of those provisions.

- (2) The provisions mentioned in subsection (1) do not apply in relation to any action taken by a foreign person if, when the action is taken:
- (a) the foreign person is a corporation, the trustee of a trust or the general partner of a limited partnership (see subsection 18(1)); and
  - (b) an interest or part of an interest (the *custodian share*) in that corporation, trust or limited partnership is held by a corporation of the kind mentioned in paragraph 30(a) (the *foreign custodian corporation*); and
  - (c) the custodian share is held in the course of the foreign custodian corporation's business of providing the custodian services mentioned in paragraph 30(a); and
  - (d) the foreign person would not be a foreign person if:
    - (i) in a case in which there is only one foreign custodian corporation to which paragraphs (b) and (c) apply—that foreign custodian corporation did not hold the custodian share to which paragraph (c) applies; or
    - (ii) in a case in which there are 2 or more foreign custodian corporations to which paragraphs (b) and (c) apply—none of those foreign custodian corporations held the custodian shares to which paragraph (c) applies.

Example: Foreign custodian corporations are foreign persons (see paragraph 30(a)). A foreign custodian corporation (*Corporation FC*) holds a total interest of 25% in another corporation (*Corporation F*). No other foreign person holds an interest in Corporation F. Corporation FC's interest makes Corporation F a foreign person because it is a substantial interest (at least 20%).

15% of Corporation FC's interest in Corporation F is a custodian share to which paragraph (2)(c) applies. That paragraph does not apply to 10% of the interest. Corporation F would not be a foreign person if it were not for the custodian share held by Corporation FC (see paragraph (2)(d)).

The provisions mentioned in subsection (1) do not apply in relation to any action taken by Corporation F.

## 7 Section 44 (heading)

Repeal the heading, substitute:

### 44 Land that is not agricultural land

#### 8 Subsection 44(1)

Omit "The kind of land that is not *agricultural land*", substitute "For the purposes of subsection 37(3) of the Act, the kind of land that is not agricultural land".

#### 9 At the end of subsection 44(1)

Add:

Note: Section 4 of the Act defines *agricultural land* as land in Australia that is used, or that could reasonably be used, for a primary production business. That definition, as modified by this section, applies in this instrument as well as in the Act (see section 13 of the *Legislation Act 2003*).

#### 10 At the end of paragraph 44(4)(b)

Add:

or (v) an approval (including accreditation) for establishing or operating a wind or solar power station to be located on the land (whether on or beneath the surface);

**11 Subsection 44(6)**

After “allowing”, insert “any or all of”.

**12 After subsection 44(7)**

Insert:

*Land used for wind or solar power station*

- (7A) The land is used wholly or predominantly for a wind or solar power station located on the land (whether on or beneath the surface).
- (7B) An approval of a government authority (including accreditation) is in force allowing a wind or solar power station to be established or operated on the land (whether on or beneath the surface).
- (7C) The land was acquired solely, or is used wholly or predominantly, to meet a condition of an approval mentioned in subsection (7B) that relates to other land.

## Schedule 2—Exemption certificates

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5

Insert:

***near-new dwelling interest*** means an interest in a dwelling, if all of the following apply:

- (a) the dwelling is contained in a development;
- (b) an agreement to sell the interest in the dwelling had become binding;
- (c) that agreement did not result in the transfer of title to the interest, and is no longer in force;
- (d) the interest is to be sold under another agreement;
- (e) the interest would be an interest in a new dwelling, to be acquired under the other agreement, if there were no agreements to which paragraphs (b) and (c) applied.

#### 2 Section 42

Repeal the section, substitute:

#### 42 Exemption certificate for businesses or entities

- (1) A foreign person may apply for a certificate under this section (a ***businesses or entities certificate***) if the foreign person or any other foreign person proposes to acquire one or more kinds of interests in the assets of an Australian business or the securities of an entity.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

- (2) The Treasurer may give a certificate if the Treasurer is satisfied that acquisitions of those kinds of interests by that foreign person are not contrary to the national interest.
- (3) The certificate must specify:
  - (a) the foreign person, who may not yet be incorporated or established, to whom the certificate relates (or will relate); and
  - (b) the kinds of interests to which the certificate relates; and
  - (c) whether the acquisition of any of those kinds of interests:
    - (i) does not give rise to a notifiable action; or
    - (ii) neither gives rise to a significant action nor a notifiable action.

Note: For other things that the certificate may specify, see section 60 of the Act.

- (4) For the purposes of subsection 45(3) of the Act, an action is not a ***significant action*** if:
  - (a) the action is an acquisition by a foreign person of an interest in assets of an Australian business or securities of an entity; and
  - (b) the foreign person is specified in a businesses or entities certificate; and
  - (c) the interest is of a kind specified in the certificate; and

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- (d) the acquisition of the interest is specified in the certificate as not giving rise to a significant action; and
  - (e) the conditions (if any) specified in the certificate are met.
- (5) For the purposes of subsection 49(2) of the Act, an action is not a **notifiable action** if:
- (a) the action is an acquisition by a foreign person of an interest in assets of an Australian business or securities of an entity; and
  - (b) the foreign person is specified in an Australian businesses or entities certificate; and
  - (c) the interest is of a kind specified in the certificate; and
  - (d) the conditions (if any) specified in the certificate are met.

### **3 Subsection 43(1)**

After “under this section”, insert “(a **tenements and mining, production or exploration entities certificate**)”.

### **4 Subsection 43(2)**

Omit “is not contrary”, substitute “are not contrary”.

### **5 At the end of section 43**

Add:

- (4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a **significant action** or a **notifiable action** if:
- (a) the action is an acquisition by a foreign person of an interest in securities or in a tenement; and
  - (b) the foreign person is specified in a tenements and mining, production or exploration entities certificate; and
  - (c) the interest is of a kind specified in the certificate; and
  - (d) the conditions (if any) specified in the certificate are met.

### **6 At the end of Division 4 of Part 3**

Add:

#### **43A Exemption certificates for residential land (near-new dwelling interests)**

- (1) A person may apply for a certificate under this section (a **residential land (near-new dwelling interests) certificate**) if:
- (a) the person has acquired, or will acquire, an interest in Australian land; and
  - (b) the person has built, or proposes to build, new dwellings on that land; and
  - (c) some or all of the interests in those dwellings are, or may become, near-new dwelling interests; and
  - (d) the person proposes to dispose of the near-new dwelling interests to foreign persons.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

- (2) The Treasurer may give a certificate if the Treasurer is satisfied that the disposal of the near-new dwelling interests to foreign persons is not contrary to the national interest.
- (3) The certificate must specify:
  - (a) the person (who may not yet be incorporated or established) to whom the certificate relates; and
  - (b) that the certificate covers interests that are, or could be, near-new dwelling interests.

Note: For other things that the certificate may specify, see section 60 of the Act.

- (4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a **significant action** or a **notifiable action** if:
  - (a) the action is a foreign person acquiring a near-new dwelling interest; and
  - (b) the acquisition was from a person (the **specified person**) who was specified in a residential land (near-new dwelling interests) certificate; and
  - (c) the interest is specified in the certificate; and
  - (d) the specified person provided the foreign person with a copy of that certificate before the foreign person acquired the interest; and
  - (e) either:
    - (i) the conditions (if any) specified in the certificate were met; or
    - (ii) the foreign person is not, at the time of the action, aware that one or more of the conditions specified in the certificate have not been met.

#### **43B Exemption certificates for residential land (other than established dwellings)**

- (1) A foreign person may apply for a certificate under this section (a **residential land (other than established dwellings) certificate**) if the foreign person or any other foreign person proposes to acquire only one of the following:
  - (a) an interest in a new dwelling;
  - (b) a near-new dwelling interest;
  - (c) an interest in vacant residential land.

Note: See also Part 6 (fees) and section 135 (manner of notification and application) of the Act.

- (2) The Treasurer may give a certificate if the Treasurer is satisfied that the acquisition of those kinds of interests by that foreign person is not contrary to the national interest.
- (3) The certificate must specify:
  - (a) the person to whom the certificate relates; and
  - (b) the kind of interest to which the certificate relates.

Note: For other things that the certificate may specify, see section 60 of the Act.

- (4) For the purposes of subsections 45(3) and 49(2) of the Act, an action is not a **significant action** or a **notifiable action** if:
  - (a) the action is an acquisition by a foreign person of an interest in Australian land; and
  - (b) the foreign person is specified in a residential land (other than established dwellings) certificate; and

- (c) the interest is of the 3 kinds specified in the certificate; and
- (d) the conditions (if any) specified in the certificate are met.

**7 Section 58**

Repeal the section.

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## Schedule 3—Miscellaneous

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### **1 Subsection 10(2)**

Repeal the subsection, substitute:

- (2) Despite subsection (1), if a foreign government investor carries on an Australian business, the foreign government investor does not *start an Australian business* merely because the foreign government investor, alone or together with one or more persons, establishes a new entity:
  - (a) that carries on the same Australian business; or
  - (b) for the purposes of acquiring interests in assets of the same Australian business.

#### **2 Paragraph 37(4)(e)**

Repeal the paragraph.

#### **3 Paragraph 52(3)(a)**

After “that is vacant,”, insert “(except interests in land covered by subsection (3A)),”.

#### **4 After subsection 52(3)**

Insert:

- (3A) The following land is covered by this subsection:
  - (a) residential land covered by paragraph 38(5)(a);
  - (b) residential land covered by subsection (2) of this section.

#### **5 At the end of subparagraph 52(6)(c)(i)**

Add “, except land leased to bodies covered by subsection (6A)”.

#### **6 Subparagraph 52(6)(c)(v)**

Repeal the subparagraph.

#### **7 After subsection 52(6)**

Insert:

- (6A) This subsection covers a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) other than the following bodies:
  - (a) the Australian Nuclear Science and Technology Organisation;
  - (b) Comcare (the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988*);
  - (c) the CSC (short for Commonwealth Superannuation Corporation) within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*;
  - (d) the Commonwealth Scientific and Industrial Research Organisation;
  - (e) the Reserve Bank of Australia.

**8 Paragraph 56(4)(b)**

Omit “1%”, substitute “5%”.

**9 Paragraph 56(4)(c)**

Omit “\$10 000 000”, substitute “\$55 million”.

**10 At the end of section 56**

Add:

*Exception—acquisition of initial interest by entity established by consortium*

- (5) Paragraph (1)(a) does not apply in relation to an acquisition of an initial direct interest in an Australian entity by a foreign government investor if the entity is established by one or more persons for the purposes of the entity making a later acquisition that is a significant action and a notifiable action.

## **Schedule 4—Application and transitional**

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

#### **1 At the end of Part 7**

Add:

#### **68 Amendments made by the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017***

The amendments of this instrument made by the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017* apply in relation to an action taken on or after the commencement of those Regulations.