

Australia

Foreign Acquisitions and Takeovers Act 1975 (1975)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Foreign Acquisitions and Takeovers Act 1975

No. 92, 1975

Compilation No. 35

Compilation date: 5 December 2025

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An Act relating to the foreign acquisition of certain land interests and to the foreign acquisition and foreign control of certain business enterprises and mineral rights

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the Foreign Acquisitions and Takeovers Act 1975.

2 Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

3 Simplified outline of this Act

This Act deals with certain actions to acquire interests in securities, assets or Australian land, and

actions taken in relation to entities (being corporations and unit trusts) and businesses, that have a connection to Australia. These actions are called significant actions. For an action to be a significant action, the action must in most cases result in a change in control involving a foreign person or be taken by a foreign person.

This Act also deals with actions taken by persons that have, or may have, implications for Australia's national security. These actions may or may not be significant actions. Actions relating to a national security business or national security land are notifiable national security actions. If an action is a reviewable national security action, or a significant action that is not a notifiable action or a notifiable national security action, the Treasurer may review the action if the Treasurer considers that the action may pose a national security concern.

If a person proposes to take or has taken an action, the Treasurer has power to do one or more of the following:

- (a) decide that the Commonwealth has no objection to the action;
- (b) impose conditions on the action;
- (c) prohibit the action;
- (d) require the action to be undone (for example, by requiring the disposal of an interest that has been acquired).

Offences and civil penalties apply for failing to comply with:

- (a) an order made prohibiting an action, or requiring an action to be undone; or
- (b) a condition imposed on an action.

Significant actions that are notifiable actions, and notifiable national security actions, must generally be notified to the Treasurer before the actions can be taken. Offences and civil penalties may apply if a notifiable action is taken without a notice having been given. Broadly, if a notice has been given stating that a significant action is proposed to be taken, the action must not be taken before the end of a specified period (generally of 40 days, or an additional period of up to 90 days from the registration of an interim order).

Fees are payable in relation to applications and orders made, and notices and notifications given, under this Act.

A person must make and keep records for the purposes of this Act, including in relation to significant actions and notifiable actions. Information that is obtained for the purposes of this Act (called protected information) may be disclosed only for certain purposes. A person who obtains, uses or discloses protected information other than as authorised by this Act may commit an offence.

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. A foreign person who takes such an action (which may or may not be a significant action or a notifiable action, or otherwise covered by this Act) must give a register 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.

Division 2—Definitions

Subdivision A—Dictionary of definitions

4 Dictionary of definitions

In this Act:

6 month period has the meaning given by subsection 113(3).

acquire an interest of a specified percentage:

- (a) in a business—has the meaning given by section 19A; and
- (b) in an entity—has the meaning given by section 20.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

aggregate interest of a specified percentage in an entity has the meaning given by subsection 17(2).

aggregate substantial interest: 2 or more persons hold an aggregate substantial interest in an entity or trust if:

- (a) for an entity—the persons hold an aggregate interest of at least 40% in the entity; or
- (b) for a trust (including a unit trust)—the persons, together with any one or more associates of any of them hold, in the aggregate, beneficial interests in at least 40% of the income or property of the trust.

Note: See also sections 17 (meanings of interest and aggregate interest of a specified percentage in an entity) and 18 (rules relating to determining percentages of interests in entities).

agribusiness: an Australian entity or Australian business is an agribusiness in the circumstances prescribed by the regulations.

agricultural land means land in Australia that is used, or that could reasonably be used, for a primary production business.

Note: The regulations may provide that land of a specified kind is not agricultural land (see subsection 27(2)).

37(3)).

agricultural land corporation has the meaning prescribed by the regulations.

agricultural land trust has the meaning prescribed by the regulations.

ART Act means the Administrative Review Tribunal Act 2024.

asset includes an interest in an asset.

associate has the meaning given by section 6.

Australia, when used in a geographical sense, includes the external Territories.

Australian business has the meaning given by section 8.

Australian corporation means a corporation formed in Australia.

Australian entity means an Australian corporation or an Australian unit trust.

Australian land means agricultural land, commercial land, residential land or a mining or production tenement.

Australian land corporation has the meaning prescribed by the regulations.

Australian land trust has the meaning prescribed by the regulations.

Australian subsidiary of a foreign entity means an Australian entity that is a subsidiary of the foreign entity.

Note: For the definition of subsidiary, see section 21.

Australian unit trust means a unit trust:

- (a) the trustee of which holds relevant Australian assets; or
- (b) the trustee of which carries on an Australian business; or
- (c) the central management and control of which is in Australia; or
- (d) in which one or more persons who are ordinarily resident in Australia hold more than 50% of the beneficial interests in the income or property of the unit trust; or
- (e) that is listed for quotation in the official list of a stock exchange in Australia.

Australian water access entitlement means a perpetual or ongoing entitlement, by or under a law of a State or Territory, to exclusive access to a share of the water resources of an area in the State or Territory.

authorised officer means a person appointed as an authorised officer under subsection 101E(1).

business includes any activity carried on by:

- (a) the Commonwealth, a State, a Territory or a local governing body; or
- (b) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
- (c) an entity wholly owned by the Commonwealth, a State, a Territory, a local governing body or a body corporate covered by paragraph (b).

change in control has the meaning given by section 54.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

commercial land means land in Australia or the seabed of the offshore area, other than land:

- (a) used wholly and exclusively for a primary production business; or
- (b) on which there is at least one dwelling (except commercial residential premises); or
- (c) on which the number of dwellings (except commercial residential premises) that could reasonably be built is less than the number prescribed by the regulations for the purposes of subparagraph (a)(ii) of the definition of residential land in this section.

commercial residential premises has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

Commonwealth, State or Territory body includes a Department of State, or an authority or agency, of the Commonwealth, a State or a Territory.

consideration has the meaning prescribed by the regulations.

constituent document of an entity or unincorporated limited partnership means any rules or other document constituting or establishing the entity or partnership or governing its activities, and includes:

- (a) for a corporation—the constitution of the corporation; and
- (b) for a unit trust—the trust deed for the trust; and
- (c) for an unincorporated limited partnership—the partnership agreement.

contractual water right of a person means a right that the person holds (alone or jointly) under a contract or a deed to all or part of another person's:

- (a) registrable water entitlement; or
- (b) water allocation; or
- (c) right of a kind specified in the regulations.

controls:

- (a) the voting power—has the meaning given by section 23; and
- (b) an entity or business—has the meaning given by subsections 54(4) and (5).

core Part 3 action means any of the following:

- (a) a significant action (other than an action mentioned in paragraph (b));

(b) any of the following actions:

- (i) a notifiable national security action that is not a significant action;
- (ii) an action in respect of which the Treasurer has given notice under subsection 66A(4);
- (iii) a reviewable national security action that is notified to the Treasurer.

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

debenture includes:

- (a) debenture stock, bonds and notes; and
- (b) any other document evidencing or acknowledging indebtedness of an entity, whether or not constituting a charge on the assets of the entity.

decision period has the meaning given by subsection 77(8).

determines the policy of a business of exploiting a mining or production tenement has a meaning affected by section 24.

development means one or more multi-storey buildings if:

- (a) the buildings will be, are being or have been built; and
- (b) the buildings are or were under one development approval; and
- (c) the number of independent self-contained dwellings (other than townhouses) that the buildings contain or will contain is at least the number prescribed by the regulations.

direct interest has the meaning prescribed by the regulations.

director includes any person occupying the position of director (however described) of a corporation.

eligible Registrar appointee means [Omitted]

engage in conduct includes fail or refuse to engage in conduct.

enters has a meaning affected by section 25.

entity means a corporation or a unit trust.

established dwelling means a dwelling (except commercial residential premises) on residential land that is not a new dwelling.

exempt core Part 3 action means an action which would be a core Part 3 action if an exemption certificate did not relate to the action.

exemption certificate means a certificate given under:

- (a) section 57, 58 or 59; or
- (b) regulations made for the purposes of section 63.

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 (such as coal or ore), oil or gas in Australia or from the seabed or subsoil of the offshore area for the purposes of prospecting or exploring for minerals, oil or gas;
- (b) a right that preserves a right mentioned in paragraph (a);
- (c) a lease under which the lessee has a right mentioned in paragraph (a) or (b);
- (d) an interest in a right mentioned in paragraph (a) or (b) or under a lease mentioned in paragraph (c).

foreign corporation means a foreign corporation to which paragraph 51(xx) of the Constitution applies.

foreign entity means an entity that is not an Australian entity.

foreign government means an entity (within the ordinary meaning of the term) that is:

- (a) a body politic of a foreign country; or
- (b) a body politic of part of a foreign country; or
- (c) a part of a body politic mentioned in paragraph (a) or (b).

foreign government investor has the meaning prescribed by the regulations.

foreign person means:

- (a) an individual not ordinarily resident in Australia; or
- (b) a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (c) a corporation in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (d) the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (e) the trustee of a trust in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (f) a foreign government; or
- (g) any other person, or any other person that meets the conditions, prescribed by the regulations.

Note: In certain circumstances, an associate of a foreign person may be taken to be a foreign person even if the associate is not a foreign person (see subsection 54(7)).

general meeting of an entity or unincorporated limited partnership means [Omitted]

general partner means a partner of a limited partnership whose liability relating to the partnership is not limited.

head has the same meaning as in the Office of National Intelligence Act 2018.

holding entity has the meaning given by subsection 21(4).

independent director has the meaning given by section 7.

interest:

(a) in a security—has the meaning given by section 9; and

(b) in an asset—has the meaning given by section 10; and

(c) in a trust—has the meaning given by section 11; and

(ca) in an unincorporated limited partnership—has the meaning given by section 11A; and

(d) in Australian land—has the meaning given by section 12; and

(da) in a business—has the meaning given by section 16A; and

(e) of a specified percentage in an entity—has the meaning given by section 17; and

(f) of a specified percentage in an unincorporated limited partnership—has the meaning given by subsection 17(2A).

Note: For other rules relating to interests in a security, asset, trust or Australian land, see sections 13 to 15.

interim order means an order made under section 68.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land includes:

(a) a building (including a new dwelling or an established dwelling) or a part of a building; and

(b) subsoil of land.

land register means a register kept under a law of the Commonwealth, a State or a Territory in which interests (within the ordinary meaning of the term) in Australian land are registered.

lease includes a sublease.

limited partner means a partner of a limited partnership whose liability relating to the partnership is limited.

limited partnership means an association of persons that:

(a) was formed solely for the purposes of becoming a partnership where the liability of at least one partner relating to the partnership is limited; and

(b) is recognised under a law of the Commonwealth, a State, a Territory, a foreign country or a part of a foreign country as such a partnership.

long term lease means a lease granted by the Commonwealth, a State or a Territory for a term (including any extension or renewal) that is reasonably likely, at the time the lease is granted, to exceed 20 years.

mining or production tenement means:

(a) a right (however described) under a law of the Commonwealth, a State or a Territory to recover minerals (such as coal or ore), oil or gas in Australia or from the seabed or subsoil of the offshore area, other than a right to recover minerals, oil or gas for the purposes of prospecting or exploring for minerals, oil or gas; or

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

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

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

national intelligence community has the same meaning as in the Office of National Intelligence Act 2018.

national security business has the meaning prescribed by the regulations.

national security land has the meaning prescribed by the regulations.

near□new dwelling acquisition has the meaning given by subsection 113(4A).

near□new dwelling interest has the same meaning as in regulations made for the purposes of section 63 (exemption certificates provided for by the regulations).

new dwelling means a dwelling (except commercial residential premises) that will be, is being or has been built on residential land and that:

(a) has not been previously sold as a dwelling; and

(b) either:

(i) has not been previously occupied; or

(ii) if the dwelling is contained in a development and the dwelling was sold by the developer of the development—has not been previously occupied for more than 12 months in total.

Note: For when a dwelling is sold, see subsections 15(4) and (5).

new dwelling acquisition has the meaning given by subsection 113(4).

no objection notification means:

(a) a written notification given under subsection 74(2) and includes such a notification as varied under section 74, 76 or 79G; or

(b) a written notification given under subsection 75(2) and includes such a notification as varied under section 76 or 79G.

section 70 or 79G.

notice imposing conditions means a written notice given under subsection 79H(1) and includes such a notice as varied under section 79J, 79P or 79Q.

notifiable action has the meaning given by Division 3 of Part 2.

notifiable national security action has the meaning given by section 55B.

occupation day has the meaning given by section 115C.

officer of an entity includes the following:

(a) for a corporation—a director of the corporation;

(b) for a unit trust:

(i) the trustee of which is an individual—the trustee; and

(ii) the trustee of which is a corporation—a director of the trustee; and

(iii) in any case—any other individual involved in the central management and control of the trust;

(c) a person who is, or a person in a group of persons who are, in a position to determine the investments or policy of the entity or a trustee of the entity;

(d) a person who makes, or participates in making, decisions that affect the whole, or a substantial part of, the business of the entity;

(e) a person who has the capacity to affect significantly the financial standing of the entity;

(f) a receiver and manager of any part of the business of the entity appointed under a power contained in any instrument;

(g) an administrator of the entity;

(h) an administrator under a deed of company arrangement executed by the entity;

(i) a liquidator of the entity appointed in a voluntary winding up.

offshore area means:

(a) the exclusive economic zone of Australia; or

(b) the continental shelf of Australia.

ordinarily resident has a meaning affected by section 5.

potential voting power has the meaning given by section 22.

primary production business has the same meaning as in the Income Tax Assessment Act 1997.

proposes:

(a) to acquire an interest in securities, assets or Australian land—has a meaning affected by subsection 16(1); and

(b) to enter or terminate an agreement—has a meaning affected by subsection 16(2).

protected information has the meaning given by section 120.

Register means the Register of Foreign Ownership of Australian Assets kept under section 130S.

Register commencement day has the meaning given by section 130Q.

registered circumstance, in relation to a person, means a registered circumstance that exists in relation to the person under a provision of Division 3 of Part 7A (including regulations made for the purposes of subsection 130ZU(1)).

register notice means a notice that a person gives or is required to give to the Registrar under a provision of Division 3 of Part 7A (including regulations made for the purposes of subsection 130ZU(1)).

registrable event day:

(a) in relation to a register notice required to be given under a provision of Division 3 of Part 7A (other than subsection 130ZU(2))—means the day specified by the provision as the registrable event day for the notice; and

(b) in relation to a register notice required to be given under subsection 130ZU(2)—has the meaning given by regulations made for the purposes of subsection 130ZU(1).

Note: This definition is affected by section 130X (interests acquired by entering agreements etc.).

registrable water entitlement has the meaning given by section 26A.

registrable water interest means:

(a) a registrable water entitlement; or

(b) a contractual water right of a person under a contract or deed whose term (including any extension or renewal) after the person starts to hold the right is reasonably likely to exceed 5 years.

Registrar means the eligible Registrar appointee appointed under section 130R.

Regulatory Powers Act means the Regulatory Powers (Standard Provisions) Act 2014.

relative has the same meaning as in the Income Tax Assessment Act 1997.

relevant Australian assets means:

(a) Australian land, including legal and equitable interests (within the ordinary meaning of the term) in such land; or

(b) securities in an Australian entity.

relevant entity means any of the following:

(a) an Australian entity;

(b) a foreign corporation:

- (i) that holds relevant Australian assets; or
- (ii) that is a holding corporation of one or more Australian corporations;
- (c) a holding entity of such a foreign corporation or of an Australian unit trust.

Note: A holding entity mentioned in paragraph (c) may be a foreign corporation of a kind that is not mentioned in paragraph (b).

residential land:

(a) means land in Australia if:

- (i) there is at least one dwelling on the land; or
- (ii) the number of dwellings that could reasonably be built on the land is less than the number prescribed by the regulations; and

(b) does not include land:

- (i) used wholly and exclusively for a primary production business; or
- (ii) on which the only dwellings are commercial residential premises.

residential land acquisition means a notifiable action to acquire an interest in residential land.

residential land (near□new dwelling interests) certificate has the same meaning as in regulations made for the purposes of section 63 (exemption certificates provided for by the regulations).

residentially occupied has the meaning given by section 115C.

reviewable decision means a decision of the Treasurer under Division 3 of Part 3 that a national security risk exists in relation to an action.

reviewable national security action has the meaning given by Division 4B of Part 2.

scheme means:

(a) any agreement, understanding, promise or undertaking:

- (i) whether express or implied; and
- (ii) whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Secretary means the Secretary of the Department.

security means a share in a corporation or a unit in a unit trust.

senior officer of an entity means an officer of the entity under any of paragraphs (a) to (e) of the definition of officer in this section, except an independent director of the entity.

sensitive business has the meaning given by section 26.

separate government entity means an individual, corporation or corporation sole that:

- (a) is an agency or instrumentality of a foreign country or a part of a foreign country; and
- (b) is not part of the body politic of a foreign country or of a part of a foreign country.

share of a corporation means a share in the share capital of the corporation, and includes:

- (a) stock into which all or any of the share capital of the corporation has been converted; and
- (b) except in section 9, an interest in such a share or in such stock.

significant action has the meaning given by Division 2 of Part 2.

significant agreement with an Australian business is an agreement relating to:

- (a) the leasing of, the letting on hire of, or the granting of other rights to use, assets of the business; or
- (b) the participation by a person in the profits or central management and control of the business.

starts a national security business has the meaning given by section 8A.

starts an Australian business has the meaning given by section 8B.

subsidiary has the meaning given by subsections 21(1) to (3).

substantial interest: a person holds a substantial interest in an entity, trust or unincorporated limited partnership if:

(a) for an entity or unincorporated limited partnership—the person holds an interest of at least 20% in the entity or partnership; or

(b) for a trust (including a unit trust)—the person, together with any one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.

Note 1: See also sections 17 (meanings of interest and aggregate interest of a specified percentage in an entity or unincorporated limited partnership) and 18 (rules relating to determining percentages of interests in entities).

Note 2: For when a person acquires a substantial interest in an entity, see section 20.

temporary resident means an individual who:

(a) holds a temporary visa under the Migration Act 1958 that allows the individual to remain in Australia for a continuous period of more than 12 months (disregarding the amount of that period remaining); or

(b) meets the following conditions:

- (i) the individual is residing in Australia;
- (ii) the individual has applied for a permanent visa under the Migration Act 1958;
- (iii) the individual holds a bridging visa under that Act that allows the individual to remain in Australia until the application has been finally determined; or

(c) meets the conditions prescribed by the regulations.

this Act includes the regulations.

threshold test is met has the meaning given by Subdivision B of Division 4 of Part 2.

tier 1 infringement notice has the meaning given by subsection 101(1).

tier 2 infringement notice has the meaning given by subsection 101(2).

tier 3 infringement notice has the meaning given by subsection 101(4).

total asset value for an entity has the meaning prescribed by the regulations.

total issued securities value for an entity has the meaning prescribed by the regulations.

Tribunal means the Administrative Review Tribunal.

unpaid vacancy fees has the meaning given by section 115K.

unpaid vacancy penalties has the meaning given by section 115K.

vacancy fee has the meaning given by section 115C.

vacancy year has the meaning given by section 115C.

voting power has the meaning given by subsection 22(1).

water allocation means the specific volume of water allocated to an Australian water access entitlement in a given period.

water resource means:

(a) surface water or ground water; or

(b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it).

An expression used in this definition that is also used in the Water Act 2007 has the same meaning as in that Act.

Subdivision B—Some defined terms and rules of interpretation

5 Meaning of ordinarily resident

(1) An individual who is not an Australian citizen is ordinarily resident in Australia at a particular time if and only if:

(a) the individual has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and

(b) at that time:

(i) the individual is in Australia and the individual's continued presence in Australia is not subject to any limitation as to time imposed by law; or

(ii) the individual is not in Australia but, immediately before the individual's most recent departure from Australia, the individual's continued presence in Australia was not subject to any limitation as to time imposed by law.

(2) Without limiting paragraph (1)(b), an individual's continued presence in Australia is subject to a limitation as to time imposed by law if the individual is an unlawful non-citizen within the meaning of the Migration Act 1958.

6 Meaning of associate

(1) Each of the following persons is an associate of a person:

(a) any relative of the person;

(b) any person with whom the person is acting, or proposes to act, in concert in relation to an action to which this Act may apply;

(c) any person with whom the person carries on a business in partnership;

(d) any entity of which the person is a senior officer;

(e) if the person is an entity:

(i) any holding entity of the entity; or

(ii) any senior officer of the entity;

(f) any entity whose senior officers are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of:

(i) the person; or

(ii) if the person is an entity—the senior officers of the person;

(g) an entity if the person is accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of:

(i) the entity; or

(ii) the senior officers of the entity;

(h) any corporation in which the person holds a substantial interest;

(i) if the person is a corporation—a person who holds a substantial interest in the corporation;

(j) the trustee of a trust in which the person holds a substantial interest;

(k) if the person is the trustee of a trust—a person who holds a substantial interest in the trust;

(l) if the person is a foreign government, a separate government entity or a foreign government investor

in relation to a foreign country (or a part of a foreign country):

- (i) any other person that is a foreign government in relation to that country (or any part of that country); or
- (ii) any other person that is a separate government entity in relation to that country (or any part of that country); or
- (iii) any other foreign government investor in relation to that country (or any part of that country).

Note: A person may be taken to be an associate under section 79.

Additional associates in relation to interests in residential land

(2) For an action taken relating to an interest in residential land (within the meaning of any of the paragraphs of subsection 12(1)), each of the following persons is also an associate of a person:

(a) an entity that is not listed for quotation in the official list of a stock exchange if a relative of the person:

- (i) holds a substantial interest in the entity; or
- (ii) is a senior officer of the entity;
- (b) if the person is an entity (the first entity)—another entity (the second entity) if:
 - (i) an individual holds a substantial interest in the first entity or is a senior officer of the first entity; and
 - (ii) a relative of the individual holds a substantial interest in the second entity or is a senior officer of the second entity; and
- (iii) the first entity and the second entity are not, and are not a subsidiary or trustee of an entity, listed for quotation in the official list of a stock exchange.

Persons who are not associates

(3) Despite subsections (1) and (2), a person is not an associate of another person merely because:

- (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; or
- (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products (within the meaning of Division 3 of Part 7.1 of the Corporations Act 2001), to acquire financial products on the client's behalf in the ordinary course of that business; or
- (c) one had sent, or proposes to send, to the other an offer under a takeover bid (within the meaning of that Act) for securities held by the other; or
- (d) one has appointed the other, otherwise than for valuable consideration (within the ordinary meaning of the term) given by the other or by an associate of the other, to vote as a proxy or representative; or
- (e) both of the following apply:
 - (i) one provides independent services as a trustee of a trust to the other who is a beneficiary of the trust;
 - (ii) the trustee is licensed to provide those services under a law of the Commonwealth, a State, a Territory, a foreign country or a part of a foreign country; or
- (f) one holds a substantial interest in a registered scheme (within the meaning of the Corporations Act 2001) and the other is the responsible entity of the scheme (within the meaning of that Act); or
- (fa) one holds a substantial interest in a notified foreign passport fund (within the meaning of the Corporations Act 2001) and the other is the operator of the fund (within the meaning of that Act); or
- (g) both are partners of one of the following kinds of partnerships:
 - (i) a partnership of actuaries or accountants;
 - (ii) a partnership of medical practitioners;
 - (iii) a partnership of patent attorneys;
 - (iv) a partnership of sharebrokers or stockbrokers;
 - (v) a partnership of trade mark attorneys;
 - (vi) a partnership that has as its primary purpose collaborative scientific research, and includes at least one university and one private sector participant (whether or not it also includes government agencies or publicly funded research bodies);
 - (vii) a partnership of architects;
 - (viii) a partnership of pharmaceutical chemists or veterinary surgeons;
 - (ix) a partnership of legal practitioners; or
- (h) both of the following apply:
 - (i) both are partners of a limited partnership;
 - (ii) at least one of them is a limited partner that is not in a position (whether alone or together with one or more persons who are, or would apart from this paragraph be, that partner's associates) to participate in the management and control of the partnership, or of any of the general partners of the partnership, in relation to any matter.

7 Meaning of independent director

Listed entities

(1) A person is an independent director of an entity if:

- (a) the person is:

- (i) a director of the entity; or
- (ii) for a unit trust—a director of a trustee of the entity; and
- (b) the entity is listed for quotation in the official list of a stock exchange (whether or not in Australia); and
- (c) the director meets the criteria of that stock exchange for a director to be independent (whether or not the criteria are binding).

Note: If the stock exchange does not have criteria for a director to be independent, a director of an entity listed for quotation in the official list of the stock exchange is not an independent director.

Entities whose securities are stapled

- (2) A person is an independent director of an entity (the first entity) if:
 - (a) the person is a director of the first entity and another entity; and
 - (b) the securities in the first entity can only be transferred together with securities in the other entity; and
 - (c) the first entity is not listed for quotation in the official list of a stock exchange, but the other entity is (whether or not in Australia); and
 - (d) the director meets the criteria of that stock exchange for a director to be independent (whether or not the criteria are binding).

8 Meaning of Australian business

- (1) An Australian business is a business that is carried on wholly or partly in Australia in anticipation of profit or gain.
- (2) For the purposes of this Act, a person who has an interest in a mining or production tenement is, as a result of having that interest, taken to carry on a business in Australia of exploiting that tenement in anticipation of profit or gain. The tenement is taken to be an asset of that business.
- (3) Without limiting subsection (1), a business is taken to be an Australian business for the purposes of this Act if:
 - (a) the business is carried on wholly or partly in Australia, whether or not in anticipation of profit or gain, by:
 - (i) the Commonwealth, a State, a Territory or a local governing body; or
 - (ii) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
 - (iii) an entity wholly owned by the Commonwealth, a State, a Territory, a local governing body or a body corporate covered by subparagraph (ii); and
 - (b) the business would, or could, be carried on in anticipation of profit or gain if it were carried on by someone other than:
 - (i) a body referred to in subparagraph (a)(i) or (ii); or
 - (ii) an entity referred to in subparagraph (a)(iii); or
 - (iii) a foreign government; or
 - (iv) a separate government entity.

8A Meaning of starts a national security business

- (1) A foreign person starts a national security business if the foreign person starts to carry on a national security business.
- (2) Despite subsection (1), if a foreign person carries on a national security business, the person does not start a national security business merely because the foreign person, alone or together with one or more persons, establishes a new entity:
 - (a) that carries on the same national security business; or
 - (b) for the purposes of acquiring interests in assets of the same national security business.

8B Meaning of starts an Australian business

- (1) A foreign person starts an Australian business if:
 - (a) the foreign person starts to carry on an Australian business; or
 - (b) for a foreign person who already carries on an Australian business—the business starts a new activity that:
 - (i) is not incidental to an existing activity of the Australian business; and
 - (ii) is within a different Division under the Australian and New Zealand Standard Industrial Classification Codes from the current activities of the Australian business.
- (2) Despite subsection (1), if a foreign person carries on an Australian business, the person does not start an Australian business merely because the foreign person, 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.

9 Meaning of interest in a security

- (1) A person holds or acquires an interest in a security if he or she has any legal or equitable interest in that security

Note 1: For other rules relating to interests in securities, see sections 13 to 15.

(2) Without limiting subsection (1), a person holds or acquires an interest in a security in an entity if:

(3) In determining whether a person holds or acquires an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(4) A person holds or acquires an interest in the issued shares in a corporation if:

(b) the person holds an interest in that stock.

(a) the same nominal amount as the amount of that stock; and

Buying back securities

10 Meaning of interest in an asset

Note 1: For other rules relating to interests in assets, see sections 13 to 15.

11 Meaning of interest in a trust

(a) the person holds or acquires a beneficial interest in the income or property of the trust; or

Note 1: For other rules relating to interests in trusts, see sections 13 to 15.

11A Meaning of interest in an unincorporated limited partnership

(b) is entitled to any or all of the distributions of capital, assets or profits of the partnership on the dissolution of the partnership; or

Note: See also section 19 (tracing of substantial interests in corporations, trusts and unincorporated limited partnerships).

12 Meaning of interest in Australian land

(a) a legal or equitable interest in Australian land, other than:

(ii) an interest in an agreement giving a right (known as a profit à prendre) to take something off another person's land, or to take something out of the soil of that land; or

(b) an interest in a security in an entity that owns Australian land, being a security that entitles the holder to a right to occupy a dwelling of a kind known as a flat or home unit situated on the land: o

(c) an interest as lessee or licensee in a lease or licence giving rights to occupy Australian land if the term of the lease or licence (including any extension or renewal) is reasonably likely, at the time the

interest is acquired, to exceed 5 years; or

(d) an interest in an agreement giving a right of a kind mentioned in subparagraph (a)(ii) if the term of the agreement (including any extension or renewal) is reasonably likely, at the time the interest in the agreement is acquired, to exceed 5 years; or

(e) an interest in an agreement involving the sharing of profits or income from the use of, or dealings in, Australian land if the term of the agreement (including any extension or renewal) is reasonably likely, at the time the interest in the agreement is acquired, to exceed 5 years; or

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- (f) an interest in a share in an Australian land corporation or agricultural land corporation; or
- (g) an interest in a unit in an Australian land trust or agricultural land trust; or
- (h) if the trustee of an Australian land trust or agricultural land trust is a corporation—an interest in a share in that corporation.

Note 1: For other rules relating to interests in Australian land, see sections 13 to 15.

Note 2: Australian land may be described as “residential land”, “agricultural land” or “commercial land”, or as “a new dwelling” or “an established dwelling”.

(2) An interest is an interest in Australian land even if it is the only interest that exists in the land or other thing concerned.

(3) A person acquires an interest in Australian land even if:

- (a) the person has previously acquired an interest in Australian land; or
- (b) the interest is an increase in the amount of an existing interest of the person in Australian land.

13 Interests that are remote or subject to restraint etc.

A person holds or acquires an interest in a security, asset, trust or Australian land despite:

- (a) its remoteness; or
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

14 Interests held or acquired jointly

A person holds or acquires an interest in a security, asset, trust or Australian land even if the person holds or acquires the interest jointly with one or more other persons.

15 Interests acquired by entering agreements or acquiring options

(1) For the purposes of this Act, a person is taken (except as provided by subsections (4) and (5)) to acquire an interest in a security, asset, trust or Australian land if the person:

- (a) enters an agreement to acquire the interest; or
- (b) either:
 - (i) for an interest in a security, asset or trust—has a right to acquire such an interest under an option; or
 - (ii) for an interest in Australian land—acquires an option to acquire such an interest; or
- (c) has a right, other than by reason of having an interest under a trust, to have such an interest transferred to himself or herself or to his or her associate.

Note: For the definition of enters, see section 25.

(2) To avoid doubt, a right mentioned in paragraph (1)(b) or (c) includes a right under an instrument or agreement.

(3) Subsections (1) and (2) apply whether or not:

- (a) the right or option is presently exercisable or exercisable in the future; or
- (b) the agreement, right or option requires the fulfilment of a condition.

Provisions of agreements that are not currently binding

(4) Subsection (5) applies for the purposes of the following provisions:

- (a) Part 4 (notices required for notifiable actions and notifiable national security actions, and may be given of other actions);
- (b) Part 5 (offences and civil penalties) to the extent that it relates to Part 4;
- (c) any other provision of this Act to the extent that it relates to the provisions mentioned in paragraph (a) or (b);
- (d) the definition of new dwelling in section 4 (including to the extent that the definition affects the definition of established dwelling in that section), except in section 95 (acquisition of interests in established dwellings).

(5) If:

- (a) a person proposes to take an action to acquire or sell an interest in a security, asset, trust or Australian land; and
 - (b) the provisions of the agreement to acquire or sell the interest do not become binding on the person until one or more conditions are met;
- the person takes the action to acquire or sell the interest, and enters the agreement, only when the provisions become binding.

Note: As a result of this subsection, the person acquires or sells the interest only when the provisions become binding. If the provisions do not become binding until one or more conditions are met, and one of those conditions is met only when the Treasurer has given an exemption certificate or no objection notification, then the person does not acquire or sell the interest before the Treasurer has given an exemption certificate or no objection notification.

16 Meaning of proposes to take certain action

(1) A person proposes to acquire an interest in securities, assets or Australian land if:

- (a) the person makes an offer to acquire the interest; or
- (b) the person makes or publishes a statement (however expressed) that expressly or impliedly invites

a holder of an interest in securities, assets or Australian land to offer to dispose of an interest in securities, assets or Australian land; or

(c) the person takes part in, or proposes to take part in, negotiations with a view to acquiring an interest in securities, assets or Australian land.

(2) A person proposes to enter or terminate an agreement if the person takes part in, or proposes to take part in, negotiations with a view to entering or terminating the agreement.

(3) This section does not limit the meaning of propose.

16A Meaning of interest of a specified percentage in a business

A person holds an interest of a specified percentage in a business if the value of the interests in assets of the business held by the person, alone or together with one or more associates of the person, is that specified percentage of the value of the total assets of the business.

Note 1: See also paragraph (a) of the definition of acquire.

Note 2: A percentage may be specified by referring to:

(a) "20%"; or

(b) "any percentage"; or

(c) a "direct interest"; or

(d) a percentage that a person holds in other assets.

17 Meanings of interest and aggregate interest of a specified percentage in an entity or unincorporated limited partnership

Meaning of interest of a specified percentage in an entity

(1) A person holds an interest of a specified percentage in an entity if the person, alone or together with one or more associates of the person:

(a) is in a position to control at least that percentage of the voting power or potential voting power in the entity; or

(b) holds interests in at least that percentage of the issued securities in the entity; or

(c) would hold interests in at least that percentage of the issued securities in the entity if securities in the entity were issued or transferred as the result of the exercise of rights of a kind mentioned in paragraph 15(1)(b) or (c).

Note 1: See also section 18 (rules relating to determining percentages of interests in entities) and the definition of acquire in section 20.

Note 2: A percentage may be specified by referring to:

(a) "20%"; or

(b) "any percentage"; or

(c) a "substantial interest" or a "direct interest"; or

(d) a percentage that a person holds in another entity.

Meaning of aggregate interest of a specified percentage in an entity

(2) Two or more persons (who are not associates of each other) hold an aggregate interest of a specified percentage in an entity if they, together with any one or more associates of any of them:

(a) are in a position to control at least that percentage of the voting power or potential voting power in the entity; or

(b) hold interests in at least that percentage of the issued securities in the entity; or

(c) would hold interests in at least that percentage of the issued securities in the entity if securities in the entity were issued or transferred as the result of the exercise of rights of a kind mentioned in paragraph 15(1)(b) or (c).

Meaning of interest of a specified percentage in an unincorporated limited partnership

(2A) A person holds an interest of a specified percentage in an unincorporated limited partnership if the person, alone or together with one or more associates of the person:

(a) is in a position to control at least that percentage of the voting power or potential voting power in the partnership; or

(b) is entitled to at least that percentage of the total distributions of capital, assets or profits of the partnership on the dissolution of the partnership; or

(c) is entitled to at least that percentage of the total distributions of capital, assets or profits of the partnership otherwise than on the dissolution of the partnership.

Proxies and representatives

(3) In determining the percentage of voting power or potential voting power that a person is in a position to control in an entity or unincorporated limited partnership, disregard any votes that he or she controls as a proxy or representative.

18 Rules relating to determining percentages of interests in entities

Exercise of future rights

(1) Subsection (2) applies if:

(a) a person has a right that, if exercised, would result in the person holding an interest in an issued security in the entity; and

(b) it cannot be determined at that time (from the right itself or from the circumstances existing at that time) whether the right would be exercised.

(2) For the purposes of this Act, in determining the percentage of the interests in the issued securities in the entity that the person holds, or would hold, at a particular time, assume that the right were exercised at that time.

Discretionary trusts

(3) For the purposes of this Act, if, under the terms of a trust, a trustee has a power or discretion to distribute the income or property of the trust to one or more beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or property of the trust that the trustee may distribute to that beneficiary.

18A Increasing percentage of interests without acquiring additional interests in securities

Effect of increase—person is taken to take an action of acquiring an interest in securities

(1) A person is taken to take an action of acquiring an interest in securities in an entity if:

(a) the person holds an interest of a particular percentage in the entity; and

(b) the percentage interest that the person holds increases without the person acquiring interests in securities in the entity.

Note: The combined effect of this subsection and other provisions of this Act may be that the person takes:

(a) a significant action because of paragraph 40(2)(a) or (b) or 43(a) or section 44; or

(b) a notifiable action because of paragraph 47(2)(a), (b) or (c) or section 48; or

(c) a notifiable national security action because of paragraph 55B(1)(c) or (d); or

(d) a reviewable national security action because of paragraph 55D(1)(a) or 55F(a).

Effect of potential increase—person is taken to propose to take an action of acquiring an interest in securities

(2) A person is taken to propose to take an action of acquiring an interest in securities in an entity if:

(a) the person holds an interest of a particular percentage in the entity; and

(b) there are reasonable grounds to believe that the percentage interest that the person holds may increase without the person acquiring interests in securities in the entity.

(3) Paragraph (2)(b) applies whether or not any person actually has the belief mentioned in that paragraph.

Modification of this Act

(4) The following table has effect:

Increasing percentage of interests without acquiring additional interests in securities—modification of this Act [Note that for platform compatibility, the original table is reproduced here as a narrative list.

Reference should be made to the original table for precise legal drafting]

For an action or proposed action that is taken to occur because of subsection (1) or subsection (2) of this section,

(a) in the entity; or

(b) previously acquired from the entity.

(a) the Treasurer receives a notice from a person stating that the action is proposed to be taken, before the action is taken;

the action is taken;

(b) the Treasurer receives a notice from a person, stating that the action has been taken, before the end of 30 days after the action is taken.

- (a) in the entity; or
- (b) previously acquired from the entity.

- (a) section 15 (interests acquired by entering agreements or acquiring options);
- (b) section 68 (interim orders);
- (c) subparagraph 74(1)(c)(iii) (no objection notification imposing conditions);
- (d) paragraph 79A(3)(b) and subsection 79A(4) (notice of national security review prohibits taking of action until review completed);
- (e) section 85A (offence for taking action while prohibited by this Act);
- (f) section 92A (civil penalty for taking action while prohibited by this Act)

Purpose for which orders may be made

(5) An order may be made under subsection 67(2), 69(2), 79D(2) or 79E(2) as those subsections apply because of the table in subsection (4) of this section, only for the purpose of restoring the percentage of interests that the person holds in the entity as nearly as possible to the percentage interest that the person held immediately before it increased.

Further modifications

(6) This Act also applies in relation to an action or proposed action that is taken to occur because of subsection (1) or (2) of this section with the modifications prescribed by the regulations.

19 Tracing of substantial interests in corporations, trusts and unincorporated limited partnerships

Tracing—general

(1) Subsection (2) applies (subject to subsection (3)) if:

(a) a person holds a substantial interest in:

- (i) a corporation (the higher party); or
 - (ii) a trust (a trustee of which is a higher party); or
 - (iii) an unincorporated limited partnership (a general partner of which is a higher party);
- including because of one or more applications of this section; and

(b) the higher party:

- (i) is in a position to control all or any of the voting power or potential voting power in a corporation or unincorporated limited partnership (the lower party); or
- (ii) holds interests in all or any of the shares in a corporation (the lower party); or
- (iii) holds an interest in a trust or unincorporated limited partnership (the lower party), other than the partnership mentioned in subparagraph (a)(iii) (if that subparagraph applies).

(2) For the purposes of this Act:

- (a) if subparagraph (1)(b)(i) applies—the person is taken to be in a position to control the voting power or potential voting power in the lower party that the higher party is in a position to control; or
- (b) if subparagraph (1)(b)(ii) applies—the person is taken to hold the interests in the shares in the lower party that the higher party holds; or
- (c) if subparagraph (1)(b)(iii) applies—the person is taken to hold the interest in the lower party that the higher party holds.

Tracing—effect of intermediate unincorporated limited partnerships

(2A) Subsection (2B) applies (subject to subsection (3)) if:

(a) a person holds a substantial interest in an unincorporated limited partnership (the higher partnership); and

(b) there are one or more unincorporated limited partnerships (each of which is an intermediate partnership in relation to the higher partnership) that are general partners of:

- (i) the higher partnership; or
- (ii) another intermediate partnership in relation to the higher partnership (because of one or more applications of this paragraph); and

- (c) a general partner (the intermediate partner) of any of those intermediate partnerships:
- (i) is in a position to control all or any of the voting power or potential voting power in a corporation or another unincorporated limited partnership (the lower party), including because of the operation of paragraph (2)(a); or
 - (ii) holds interests in the shares of a corporation (the lower party), including because of the operation of paragraph (2)(b); or
 - (iii) holds an interest in a trust or another unincorporated limited partnership (the lower party), including because of the operation of paragraph (2)(c).

(2B) For the purposes of this Act:

- (a) if subparagraph (2A)(c)(i) applies—the person is taken to be in a position to control the voting power or potential voting power in the lower party that the intermediate partner is in a position to control; or
- (b) if subparagraph (2A)(c)(ii) applies—the person is taken to hold the interests in the shares in the lower party that the intermediate partner holds; or
- (c) if subparagraph (2A)(c)(iii) applies—the person is taken to hold the interest in the lower party that the intermediate partner holds.

Section does not apply for certain purposes

(3) This section does not apply for the purpose of:

- (a) determining under any of the following whether a foreign person acquires a direct interest in an Australian entity or Australian business that is an agribusiness:
 - (i) paragraph 40(2)(a) (meaning of significant action—entities);
 - (ii) paragraph 41(2)(a) (meaning of significant action—businesses);
 - (iii) paragraph 47(2)(a) (meaning of notifiable action—general); or
- (b) determining under paragraph 47(2)(b) (meaning of notifiable action—general) whether a foreign person acquires a substantial interest in an Australian entity.

19A Meaning of acquire an interest of a specified percentage in a business

- (1) A person acquires an interest of a specified percentage in a business if the person:
- (a) starts to hold an interest of that percentage in the business; or
 - (b) would start to hold an interest of that percentage in the business on the assumption that the person held interests in assets of the business that are interests that the person has offered to acquire; or
 - (c) for a person who already holds an interest of that percentage in the business:
 - (i) starts to hold additional interests in assets of the business; or
 - (ii) would start to hold additional interests in assets of the business if interests in assets of the business were transferred as the result of the exercise of rights of a kind mentioned in paragraph 15(1)(b) or (c).

Note: A percentage may be specified by referring to:

- (a) “20%”; or
- (b) “any percentage”; or
- (c) a “substantial interest” or a “direct interest”; or
- (d) a percentage that a person holds in another entity.

(2) For the purposes of subsection (1), a reference to a person offering to acquire interests in assets of a business includes a reference to a person making or publishing a statement (however expressed) that expressly or impliedly invites a holder of interests in assets to offer to dispose of interests in assets.

20 Meaning of acquire an interest of a specified percentage in an entity

- (1) A person acquires an interest of a specified percentage in an entity if the person:
- (a) starts to hold an interest of that percentage in the entity; or
 - (b) would start to hold an interest of that percentage in the entity on the assumption that the person:
 - (i) held interests in securities that are interests that he or she has offered to acquire; or
 - (ii) held rights to votes that might be cast at a general meeting of the entity that are rights that he or she has offered to acquire; or
 - (c) for a person who already holds an interest of that percentage in the entity:
 - (i) becomes in a position to control more of the voting power or potential voting power in the entity; or
 - (ii) starts to hold additional interests in the issued securities in the entity; or
 - (iii) would start to hold additional interests in the issued securities in the entity if securities in the entity were issued or transferred as the result of the exercise of rights of a kind mentioned in paragraph 15(1)(b) or (c).

Note 1: For the definition of general meeting, see section 4.

Note 2: A percentage may be specified by referring to:

- (a) “20%”; or
- (b) “any percentage”; or
- (c) a “substantial interest” or a “direct interest”; or
- (d) a percentage that a person holds in another entity.

(2) For the purposes of subsection (1), a reference to a person offering to acquire interests in securities or rights includes a reference to a person making or publishing a statement (however expressed) that

expressly or impliedly invites a holder of interests in securities or rights to offer to dispose of interests in securities or rights.

21 Meanings of subsidiary and holding entity

Meaning of subsidiary

(1) An entity (the lower entity) is a subsidiary of another entity (the higher entity) if:

(a) the higher entity:

(i) is in a position to control more than half the voting power in the lower entity; or

(ii) holds more than half the issued securities in the lower entity (disregarding any securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the lower entity is a subsidiary of an entity that is the higher entity's subsidiary (including because of one or more applications of this subsection).

Note: The lower entity need not be the immediate subsidiary of the higher entity under paragraph (1)(a) (see section 23 which provides that a person may control the voting power in an entity directly or indirectly, and section 19 which provides that a person is taken to hold interests in securities that are traced through a chain of corporations, trusts or unincorporated limited partnerships).

(2) In determining whether a lower entity is a subsidiary of a higher entity, disregard any securities held or power exercisable by:

(a) the higher entity in a fiduciary capacity; or

(b) any person as a result of a debenture of the lower entity; or

(c) any person as a result of a trust deed for securing the issue of a debenture of the lower entity.

(3) In determining whether a lower entity is a subsidiary of a higher entity, any securities held or power exercisable:

(a) by any person as a nominee for the higher entity; or

(b) by, or by a nominee for, a subsidiary of the higher entity;

are taken to be held or exercisable by the higher entity.

Meaning of holding entity

(4) An entity (the higher entity) is a holding entity of another entity (the lower entity) if the lower entity is a subsidiary of the higher entity.

22 Meanings of voting power and potential voting power

Meaning of voting power

(1) The voting power in an entity or unincorporated limited partnership is the maximum number of votes that might be cast at a general meeting of the entity or partnership.

Note: For the definition of general meeting, see section 4.

Meaning of potential voting power

(2) The potential voting power in an entity or unincorporated limited partnership is the voting power in the entity or partnership, on the assumption that the votes that might be cast at a general meeting of the entity or partnership included each vote that:

(a) because of the exercise of a right might come into existence in the future (whether or not the right is exercisable presently or in the future or on the fulfilment of a condition); and

(b) if it came into existence, might be cast at a general meeting of the entity or partnership.

Note: Different voting rights might attach to different classes of securities in an entity.

Exercise of future rights

(3) In determining how much of the potential voting power in an entity or unincorporated limited partnership a person is in a position to control at a particular time, if:

(a) a right exists that, if exercised, would result in the person being in a position to control more of the potential voting power in the entity or partnership than the person would be in a position to control if the right were not exercised; and

(b) it cannot be determined at that time (whether from the right itself or from the circumstances existing at that time) whether the right would be exercised;

assume that the right were exercised at that time.

Veto power

(4) If a person is in a position to veto any resolution of the board, central management or general meeting of an entity or unincorporated limited partnership, then for the purposes of this Act (except paragraph 47(2)(b) (meaning of notifiable action) and subsection 54(4) (meaning of control)) the person is taken to be in a position to control 20% of the potential voting power in the entity or partnership.

23 Meaning of controls the voting power

A person controls the voting power in an entity or unincorporated limited partnership if the person controls the power directly or indirectly, including as a result or by means of agreements or practices, whether or not the agreements or practices:

(a) have legal or equitable force; or

(b) are based on legal or equitable rights.

24 Meaning of determines the policy of a business of exploiting a mining or production tenement

24 Meaning of determines the policy of a business of exploiting a mining or production tenement

- (1) A person determines the policy of a business of exploiting a mining or production tenement if the person determines questions relating to the disposal of an interest in the tenement.
- (2) This section does not limit the meaning of determines the policy of a business of exploiting a mining or production tenement.

25 Meaning of enters an agreement

- (1) A person enters an agreement if:
- (a) the person enters into any formal or informal scheme, including by:
 - (i) creating a trust (whether express or implied); or
 - (ii) entering into a transaction; or
 - (iii) acquiring an interest in a security, asset, trust or Australian land; or
 - (b) the agreement is materially altered or varied.

Note 1: For the definition of scheme, see section 4.

Note 2: A variation of an agreement that increases the percentage that a person holds in an entity is material. A variation to the way the consideration for an acquisition of an interest is worked out is not material.

- (2) This section does not limit the meaning of enters.

26 Meaning of sensitive business

- (1) A business is a sensitive business if the business meets the conditions specified in the regulations.
- (2) Without limiting subsection (1) or subsection 33(3A) of the Acts Interpretation Act 1901, the regulations may prescribe:
- (a) sensitive businesses generally, or different sensitive businesses for different kinds of foreign persons; and
 - (b) different conditions for different sensitive businesses.

26A Meaning of registrable water entitlement

- (1) A registrable water entitlement of a person is any of the following rights that the person holds (alone or jointly):
- (a) an irrigation right (within the meaning of the Water Act 2007) that relates to a water resource in Australia;
 - (b) a right (including an Australian water access entitlement) conferred by or under a law of a State or Territory to do either or both of the following:
 - (i) to hold water from a water resource in Australia;
 - (ii) to take water from a water resource in Australia.
- (2) However, a registrable water entitlement does not include:
- (a) stock and domestic rights; or
 - (b) riparian rights; or
 - (c) water allocations; or
 - (d) a right of a kind specified in the regulations.

27 Regulations to provide in relation to valuing assets

The regulations may provide in relation to valuing the assets of an entity, trust or business.

28 Acts done by agents

An act done or proposed to be done by an agent on behalf of his or her principal is taken to be done or proposed to be done by his or her principal.

Division 3—Application of this Act

29 Application of this Act to individuals, entities and unincorporated limited partnerships

This Act applies to:

- (a) all individuals, whether or not resident in Australia or Australian citizens; and
- (b) all corporations and unincorporated limited partnerships, whether or not formed or carrying on business in Australia; and
- (c) all unit trusts, whether or not Australian unit trusts.

30 Extension to external Territories

This Act extends to every external Territory.

31 Extraterritoriality

This Act applies both within and outside Australia.

32 Extension to exclusive economic zone and continental shelf

This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

33 This Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

34 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that it is capable of operating concurrently with this Act.

35 General severability

Application of this section

(1) This section applies in relation to each of the following persons:

- (a) a foreign person;
- (b) a corporation;
- (c) a person applying for an exemption certificate under:
 - (i) section 57 (certificates for new dwellings); or
 - (ii) regulations made for the purposes of section 63;
- (d) an individual who holds a substantial interest, or who, as one of 2 or more persons, holds an aggregate substantial interest in a corporation or trust.

Effect of this Act

(2) Without limiting the effect of this Act apart from this section, this Act also has effect as provided by this section.

(3) To avoid doubt, no subsection of this section limits the operation of any other subsection of this section.

External affairs power

(4) This Act has the effect it would have if each reference to a person mentioned in subsection (1) were expressly confined to a person outside Australia.

Corporations power

(5) This Act has the effect it would have if each reference to a person mentioned in subsection (1) were expressly confined to a corporation to which paragraph 51(xx) of the Constitution applies.

Aliens power

(6) This Act has the effect it would have if each reference to a person mentioned in subsection (1) were expressly confined to an alien (within the meaning of paragraph 51(xix) of the Constitution).

Trade and commerce power

(7) This Act has the effect it would have if each reference to a person mentioned in subsection (1) were expressly confined to a person engaged in:

- (a) trade or commerce between Australia and places outside Australia; or
- (b) trade or commerce among the States; or
- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

Territories and Commonwealth places power

(8) This Act has the effect it would have if each reference to a person mentioned in subsection (1) were expressly confined to a person in, or a person taking an action in relation to:

- (a) a Territory; or
- (b) a Commonwealth place (within the meaning of the Commonwealth Places (Application of Laws) Act 1970).

36 Severability relating to Australian businesses

Without limiting the effect of this Act apart from this section, this Act also has the effect it would have if each reference to an Australian business were expressly confined to a reference to an Australian business being carried on by a corporation.

Note: The reference to a corporation in this section is affected by section 35 (general severability).

37 Regulations providing for exemptions

(1) The regulations may provide that this Act, or specified provisions of this Act, do not apply in relation to any of, or any combination of, the following:

- (a) acquisitions of the kind or in the circumstances prescribed by the regulations;
- (b) interests of the kind or in the circumstances prescribed by the regulations;
- (c) Australian businesses of the kind or in the circumstances prescribed by the regulations;
- (d) foreign persons of the kind or in the circumstances prescribed by the regulations.

Note: Provisions may be specified by referring to:

- (a) a particular provision; or
- (b) this Act, other than specified provisions.

(2) Without limiting subsection (1), the regulations may provide that specified provisions of the Act do not apply to a specified extent.

(3) Without limiting subsection (1), the regulations may provide that land of a specified kind is not agricultural land.

(4) The regulations may provide that specified foreign persons who take action in relation to interests in Australian land may disregard the fact that the land is agricultural land for all or specified purposes.

(5) Regulations providing as mentioned in subsection (4) do not affect the operation of this Act to the extent that the action is otherwise a significant action or notifiable action.

(6) Regulations made for the purposes of this section have effect according to their terms.

(7) This Act does not limit the regulations that may be made for the purposes of this section.

Part 2—Actions to which this Act applies

Division 1—Simplified outline of this Part

38 Simplified outline

This Part defines the concepts of significant action, notifiable action, notifiable national security action and reviewable national security action.

The Treasurer has powers under Part 3 in respect of these kinds of actions.

Division 2—Meaning of significant action

39 Simplified outline of this Division

Broadly, a significant action is an action to acquire interests in securities, assets or Australian land, or otherwise take action in relation to entities (being corporations and unit trusts) and businesses, that have a connection to Australia. For an action to be a significant action, the action must in most cases result in a change in control involving a foreign person or be taken by a foreign person.

Generally, the action is only a significant action if the entity, business or land meets the threshold test. A different threshold test applies for certain significant actions taken in relation to agribusinesses.

The regulations may also prescribe actions that are significant actions.

An acquisition of an interest in Australian land by a foreign person that is specified in an exemption certificate under Division 5 is generally not a significant action.

Division 6 deals with the treatment of entities whose securities are stapled and entities operating on a unified basis.

40 Meaning of significant action—entities

(1) An action is a significant action if the conditions in this section are met.

First condition—kinds of action

(2) The first condition is that the action is any of the following:

(a) to acquire a direct interest in an Australian entity that is an agribusiness;

(b) to acquire interests in securities in an entity;

(c) to issue securities in an entity;

(d) to enter an agreement:

(i) relating to the affairs of the entity; and

(ii) under which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the entity (or of an associate of such a foreign person);

(e) to alter a constituent document of the entity as a result of which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the entity (or of an associate of such a foreign person).

Note: An action mentioned in any of paragraphs (2)(b) to (e) may be taken in relation to an Australian entity that is an agribusiness (see section 42).

Second condition—threshold

(3) The second condition is that the threshold test is met in relation to the entity (see Subdivision B of Division 4).

Third condition—kinds of entities covered

(4) The third condition (except if paragraph (2)(a) applies) is that the entity is the following:

(a) for an acquisition of interests in shares or an issue of shares:

(i) a corporation that is a relevant entity that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity of such a corporation;

(b) for any other action relating to a corporation:

(i) an Australian corporation that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity (other than a foreign corporation) of such a corporation;

(c) for an action relating to a unit trust:

(i) an Australian unit trust; or

(ii) a holding entity of an Australian unit trust.

Last condition—action taken by a foreign person

(5) If paragraph (2)(a) applies, the last condition is that the action is or is to be taken by a foreign person.

Last condition—action results in change in control

(6) If any of paragraphs (2)(b) to (e) apply, the last condition is that there would be or has been a

(c) if any of paragraphs (2)(b) to (e) apply, the last condition is that there would be or has been a change in control of the entity as a result of the action (see Subdivision C of Division 4).

(7) However, the last condition in subsection (6) is not required to be met if:

(a) paragraph (2)(b) applies and the action is or is to be taken by a foreign person who controls the entity (whether alone or together with one or more associates) immediately before the action is or is to be taken; or

(b) paragraph (2)(c) applies and a foreign person controls the entity (whether alone or together with one or more associates) immediately before the action is or is to be taken.

41 Meaning of significant action—businesses

(1) An action is a significant action if the conditions in this section are met.

First condition—kinds of action

(2) The first condition is that the action is any of the following:

(a) to acquire a direct interest in an Australian business that is an agribusiness;

(b) to acquire interests in assets of an Australian business;

(c) to enter or terminate a significant agreement with an Australian business.

Note: An action mentioned in paragraph (2)(b) or (c) may be taken in relation to an Australian business that is an agribusiness (see section 42).

Second condition—threshold

(3) The second condition is that the threshold test is met in relation to the Australian business (see Subdivision B of Division 4).

Third condition—action taken by a foreign person

(4) If paragraph (2)(a) applies, the third condition is that the action is or is to be taken by a foreign person.

Third condition—action results in change in control

(5) If paragraph (2)(b) or (c) applies, the third condition is that there would be or has been a change in control of the business as a result of the action (see Subdivision C of Division 4).

(6) However, the third condition in subsection (5) is not required to be met if:

(a) paragraph (2)(b) applies; and

(b) the action is or is to be taken by a foreign person who controls the business (whether alone or together with one or more associates) immediately before the action is or is to be taken.

42 Action taken in relation to agribusinesses

To avoid doubt, a person may take an action under any of paragraphs 40(2)(b) to (e) or 41(2)(b) or (c) in relation to an Australian entity or Australian business that is an agribusiness.

43 Meaning of significant action—land

An action is a significant action if:

(a) the action is for a foreign person to acquire an interest in Australian land; and

(b) the threshold test is met in relation to the land (see Subdivision B of Division 4).

Note: Certain acquisitions of land by foreign persons may not be significant actions (see section 45).

44 Meaning of significant action—actions prescribed by the regulations

(1) The regulations may provide that a specified action is a significant action (including by providing that a specified action is a significant action if specified conditions are met).

(2) Sections 40, 41 and 43 do not limit the actions that may be specified by the regulations.

Note: For example, the regulations may specify an action without requiring the threshold test to be met or a change in control.

45 Actions that are not significant actions—exemption certificates

(1) Despite this Division, an action is not a significant action if:

(a) the action is a foreign person acquiring an interest in a new dwelling that will be, is being or has been built on another interest (the development interest) in Australian land; and

(b) the acquisition was from a person who was specified in an exemption certificate in force under section 57; and

(c) the development interest was 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.

(2) Despite this Division, an action is not a significant action if:

(a) the action is a foreign person acquiring a kind of interest in Australian land; and

(b) the foreign person is specified in an exemption certificate in force under section 58 or 59; and

(c) the interest is, or is of a kind, specified in the certificate; and

(d) the conditions (if any) specified in the certificate were met.

(3) The regulations may provide, in relation to exemption certificates in force under regulations made

(3) The regulations may provide, in relation to exemption certificates in force under regulations made for the purposes of section 63, that an action of a specified kind is not a significant action.

Division 3—Meaning of notifiable action

46 Simplified outline of this Division

A notifiable action is an action by a foreign person:

- (a) to acquire a direct interest in an Australian entity or Australian business that is an agribusiness; or
- (b) to acquire a substantial interest in an Australian entity; or
- (c) to acquire an interest in Australian land.

Generally, the action is only notifiable if the entity, business or land meets the threshold test. A different threshold test applies for certain notifiable actions taken in relation to agribusinesses.

There does not need to be a change in control for actions relating to entities and businesses to be notifiable actions.

The regulations may also prescribe actions that are notifiable actions.

Actions to acquire interests in Australian land that are specified in an exemption certificate under Division 5 are generally not notifiable actions.

Division 6 deals with the treatment of entities whose securities are stapled and entities operating on a unified basis.

47 Meaning of notifiable action—general

(1) An action is a notifiable action if the conditions in this section are met.

First condition—kinds of action

(2) The first condition is that the action is any of the following:

- (a) to acquire a direct interest in:
 - (i) an Australian entity that is an agribusiness; or
 - (ii) an Australian business that is an agribusiness;
- (b) to acquire a substantial interest in an Australian entity;
- (c) to acquire an interest in Australian land.

Note: For the definition of acquire a direct interest or a substantial interest, see section 20.

Second condition—threshold

(3) The second condition is that the threshold test is met in relation to the entity, business or land (see Subdivision B of Division 4).

Third condition—kinds of entities covered

(4) If subparagraph (2)(a)(i) or paragraph (b) applies, the third condition is that the entity is:

- (a) an Australian corporation that carries on an Australian business, whether alone or together with one or more other persons; or
- (b) an Australian unit trust; or
- (c) an Australian entity that is the holding entity of an entity mentioned in paragraph (a) or (b).

Last condition—action taken by a foreign person

(5) The last condition (whether paragraph (2)(a), (b) or (c) applies) is that the action is or is to be taken by a foreign person.

48 Meaning of notifiable action—actions prescribed by the regulations

(1) The regulations may provide that a specified action is a notifiable action (including by providing that a specified action is a notifiable action if specified conditions are met).

(2) Section 47 does not limit the actions that may be specified by the regulations.

Note: For example, the regulations may specify an action without requiring the threshold test to be met.

49 Actions that are not notifiable actions—exemption certificates

(1) Despite this Division, an action is not a notifiable action if:

- (a) the action is a foreign person acquiring an interest in Australian land; and
- (b) the action would not be a significant action under section 45 (actions that are not significant actions—exemption certificates).

(2) The regulations may provide, in relation to exemption certificates in force under regulations made for the purposes of section 63, that an action of a specified kind is not a notifiable action.

Division 4—The threshold test and change in control

Subdivision A—Simplified outline of this Division

50 Simplified outline of this Division

Two important tests in determining whether an action is a significant action are whether the threshold test is met and whether there has been a change in control. The threshold test is also important in determining whether an action is a notifiable action.

For the threshold test to be met, a certain value must be above a threshold prescribed by the

For the threshold test to be met, a certain value must be above a threshold prescribed by the regulations. The value depends on the action taken.

There is a change in control of an entity or business if the Treasurer is satisfied that one or more foreign persons begin to control the entity or business, or the foreign persons who currently control the entity or business change.

A person who holds a substantial interest in an entity is taken to control the entity. Also, a person controls the entity if the person is in a position to determine the policy of the entity or business.

There are broad powers for the regulations to prescribe thresholds under this Part.

Subdivision B—The threshold test

51 The threshold test for entities and businesses

The threshold test is met in relation to an entity or business for an action mentioned in column 1 of the following table if the value mentioned in column 2 of the table is more than the value prescribed by the regulations.

When the threshold test is met (Kind of action and Value) [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

Item 1: The threshold test for a person acquiring a direct interest in an Australian entity or Australian business that is an agribusiness is the total of the following:

(a) the value of the consideration for the acquisition;
(b) the total value of the other interests held by the person, alone or together with one or more associates:

(i) in the entity or business; or
(ii) previously acquired from the entity or business

Item 2: The threshold test for acquiring interests in securities in an entity, or issuing securities in an entity meets the threshold is the higher of the following:

(a) the total asset value for the entity;
(b) the total issued securities value for the entity

Item 2A: The threshold test for acquiring a substantial interest in an Australian entity is the higher of the following:

(a) the total asset value for the entity;
(b) the total issued securities value for the entity

Item 3: The threshold test for entering an agreement mentioned in paragraph 40(2)(d) in relation to an entity, or altering a constituent document of an entity as mentioned in paragraph 40(2)(e) is the total asset value for the entity.

Item 4: The threshold test for acquiring interests in the assets of an Australian business is the total asset value for the entity.

Item 5: The threshold test for entering or terminating a significant agreement with an Australian business is the total value of the assets of the business.

Note 1: Total asset value, total issued securities value and consideration are defined by the regulations (see section 4).

Note 2: The regulations may provide in relation to valuing assets of an entity or business (see section 27).

52 The threshold test for land

Land without threshold value

(1) The threshold test is met in relation to land if the land is of a kind that is prescribed by the regulations for the purposes of this subsection.

Agricultural land where total value of interests is above threshold value

(2) The threshold test is met in relation to land if both of the following apply:

(a) the land is agricultural land;
(b) the total value of the following is more than the value prescribed for the purposes of this paragraph:
(i) all interests in agricultural land held by the foreign person, alone or together with one or more associates;
(ii) the consideration for the acquisition of the interest in the land.

Note: Consideration is defined by the regulations (see section 4).

Other land where value of interest is above threshold value

(3) The threshold test is met in relation to land if both of the following apply:

(a) the land is not land prescribed for the purposes of subsection (1) or agricultural land;
(b) the value of the interest in the land is more than the value prescribed for the purposes of this paragraph.

53 The threshold test in relation to actions of more than one kind

Agreements covering more than one action

(1) If:

(a) an action relating to an entity, business or land is covered by an agreement; and

(b) the threshold test is met in relation to the action and the entity, business or land;

the threshold test is met for the action even if the test is not met for another action covered by the agreement (whether or not relating to the same entity, business or land).

Actions of more than one kind

(2) If either or both of the following apply:

(a) a single action is covered by more than one of the following (because an action is an action of more than one kind):

(i) paragraph 40(2)(a), (b), (c), (d) or (e);

(ii) paragraph 41(2)(a), (b) or (c);

(iii) paragraph 43(a);

(iv) a provision of regulations made for the purposes of section 44;

(b) a single action relating to land is covered by more than one subsection of section 52 (because the land is land of more than one kind);

the threshold test is met in relation to the single action if the test is met in relation to any of the kinds of actions or land (even if the threshold test is not met in relation to any of the other kinds of actions or land).

Example 1: An acquisition of an interest in securities in an Australian land corporation is covered by paragraphs 40(2)(b) and 43(a). The threshold test is met if the threshold test is met in relation to the corporation or land held by the corporation.

Example 2: An acquisition of an interest in land may be an acquisition of an interest in a mining or production tenement and an interest in agricultural land. The threshold test is met if the threshold test is met in relation to either kind of land.

Subdivision C—Change in control

54 Change in control

(1) For the purposes of determining whether an action is a significant action, there is a change in control of an entity or business if, and only if, the Treasurer is satisfied that the action would have, or has had, any of the results mentioned in subsection (2) or (3).

Foreign persons begin to control entity or business

(2) One or more foreign persons would begin, or have begun, to control the entity or business (whether alone or together with any associates of any of those persons).

Change in foreign persons who control the entity or business

(3) If one or more foreign persons already control or controlled the entity or business:

(a) another foreign person would become, or has become, a person who controls the entity or business; or

(b) a person would cease, or has ceased, to be a person who controls the entity or business.

Meaning of control

(4) A person controls an entity or business if:

(a) the person (whether alone or together with one or more associates) is in a position to determine the policy of the entity or business in relation to any matter; or

(b) without limiting paragraph (a), in relation to the acquisition of interests in securities in an entity or an issue of securities in an entity—the person holds a substantial interest in the entity.

Note: For determining the policy of a business of exploiting a mining or production tenement, see section 24.

(5) However, a person mentioned in paragraph (4)(b) does not control the entity if the Treasurer is satisfied that, having regard to all the circumstances, the person together with any one or more associates of that person is not in a position to determine the policy of the entity.

(6) Subsection (5) does not require the Treasurer to determine whether a person is in a position to determine the policy of an entity.

References to foreign persons

(7) If the Treasurer is satisfied that one or more foreign persons together with any one or more associates control an entity under subsection (4), then, in relation to an action taken relating to the entity, a reference to a foreign person is taken, for the purposes of Part 3 (powers of Treasurer), to include a reference to those associates (even if those associates are not foreign persons).

Subdivision D—Regulations

55 Regulations

(1) Regulations made for the purposes of this Part may prescribe any of, or any combination of, the following:

- (a) values of nil;
- (b) different values for different kinds of entities, businesses or land;
- (c) different values for different kinds of foreign persons;
- (d) different values for:
 - (i) sensitive businesses generally; or
 - (ii) different sensitive businesses for different foreign persons.

Note: Regulations may also provide for indexation (see subsection 139(2)).

(2) The paragraphs and subparagraphs in subsection (1) do not limit:

- (a) each other; or
- (b) the regulations that may be made for the purposes of this Part; or
- (c) subsection 33(3A) of the Acts Interpretation Act 1901.

Division 4A—Meaning of notifiable national security action

Subdivision A—Simplified outline

55A Simplified outline

This Division defines the concept of a notifiable national security action.

Subdivision B—Meaning of notifiable national security action

55B Meaning of notifiable national security action

(1) An action is a notifiable national security action if the action is taken, or proposed to be taken, by a foreign person and the action is any of the following:

- (a) to start a national security business;
- (b) to acquire a direct interest in a national security business;
- (c) to acquire a direct interest in an entity that carries on a national security business;
- (d) to acquire an interest in Australian land that, at the time of acquisition, is national security land;
- (e) to acquire a legal or equitable interest in an exploration tenement in respect of Australian land that, at the time of acquisition, is national security land.

(2) For the purposes of paragraph (1)(e), a person acquires a legal or equitable interest in an exploration tenement even if:

- (a) the person has previously acquired an interest in an exploration tenement; or
- (b) the interest is an increase in the amount of an existing interest of the person in an exploration tenement.

(3) The regulations may provide, in relation to exemption certificates in force under regulations made for the purposes of section 63, that an action of a specified kind is not a notifiable national security action.

Division 4B—Meaning of reviewable national security action

Subdivision A—Simplified outline

55C Simplified outline

This Division defines the concept of a reviewable national security action. The Treasurer may review an action of this kind under Part 3, as well as a significant action that is not a notifiable action or notifiable national security action, if the Treasurer considers that the action may pose a national security concern.

Subdivision B—Meaning of reviewable national security action

55D Meaning of reviewable national security action—entities

Meanings

(1) An action is a reviewable national security action if:

- (a) the action is taken, or proposed to be taken, by a person and the action is to acquire an interest of any percentage in an entity; and
- (b) as a result of the action or proposed action:
 - (i) a foreign person acquires, or will acquire, a direct interest in the entity and that acquisition, or proposed acquisition, is not a significant action, notifiable action or notifiable national security action; or
 - (ii) a foreign person will be in a position, or more of a position, to influence or participate in the central management and control of the entity; or
 - (iii) a foreign person will be in a position, or more of a position, to influence, participate in or determine

(iii) a foreign person will be in a position, or more of a position, to influence, participate in or determine the policy of the entity; and

(c) the action is or was not otherwise a significant action, a notifiable action or a notifiable national security action.

Note: For the definition of entity, see subsection (3).

(2) An action is also a reviewable national security action if:

(a) the action is taken, or proposed to be taken, by a person and the action is:

(i) to issue securities in an entity; or

(ii) to enter an agreement relating to the affairs of an entity and under which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a direct interest in the entity; or

(iii) to alter a constituent document of an entity as a result of which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a direct interest in the entity; and

(b) in the case to which subparagraph (a)(i) applies—as a result of the action or proposed action:

(i) a foreign person acquires, or will acquire, a direct interest in the entity and that acquisition, or proposed acquisition, is not a significant action, notifiable action or notifiable national security action; or

(ii) a foreign person will be in a position, or more of a position, to influence or participate in the central management and control of the entity; or

(iii) a foreign person will be in a position, or more of a position, to influence, participate in or determine the policy of the entity; and

(c) the action is or was not otherwise a significant action, a notifiable action or a notifiable national security action.

Note: For the definition of entity, see subsection (4).

Definitions of entity

(3) For the purposes of subsection (1), the entity must be:

(a) for an acquisition of interests in shares:

(i) a corporation that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity of such a corporation; or

(b) for any other action relating to a corporation:

(i) an Australian corporation that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity (other than a foreign corporation) of such a corporation; or

(c) for an action relating to a unit trust:

(i) an Australian unit trust; or

(ii) a holding entity of an Australian unit trust.

(4) For the purposes of subsection (2), the entity must be:

(a) for an acquisition of interests in shares or an issue of shares:

(i) a corporation that is a relevant entity that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity of such a corporation; or

(b) for any other action relating to a corporation:

(i) an Australian corporation that carries on an Australian business, whether alone or together with one or more other persons; or

(ii) the holding entity (other than a foreign corporation) of such a corporation; or

(c) for an action relating to a unit trust:

(i) an Australian unit trust; or

(ii) a holding entity of an Australian unit trust.

55E Meaning of reviewable national security action—businesses

(1) An action is a reviewable national security action if:

(a) the action is taken, or proposed to be taken, by a person and the action is any of the following:

(i) to acquire an interest of any percentage in an Australian business;

(ii) to acquire an interest in the assets of an Australian business;

(iii) to enter or terminate a significant agreement with an Australian business; and

(b) as a result of the action or proposed action:

(i) a foreign person acquires, or will acquire, a direct interest in the Australian business and that acquisition, or proposed acquisition, is not a significant action, notifiable action or notifiable national security action; or

(ii) a foreign person will be in a position, or more of a position, to influence or participate in the central management and control of the Australian business; or

(iii) a foreign person will be in a position, or more of a position, to influence, participate in or determine

the policy of the Australian business; and

(c) the action is or was not otherwise a significant action, a notifiable action or a notifiable national security action.

(2) An action is also a reviewable national security action if:

(a) the action is taken, or proposed to be taken, by a foreign person and the action is to start an Australian business; and

(b) the action is or was not otherwise a significant action, a notifiable action or a notifiable national security action.

55F Meaning of reviewable national security action—land

An action is a reviewable national security action if:

(a) the action is taken, or proposed to be taken, by a foreign person and the action is to acquire an interest in Australian land; and

(b) the action is or was not otherwise a significant action, a notifiable action or a notifiable national security action.

55G Actions that are not reviewable national security actions—exemption certificates

The regulations may provide, in relation to exemption certificates in force under regulations made for the purposes of section 63, that an action of a specified kind is not a reviewable national security action.

Division 5—Exemption certificates

56 Simplified outline of this Division

A person may apply for an exemption certificate under this Division.

The Treasurer must generally make a decision on an application within the period prescribed by the regulations. The regulations may also provide for additional kinds of exemption certificates.

57 Exemption certificates for new dwellings

(1) A person may apply for a certificate under this section if:

(a) the person or any other person proposes to acquire or has acquired an interest in Australian land; and

(b) the person or other person proposes to dispose of new dwellings to foreign persons that will be, are being or have been built on that land.

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the disposal of the new dwellings 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) the interest to which the certificate relates.

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

58 Exemption certificates for foreign persons

(1) A foreign person may apply for a certificate under this section if the foreign person or any other foreign person proposes to acquire one or more kinds of interests in Australian land.

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(2) The Treasurer may give a certificate if the Treasurer is satisfied that acquisitions of those kinds of interests by that foreign person 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) the kinds of interests in Australian land to which the certificate relates.

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

59 Exemption certificates for established dwellings

(1) A foreign person may apply for a certificate under this section if the foreign person or any other foreign person proposes to acquire an interest in an established dwelling.

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(2) The Treasurer may give a certificate if the Treasurer is satisfied that the acquisition of the interest 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 interest to which the certificate relates.

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

60 Other matters that may be specified by exemption certificates

(1) An exemption certificate may specify:

(a) one or more conditions; and

(b) a period during which the certificate is in force; and

(c) any other matter.

Note 1: For offences and civil penalties for failing to comply with a condition, see Part 5.

Note 2: An example of a condition that may be specified in an exemption certificate is a condition requiring that an interest or kind of interest be acquired in land within a specified area.

(2) An exemption certificate may:

- (a) in respect of a certificate taken to be given under section 57, 58 or 59—deal with the interests or kinds of interests to which the certificate relates; or
- (b) in respect of a certificate taken to be given under the regulations—deal with the interest or kinds of interests, or the action or kinds of actions, to which the certificate relates.

61 Time limit for making decisions on exemption certificates

(1) If a person applies for an exemption certificate, the Treasurer must make a decision whether to grant the application before the end of the following period:

- (a) the period prescribed by the regulations;
- (b) if, before the end of the period (including the period as extended under this paragraph), the person requests in writing the Treasurer to extend the period—the period as so extended;
- (c) if, before the end of the period (including the period as extended under this paragraph or paragraph (b)), the Treasurer extends the period under section 61A—the period as so extended.

Note: For withdrawal of applications, see section 136.

Giving exemption certificates

(2) If the Treasurer decides to grant the application, the exemption certificate:

- (a) must be given to the person before the end of 10 days after the decision is made; and
- (b) may be given to the person at an address (including an electronic address) specified in the application by the person as the address for service of notices relating to the application.

Failure to make decision or give exemption certificate

(3) The Treasurer is taken to have given, in accordance with subsection (2), an exemption certificate (without specifying conditions) of the kind applied for if the Treasurer does not:

- (a) make a decision before the end of the period mentioned in subsection (1); or
- (b) if the Treasurer makes a decision before the end of the period—give the person the exemption certificate in accordance with subsection (2).

(4) The exemption certificate is taken to have specified:

- (a) the person to whom the certificate relates; and
 - (b) in respect of a certificate taken to be given under section 57, 58 or 59—the interests or kinds of interests to which the certificate relates; and
 - (ba) in respect of a certificate taken to be given under the regulations—the interest or kinds of interests, or the action or kinds of actions, to which the certificate relates; and
 - (c) the period during which the certificate is in force;
- in accordance with the information specified in the application.

61A Treasurer may extend period by up to 90 days

(1) Before the end of a period mentioned in subsection 61(1), the Treasurer may, by notice in writing given to the person mentioned in that subsection, extend (or further extend) the period. The Treasurer may do so more than once.

(2) The total number of days by which the Treasurer may extend a period by notices given under this section must not exceed 90 days.

(3) The notice:

- (a) must include the reasons for the decision; and
- (b) may be given to the person at an address (including an electronic address) specified in the application by the person as the address for service of notices relating to the application.

(4) The Treasurer is not required to observe any requirements of the natural justice hearing rule in making a decision under subsection (1).

62 Variation or revocation of exemption certificates—general

(1) If, in giving an exemption certificate to a person, the Treasurer was satisfied that the relevant acquisition or action was not contrary to the national interest, the Treasurer may vary or revoke the certificate if the Treasurer is satisfied that the variation or revocation is not contrary to the national interest.

(1A) If, in giving an exemption certificate to a person, the Treasurer was satisfied that the relevant action was not contrary to national security, the Treasurer may vary or revoke the certificate if the Treasurer is satisfied that the variation or revocation is not contrary to national security.

(2) A variation may be made on application in writing by the person or on the Treasurer's own initiative.

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(3) Subsection 33(3) of the Acts Interpretation Act 1901 does not apply in relation to a power under this Division to give an exemption certificate.

(4) Subsection (1) does not apply to an exemption certificate that is taken to have been given under section 61.

62A Variation or revocation of exemption certificates—false or misleading information or documents

(1) The Treasurer may give a notice under subsection (2) if the Treasurer reasonably believes that before an exemption certificate was given the person to whom the certificate relates gave the Treasurer information that was or documents that were:

- (a) relevant to the exemption certificate; and
- (b) false or misleading in a material particular.

(2) The Treasurer may give the person a notice, in writing, that the Treasurer is considering varying or revoking the exemption certificate because the Treasurer has the reasonable belief mentioned in subsection (1).

(3) The Treasurer may vary or revoke an exemption certificate relating to a person if:

(a) the Treasurer is satisfied that before the exemption certificate was given the person gave the Treasurer information that was or documents that were:

- (i) relevant to the exemption certificate; and
- (ii) false or misleading in a material particular; and

(b) the Treasurer has given the person a notice under subsection (2) in respect of the exemption certificate; and

(c) the variation or revocation is made no later than 120 days after the day on which the Treasurer gave the person that notice.

Note: Subsection 33(3) of the Acts Interpretation Act 1901 does not apply in relation to a power under this Division to give an exemption certificate (see subsection 62(3)).

(4) To avoid doubt, for the purposes of this section, information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

(5) The Treasurer must notify the person, in writing, of the variation or revocation before the end of 10 days after the revocation is made.

(6) This section does not limit the circumstances in which the Treasurer may vary or revoke an exemption certificate.

(7) This section applies to an exemption certificate that is taken to be given under section 61.

62B Effect of revocation or variation of exemption certificate

(1) This section applies if:

- (a) an exemption certificate relates to an action; and
- (b) either:

(i) the exemption certificate is revoked under section 62 or 62A; or

(ii) the exemption certificate is varied under section 62 or 62A, and as a result of the variation the exemption certificate no longer relates to the action.

(2) Despite sections 45 and 49, subsection 55B(3) and section 55G, the operation of those sections and subsections in relation to the exemption certificate do not prevent the action, from the time mentioned in subsection (3), from being any of the following:

- (a) a significant action;
- (b) a notifiable action;
- (c) a notifiable national security action;
- (d) a reviewable national security action.

(3) The time is:

- (a) if the revocation or variation specifies a time when it comes into effect—that time; or
- (b) otherwise—the time when the revocation or variation is made.

(4) Subsection (5) applies if:

(a) at the time the action was taken:

- (i) it was not a core Part 3 action; or
- (ii) it was not contrary to the national interest or to national security; and

(b) as a result of the operation of subsection (2), the action becomes a core Part 3 action at the time mentioned in subsection (3).

(5) To avoid doubt, the Treasurer may make an order under section 69 (disposal orders) in relation to the action despite the fact that, at the time the action was taken:

- (a) it was not a core Part 3 action; or
- (b) it was not contrary to the national interest or to national security.

63 Exemption certificates provided for by the regulations

The regulations may provide for and in relation to additional kinds of certificates given by the Treasurer.

Note: The regulations may provide, in relation to exemption certificates in force under regulations made for the purposes of this section, that an action of a specified kind is not:

- (a) a significant action (see subsection 45(3)); or
- (b) a notifiable action (see subsection 49(2)); or
- (c) a notifiable national security action (see subsection 55B(3)); or
- (d) a reviewable national security action (see section 55G).

(d) a reviewable national security action (see section 55G).

Division 6—Entities whose securities are stapled and entities operating on a unified basis

64 Simplified outline of this Division

This Division deals with the treatment of entities whose securities are stapled and entities operating on a unified basis. In certain circumstances, if any of those entities are foreign or not carrying on an Australian business, they are treated as if they were Australian entities or carrying on an Australian business. Consequently, an action taken in relation to those entities may be a significant action or a notifiable action.

65 Entities whose securities are stapled and entities operating on a unified basis

(1) This section applies if:

(a) either:

(i) the securities in an entity can only be transferred together with securities in one or more other entities; or

(ii) an entity has entered an agreement with one or more other entities resulting in the entities being under a legal obligation to operate on a unified basis; and

(b) a person takes an action in relation to one of the entities (the target) mentioned in paragraph (a); and

(c) the target is not:

(i) an Australian entity; or

(ii) an entity carrying on an Australian business; or

(iii) an entity carrying on a national security business; or

(iv) the holding entity of an entity mentioned in subparagraph (ii) or (iii);

as is required for the action to be a significant action, notifiable action, notifiable national security action or reviewable national security action; and

(d) there is at least one other entity mentioned in paragraph (a) that is an entity of a kind mentioned in subparagraph (c)(i), (ii), (iii) or (iv).

Note: Entities in a dual listed company arrangement are examples of entities that are under a legal obligation to operate on a unified basis.

(2) For the purposes of this Act, the target is taken to be the same kind of entity as the entity mentioned in paragraph (d).

Example: A foreign person acquires interests in securities in the target (see paragraph 40(2)(b)). The target's securities are stapled to securities in another entity. The other entity is a relevant entity that carries on an Australian business (see subparagraph 40(4)(a)(i)). The target is taken to be a relevant entity that carries on an Australian business.

Part 3—Powers of Treasurer

Division 1—Simplified outline of this Part

66 Simplified outline of this Part

This Part deals with the powers that the Treasurer has if an action is proposed to be taken or has been taken.

The Treasurer may review actions in the circumstances set out in Division 1A. Such actions are reviewable national security actions, and significant actions that are not notifiable actions or notifiable national security actions. The Treasurer may make orders and decisions of a kind mentioned below in relation to any actions so reviewed.

If an action is proposed to be taken, the Treasurer may prohibit the action. The Treasurer may make an interim order before deciding whether to make an order prohibiting an action.

If an action has been taken, the Treasurer may order that the action be undone (for example, by requiring an acquisition to be disposed of).

Instead of making an order, the Treasurer may give a notification (called a no objection notification) stating that the Commonwealth does not object to an action. The Treasurer may impose conditions on an action.

If the Treasurer is given a notice that an action is proposed to be taken or reviews an action under Division 1A, the Treasurer must make a decision under this Part within a certain period, although the period may be extended. A person must not take the action during this period unless the person is given a no objection notification.

The Treasurer also has last resort powers to deal with national security risks arising in relation to an action. If the Treasurer is permitted to review the action, the Treasurer may make orders to eliminate or reduce any such risks.

Division 1A—Review of reviewable national security actions

66A National security review of actions

Review allowed if action may pose a national security concern

(1) Subject to subsection (5), the Treasurer may review:

(a) a reviewable national security action; or

(b) a significant action that is not a notifiable action or notifiable national security action;

if the Treasurer considers that the action may pose a national security concern.

Note 1: See also section 77 (time limit on making orders and decisions) and Parts 5 (offences and civil penalties) and 6 (fees).

Note 2: In reviewing the reviewable national security action, the Treasurer may seek information: see section 133.

When review may begin

(2) The Treasurer may only start a review of an action that has been taken within the time prescribed by the regulations.

(3) For the purposes of subsection (2), the following provisions are to be disregarded:

(a) paragraphs 15(1)(b) and (c);

(b) paragraphs 17(1)(c) and (2)(c);

(c) subparagraphs 19A(1)(c)(ii) and 20(1)(c)(iii).

Notice of review

(4) If the Treasurer reviews an action mentioned in subsection (1), the Treasurer must give written notice to the person who has taken, or who proposes to take, the action, of the review.

Actions not reviewable in certain circumstances

(5) The Treasurer may not review an action under this section if, at the time a review would otherwise start, any of the following apply:

(a) the action has been notified to the Treasurer;

(b) a person was given a no objection notification in relation to the action;

(c) the action or the kind of action is specified in an exemption certificate that is in force under Division 5 of Part 2 or the regulations;

(d) the action has been taken and, at the time it was taken, the action or the kind of action was specified in an exemption certificate in force under Division 5 of Part 2 or the regulations;

(e) an order or decision under Division 2 or 3 of this Part has been made by the Treasurer in relation to the action.

Division 2—Orders relating to actions that are, or whose result would be, contrary to national security or the national interest

Subdivision A—Orders

67 Order prohibiting proposed actions

(1) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

(a) a significant action (other than a significant action covered by subparagraph (1A)(a)(ii)) is proposed to be taken; and

(b) taking the significant action would be contrary to the national interest.

Note: See also section 77 (time limit on making orders and decisions) and Parts 5 (offences and civil penalties) and 6 (fees).

(1A) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

(a) an action of any of the following kinds is proposed to be taken:

(i) a notifiable national security action that is not a significant action;

(ii) an action in respect of which the Treasurer has given a notice under subsection 66A(4);

(iii) a reviewable national security action notified to the Treasurer; and

(b) taking the action would be contrary to national security.

Note: See also section 77 (time limit on making orders and decisions) and Parts 5 (offences and civil penalties) and 6 (fees).

(2) The Treasurer may make an order in accordance with the following table.

Powers of Treasurer to prohibit proposed actions. [Note that for platform compatibility, the original table

owers of Treasurer to prohibit proposed actions. [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

The Treasurer may make an order prohibiting:

Item 1: The whole or a part of the proposed acquisition, if the action is to acquire:

- (a) a direct interest in an entity or Australian business; or
- (b) a direct interest in an Australian entity, or an Australian business, that is an agribusiness; or
- (c) an interest in securities in an entity; or
- (d) an interest of any percentage in an entity or an Australian business; or
- (e) an interest in assets of an Australian business; or
- (f) a direct interest in a national security business; or
- (g) a legal or equitable interest in an exploration tenement, and that action is to be taken by a foreign person who is not a foreign government investor.

Item 2: The whole or a part of the proposed issue of the securities, if the action is to issue securities in an entity.

Item 3: Entering the proposed agreement, if the action is to enter an agreement mentioned in paragraph 40(2)(d) or subparagraph 55D(2)(a)(ii).

Item 4: The proposed alteration, if the action is to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) or subparagraph 55D(2)(a)(iii).

Item 5: The starting of the whole or a part of the Australian business, if the action is to start an Australian business, and that action is to be taken by a foreign person who is not a foreign government investor.

Item 5A: The starting of the whole or a part of the national security business, if the action is to start a national security business.

Item 6: entering the proposed agreement, if the action is to enter a significant agreement with an Australian business

Item 7: The termination of the existing agreement, if the action is to terminate a significant agreement with an Australian business.

Item 8: The proposed acquisition, if the action is to acquire an interest in Australian land.

Item 9: Anything prescribed by regulations made for the purposes of this item, if the action is to take any significant action prescribed by regulations made for the purposes of section 44.

(3) If the Treasurer makes an order under subsection (2), the Treasurer may, by notifiable instrument, also make an order in accordance with the following table.

Additional orders [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

The Treasurer may also make an order

Item 1: Directing a specified foreign person (whether alone or with specified associate or class of associates) not to:

- (a) increase the proportion of the total voting power, or the total potential voting power, in the entity that the person is in a position to control (or increase that proportion beyond a specified proportion); or
- (b) increase the proportion of interests in issued securities in the entity that the person holds (or increase that proportion beyond a specified proportion)

if the action is to acquire:

- (a) a direct interest in an entity; or
- (b) a direct interest in an Australian entity that is an agribusiness; or
- (c) an interest of any percentage in an entity; or
- (d) an interest in securities in an entity

Item 2: Directing a specified foreign person (whether alone or with specified associate or class of associates):

- (a) not to acquire any interests in that business or the assets of that business; or
- (b) to acquire any such interests only to a specified extent

if the action is to acquire:

- (a) a direct interest in an Australian business that is an agribusiness; or
- (b) a direct interest in a national security business; or
- (c) an interest in assets of an Australian business; or
- (d) an interest of any percentage in an Australian business

Item 3: Directing a specified foreign person (whether alone or with specified associate or class of associates):

- (a) not to acquire any interests in the land or other thing concerned; or
- (b) to acquire any such interests only to a specified extent

if the action is to acquire an interest in Australian land.

68 Interim orders

(1) For the purpose of considering whether to make an order under section 67, the Treasurer may, by notifiable instrument, make an order, under this section, of the kind that he or she may make under that section as if that section had applied.

Note: See also section 77 (time limit on making orders and decisions) and Parts 5 (offences and civil penalties) and 6 (fees).

(2) An order made under this section must specify the period during which the order has effect. The period must not be more than 90 days.

Note: The period does not start until the order is registered on the Federal Register of Legislation (see paragraph 79M(2)(b)).

69 Disposal orders

(1) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

(a) a significant action (other than a significant action covered by subparagraph (1A)(a)(ii)) has been taken; and

(b) the result of the significant action is contrary to the national interest.

Note: See also sections 70 (limitation on making disposal orders) and 77 (time limit on making orders and decisions).

(1A) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

(a) an action of any of the following kinds has been taken:

(i) a notifiable national security action that is not a significant action;

(ii) an action in respect of which the Treasurer has given a notice under subsection 66A(4);

(iii) a reviewable national security action that is notified to the Treasurer; and

(b) the result of the action is contrary to national security.

Note: See also sections 70 (limitation on making disposal orders) and 77 (time limit on making orders and decisions).

(2) The Treasurer may make an order in accordance with the following table.

Powers of Treasurer to require disposal of interests [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

The Treasurer may make an order directing”

Item 1: the person who acquired the interest to dispose of the interest within a specified period to one or more persons who are not associates of the person, if the action was to acquire:

(a) a direct interest in an entity or Australian business; or

(b) a direct interest in an Australian entity, or an Australian business, that is an agribusiness; or

(c) an interest in securities in an entity; or

(d) an interest of any percentage in an entity or an Australian business; or

(e) an interest in assets of an Australian business; or

(f) a direct interest in a national security business; or

(g) a legal or equitable interest in an exploration tenement, and that action is to be taken by a foreign person who is not a foreign government investor

The Treasurer may make an order directing specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind, if the action was:

Item 1A: to acquire:

(a) an interest of any percentage in an entity or an Australian business; or

(b) an interest in assets of an Australian business

Item 2: to enter an agreement mentioned in paragraph 40(2)(d) or subparagraph 55D(2)(a)(ii)

Item 3: to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) or subparagraph 55D(2)(a)(iii)

Item 4: to start an Australian business, and that action was taken by a foreign person who is not a foreign government investor

Item 4A: to start a national security business

Item 5: to enter a significant agreement with an Australian business

Item 6: to terminate a significant agreement with an Australian business

Item 7: The Treasurer may make an order directing the person who acquired the interest to dispose of that interest within a specified period to one or more persons who are not associates of the person, if the action was to acquire an interest in Australian land.

Item 8: The Treasurer may make an order directing specified persons to do a thing prescribed by

regulations made for the purposes of this item, if the action was to take any significant action prescribed by regulations made for the purposes of section 44.

Orders made under table item 7

(3) Without limiting item 7 of the table in subsection (2):

(a) a foreign person is taken to have acquired an interest in Australian land if the person becomes (with or without the knowledge of the person) a beneficiary in a trust that consists of or includes the interest; and

(b) if the trust is a discretionary trust—a reference to the disposal of the interest of the foreign person is a reference to the disposal of any assignable benefits in relation to that trust that may ultimately vest in that foreign person.

Orders made under table items 2, 3, 5 or 6

(4) Unless subsection (4A) applies, if the Treasurer is satisfied as mentioned in subsection (1), an order under any of items 2, 3, 5 or 6 of the table in subsection (2) may be made only for the purpose of:

(a) restoring the control of the entity or business as closely as possible to the position in which it was before the significant action was taken; or

(b) preventing the occurrence of a change in control of the entity or business.

(4A) If the Treasurer is satisfied as mentioned in subsection (1A), an order under any of items 1A, 2 or 3 of the table in subsection (2) may be made only for the purpose of:

(a) restoring the foreign person's position to influence or participate in the central management and control of the entity as closely as possible to what it was before the action was taken; or

(b) restoring the foreign person's position to influence or participate, participate in or determine the policy of the entity as closely as possible to what it was before the action was taken.

(5) Before the end of a period specified in an order made under any of items 2, 3, 5 or 6 of the table in subsection (2) (or that period as extended under a previous application of this subsection), the Treasurer may, in writing, extend the period. The order has effect as if the period as extended had been specified in the order.

70 Limitation on making disposal orders

(1) This section applies if:

(a) a person is given a no objection notification specifying one or more actions; and

(b) in the case of a no objection notification relating to actions that are proposed to be taken—the actions specified in the no objection notification were taken; and

(c) in any case, both of the following apply:

(i) either the period specified under section 76 in the notification has not ended or the actions were taken before the end of the period specified in the notification;

(ii) the foreign persons who took the actions were specified in the notification.

(2) The Treasurer may make an order under section 69 (disposal orders) in relation to the actions only if:

(a) the person is convicted of an offence against section 87 in relation to a condition included in the notification; or

(b) an order is made under section 19B of the Crimes Act 1914 in relation to the person in respect of such an offence; or

(c) a civil penalty order is made against the person under the Regulatory Powers Act in relation to a contravention of section 93, 96 or 97 of this Act relating to a condition included in the notification.

Note: The Treasurer may make an order under this Subdivision in relation to:

(a) a significant action that is not specified in the notification but is covered by the same agreement that covered the actions mentioned in subsection (1); or

(b) a foreign person who is not specified in the notification but who took significant actions covered by the same agreement that covered the actions mentioned in subsection (1).

(3) To avoid doubt, this section is subject to subsection 76A(7) (effect of revocation of no objection notification).

Subdivision B—No objection notifications

74 No objection notification imposing conditions

Application of this section

(1) This section applies if:

(a) the Treasurer is satisfied that a significant action (other than a significant action covered by paragraph (1A)(b)) is proposed to be taken (whether or not the Treasurer was given a notice relating to the action); or

(b) all of the following apply:

(i) the Treasurer is satisfied that a significant action has been taken;

(ii) the Treasurer was not given a notice relating to the action before the action was taken;

(iii) the action is not covered by paragraph (1A)(b); or

(c) all of the following apply:

(i) the Treasurer is satisfied that a significant action has been taken;

(ii) the Treasurer was given a notice relating to the action before the action was taken;

(iia) the action is not covered by paragraph (1A)(b);

(iii) the action was taken before the day mentioned in section 82.

Note: See also sections 76 (content of no objection notification) and 77 (time limit on making orders and decisions).

(1A) This section also applies if the following kinds of actions are proposed to be taken or have been taken:

(a) a notifiable national security action that is not a significant action;

(b) an action in respect of which the Treasurer has given a notice under subsection 66A(4);

(c) a reviewable national security action that is notified to the Treasurer.

Note: See also sections 76 (content of no objection notification) and 77 (time limit on making orders and decisions).

Imposition of conditions

(2) The Treasurer may:

(a) decide that the Commonwealth has no objection to the action if one or more of the following conditions were imposed:

(i) for paragraph (1)(a)—a condition that the Treasurer is satisfied is necessary to ensure the action, if taken, will not be contrary to the national interest;

(ii) for paragraphs (1)(b) and (c)—a condition that the Treasurer is satisfied is necessary to ensure that the action is not contrary to the national interest;

(iii) for subsection (1A) and in relation to an action proposed to be taken—a condition that the Treasurer is satisfied is necessary to ensure the action, if taken, will not be contrary to national security;

(iv) for subsection (1A) and in relation to an action that has been taken—a condition that the Treasurer is satisfied is necessary to ensure the action is not contrary to national security; and

(b) notify the person, in writing (the no objection notification), of the conditions.

(3) The no objection notification:

(a) must be given before the end of 10 days after the decision is made; and

(b) if a notice relating to the action was given—may be given to the person at an address (including an electronic address) specified in that notice as the address for service of notices relating to the action.

Variation and revocation of conditions

(4) Subject to subsection (6), the Treasurer may:

(a) in relation to an action of a kind mentioned in subsection (1)—vary a no objection notification given to a person in one or more ways mentioned in subsection (4A) if the Treasurer is satisfied that the variation is not contrary to the national interest; and

(b) in relation to an action of a kind mentioned in subsection (1A)—vary a no objection notification given to a person in one or more ways mentioned in subsection (4A) if the Treasurer is satisfied that the variation is not contrary to national security.

(4A) For the purposes of subsection (4), the Treasurer may vary a no objection notification in one or more of the following ways:

(a) revoking a condition;

(b) imposing a new condition;

(c) varying an existing condition;

(d) varying the information specified under section 76.

(5) The variation may be made on the Treasurer's own initiative.

Note: The variation may also be made on application by the person (see subsection 76(6)).

(6) The Treasurer may vary a no objection notification given to a person by imposing a new condition or varying an existing condition only if:

(a) the person consents to the new condition or the variation; or

(b) the Treasurer is satisfied that the new condition or variation does not disadvantage the person.

Statements in notices

(7) For the purposes of this section:

(a) a notice relating to an action stating that a person has a right (including a right under an option) to acquire interests in securities, assets or Australian land is taken to be a statement that the person proposes to acquire the interests in the securities, assets or land; and

(b) a notice relating to an action stating that a person proposes to acquire a right (including a right under an option) to acquire an interest in a security, asset or Australian land is taken to be a statement that the person proposes to exercise that right.

Effect of notification on later actions

(8) If:

- (a) a person gives a notice to the Treasurer relating to more than one significant action proposed to be taken in relation to an entity or business; and
 - (b) the Treasurer is satisfied that the actions would result in a change in control of the entity or business; and
 - (c) the Treasurer gives a no objection notification to the person under this section in relation to the actions; and
 - (d) not all of the actions are taken; and
 - (e) the person gives a later notice to the Treasurer relating to a later action that is proposed to be taken in relation to the entity or business;
- the giving of the no objection notification does not prevent the Treasurer from determining that there has been or will be a change in control of the entity or business as a result of the later action.

Note: See also subparagraph 79A(1)(b)(ii).

75 No objection notification not imposing conditions

- (1) This section applies if:
 - (a) the Treasurer receives a notice that a person proposes to take an action; and
 - (b) the Treasurer is satisfied that the action is covered by:
 - (i) subsections 40(2) and (3), and whichever of subsection 40(4) or (5) applies (meaning of significant action—entities); or
 - (ii) subsections 41(2) and (3) and subsection 41(4) (if it applies) (meaning of significant action—business); or
 - (iii) section 43 (meaning of significant action—land); or
 - (iv) regulations made for the purposes of section 44 (meaning of significant action—actions prescribed by the regulations), disregarding any conditions prescribed by the regulations in relation to a change in control.

Note 1: See also sections 76 (content of no objection notification) and 77 (time limit on making orders and decisions) and Parts 5 (offences and civil penalties) and 6 (fees).

Note 2: This section disregards whether there has been a change in control.

(1A) This section also applies if:

- (a) the Treasurer receives a notice that a person proposes to take a notifiable national security action; or
- (b) a person proposes to take:
 - (i) an action in respect of which the Treasurer has given a notice under subsection 66A(4); or
 - (ii) a reviewable national security action that the person notifies to the Treasurer.

Note: See also sections 76 (content of no objection notification) and 77 (time limit on making orders and decisions).

(2) The Treasurer may:

- (a) decide that the Commonwealth has no objection to the action; and
- (b) notify the person, in writing (the no objection notification), of the decision.

(3) The no objection notification:

- (a) must be given before the end of 10 days after the decision is made; and
- (b) may be given to the person at an address (including an electronic address) specified in the notice relating to the action as the address for service of notices relating to the action.

Statements in notices

(4) For the purposes of this section:

- (a) a notice relating to an action stating that a person has a right (including a right under an option) to acquire interests in securities, assets or Australian land is taken to be a statement that the person proposes to acquire the interests in the securities, assets or land; and
- (b) a notice relating to an action stating that a person proposes to acquire a right (including a right under an option) to acquire an interest in a security, asset or Australian land is taken to be a statement that the person proposes to exercise that right.

Effect of notifications on later actions

- (5) A notification given under this section in relation to an action taken relating to an entity or business does not prevent the Treasurer from determining later whether there has been a change in control of the entity or business.

76 Content of notification

(1) A no objection notification given to a person under section 74 or 75 must:

- (a) specify the following:
 - (i) the one or more actions to which the notification relates;
 - (ii) the one or more foreign persons to which the notification relates; and
- (b) include the following:
 - (i) a requirement that the actions to which the notification relates, if taken, must be taken before the end of a specified period after the day the notification is given;

or a specified period after the day the notification is given;

(ii) a statement to the effect that the Treasurer may, in certain circumstances review the actions to which the notification relates under Division 3 and exercise powers under that Division.

(2) The no objection notification may specify a foreign person by specifying:

(a) a foreign person that:

(i) is not yet incorporated; or

(ii) is a trustee of a trust that is not yet established; and

(b) the way in which the foreign person is to be incorporated or the trust is to be established.

(3) A foreign person is taken not to be specified in a no objection notification if:

(a) the notification specified the foreign person under subsection (2) before the foreign person was incorporated or the trust was established; and

(b) the foreign person is not incorporated or the trust is not established in the way specified in the notification.

Note: The protection under section 70 from disposal orders applies to a foreign person only if the foreign person is specified in a no objection notification.

(4) The period mentioned in subparagraph (1)(b)(i) is:

(a) the period prescribed by the regulations; or

(b) if the Treasurer is satisfied that a longer period is not contrary to national security or the national interest—that longer period.

(5) A single notification may include a no objection notification under each of sections 74 and 75 in relation to different actions.

Variation of no objection notification

(6) A person given a no objection notification may apply to the Treasurer for a variation of the notification (including after the action specified in the notification is taken).

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(7) An application for an extension of a period specified in a no objection notification must be made 2 months before the end of the period.

(8) The Treasurer may vary a no objection notification if:

(a) in the case of a no objection notification given in relation to an action of a kind mentioned in subsection 74(1) or 75(1)—the Treasurer is satisfied that the variation is not contrary to the national interest; and

(b) in the case of a no objection notification given in relation to an action of a kind mentioned in subsection 74(1A) or 75(1A)—the Treasurer is satisfied that the variation is not contrary to national security.

76A Revocation of no objection notification

(1) The Treasurer may give a notice under subsection (2) if the Treasurer reasonably believes that before a no objection notification was given to a person the person (or another person specified in the notification) gave the Treasurer information that was or documents that were:

(a) relevant to the no objection notification; and

(b) false or misleading in a material particular.

(2) The Treasurer may give the person who was given the notification a notice, in writing, that the Treasurer is considering revoking the notification (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)) because the Treasurer has the reasonable belief mentioned in subsection (1).

(3) The Treasurer may revoke a no objection notification given to a person (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)) if:

(a) the Treasurer is satisfied that before the no objection notification was given the person (or another person specified in the notification) gave the Treasurer information that was or documents that were:

(i) relevant to the no objection notification; and

(ii) false or misleading in a material particular; and

(b) the Treasurer has given the person a notice under subsection (2) in respect of the no objection notification; and

(c) the revocation is made no later than 120 days after the day on which the Treasurer gave the person that notice.

(4) To avoid doubt, for the purposes of this section, information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

(5) The Treasurer must notify the person, in writing, of the revocation before the end of 10 days after the revocation is made.

(6) This section does not limit the circumstances in which the Treasurer may revoke a no objection notification.

(7) If the Treasurer revokes a no objection notification under subsection (1) (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)), the Treasurer may make:

(a) an order under section 67, 68 or 69; or

(b) a decision under paragraph 74(2)(a) or 75(2)(a);

as if the no objection notification had never been given (and the relevant decision had never been made).

Note: The Treasurer cannot make an order under section 67 or 68 if the core Part 3 action in relation to which the no objection notification was given had already been taken before the revocation.

Subdivision C—Time limits on making orders and decisions

77 Time limit on making orders and decisions

Time limit on making orders or decisions

(1) If a decision period starts in relation to an action (see subsection (6)), the Treasurer must not (subject to subsections (2) to (5)) make an order or decision under Division 2 relating to the action after the end of the decision period.

Note 1: For when the Treasurer may vary or revoke an order or no objection notification, see sections 74, 76, 76A and 79G.

Note 2: For further powers the Treasurer has after the expiry of the time limit in this section, see Division 3 of Part 3 (about last resort powers).

Longer time limit where interim order is made

(2) However, if:

(a) the Treasurer makes, or purports to make, an interim order in relation to the action on or before the end of the decision period; and

(b) the interim order is registered in accordance with section 79M;

the Treasurer must not make an order under section 67 or 69 or a decision under section 74 or 75 relating to the action after the end of the period specified in the interim order.

No time limit if action taken during period

(3) Subsections (1) and (2) do not apply if:

(a) the decision period started because the Treasurer received a notice from a person stating that the action was proposed to be taken; and

(b) the person took the action before the end of:

(i) for a case to which subsection (1) applies—the decision period; or

(ii) for a case to which subsection (2) applies—the period specified in the interim order.

No time limit if order made during period

(4) Subsections (1) and (2) do not apply if:

(a) the Treasurer made an order (other than an interim order) or decision under Division 2 relating to the action on or before the end of:

(i) for a case to which subsection (1) applies—the decision period; or

(ii) for a case to which subsection (2) applies—the period specified in the interim order; and

(b) the Treasurer also registers the order in accordance with section 79M, or gives a notification in accordance with subsection 74(3) or 75(3).

Later decision periods

(5) Subsections (1) and (2) do not prevent the Treasurer from making an order or decision in relation to an action at a time after the end of a period if the time is in:

(a) another decision period that has started in relation to the action under subsection (6); or

(b) a period specified in an interim order made, or purported to be made, during another decision period that has started in relation to the action under subsection (6).

Note: Under the table in subsection (6), there may be more than one decision period for an action. For example, a decision period might start in relation to an action under item 1 of the table and then later another decision period might start under item 5 of the table.

When a decision period starts

(6) A decision period starts in relation to an action referred to in column 1 of an item in the following table if the event referred to in column 2 of that table item occurs. To avoid doubt, there may be more than one decision period for an action.

When a decision period starts

1. Column 1: Action) Any of the following: (a) a significant action; (b) a notifiable national security action; (c) a reviewable national security action -- (Column 2: Event) The Treasurer receives a notice from a person stating that the action is proposed to be taken

2. (Column 1: Action) An action to which an exemption certificate relates -- (Column 2: Event) The action becomes a core Part 3 action as a result of the operation of subsection 62B(2) (which is about the effect of revocation of an exemption certificate)

3. (Column 1: Action) Any of the following: (a) a significant action that is not a notifiable action or notifiable national security action; (b) a reviewable national security action -- (Column 2: Event) The Treasurer gives a person a notice in relation to the action under subsection 66A(4) (which is about national security review of actions)

4. (Column 1: Action) An action in relation to which the Treasurer made a decision under section 74 or 75 (which is about no objection notifications) -- (Column 2: Event) The Treasurer notifies a person under subsection 76A(4) that the Treasurer has revoked a no objection notification given to the person in relation to the action

5. (Column 1: Action) Any of the following: (a) a significant action; (b) a notifiable national security action; (c) a reviewable national security action -- (Column 2: Event) An order or decision the Treasurer purported to make under Division 2 in relation to the action is set aside by a court

Note 1: If a fee is payable by a person under section 113, the notice is taken not to have been given until the fee has been paid or waived (see section 114).

Note 2: For withdrawal of notices, see section 136.

Notice given under section 133

(7) If a notice is given to a person under section 133 requiring a person to give information or produce a document, a decision period, or a period specified in an interim order, does not include any day in the period:

(a) beginning on the day the notice is given; and

(b) ending on the day the person gives the information or produces the document in accordance with the notice.

Meaning of decision period

(8) A decision period is:

(a) the period of 30 days after the day the event referred to in column 2 of the applicable item of the table in subsection (6) occurs; or

(b) if, before the end of a decision period (including a decision period as extended under this paragraph), the person specified in subsection (9) requests in writing the Treasurer to extend the period—the period as so extended; or

(c) if, before the end of a decision period (including a decision period as extended under this paragraph or paragraph (b)), the Treasurer extends the period under section 77A—the period as so extended.

Specified person for extensions of the decision period

(9) The person is:

(a) in a case to which item 1, 3 or 4 of the table in subsection (6) applies—the person mentioned in column 2 of that table item; or

(b) in a case to which item 2 of the table in subsection (6) applies in relation to a variation or revocation under section 62—the person to whom the exemption certificate was given; or

(c) in a case to which item 2 of the table in subsection (6) applies in relation to a variation or revocation under section 62A—the person to whom the notice under section 62A was given; or

(d) in a case to which item 5 of the table in subsection (6) applies—the person who took, or proposed to take, the action.

77A Treasurer may extend decision period by up to 90 days

(1) Before the end of a decision period, the Treasurer may, by notice in writing given to the person specified in subsection 77(9), extend (or further extend) the period. The Treasurer may do so more than once.

(2) The total number of days by which the Treasurer may extend a decision period by notices given under this section must not exceed 90 days.

(3) The notice:

(a) must include the reasons for the decision; and

(b) in a case to which item 1 of the table in subsection 77(6) applies—may be given to the person at an address (including an electronic address) specified in the notice relating to the action as the address for service of notices relating to the action.

(4) The Treasurer is not required to observe any requirements of the natural justice hearing rule in making a decision under subsection (1).

Subdivision D—Anti□ avoidance

78 Anti□ avoidance

(1) This section applies if:

(a) one or more persons enter into, begin to carry out or carry out a scheme; and

(b) the Treasurer is satisfied that any of the persons who entered into, began to carry out or carried out all or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to one or more persons (whether those persons are the same as the persons mentioned in paragraph (a)); and

(c) all or part of the scheme has achieved, or (apart from this section) would achieve, that purpose.

Note: For the definition of scheme, see section 4.

(2) The Treasurer may (subject to subsection (3)) make any order or decision under Division 2 that the Treasurer would have been able to make if all or part of the scheme had not achieved that purpose.

(3) The Treasurer must not make an order prohibiting a person from doing anything that has already been done by the person before the order is made.

79 Persons involved in avoidance taken to be associates

(1) The Treasurer may make an order under subsection (2) if:

- (a) the Treasurer makes an order under section 78 (anti-avoidance) in relation to more than one person; and
- (b) the Treasurer is satisfied that not making an order under subsection (2) is contrary to national security or the national interest.

(2) The Treasurer may make an order specifying that some or all of the persons to which the order under section 78 relates are taken to be associates of each other for the purposes of this Act or for specified purposes.

(3) An order under subsection (2) must specify the period during which the order is in force.

Effect of order

(4) An order under subsection (2) has effect according to its terms.

Order not a legislative instrument

(5) An order under subsection (2) is not a legislative instrument.

Division 3—Last resort powers: orders to deal with national security risks arising after an initial assessment

Subdivision A—National security review required

79A National security review required before orders may be made

Bases on which Treasurer may review actions

(1) The Treasurer may review an action if the Treasurer is satisfied that:

(a) any of the following apply:

- (i) a no objection notification in relation to the action has been given and has not been revoked under section 76A;
 - (ii) the action has been taken and, at the time it was taken, the action or the kind of action was specified in an exemption certificate in force under Division 5 of Part 2 or the regulations;
 - (iii) the action has been taken and, at the time it was taken, the interest or kind of interest to which the action relates was specified in an exemption certificate in force under Division 5 of Part 2 or the regulations;
 - (iv) an interim order in relation to the action was made and the Treasurer did not make an order under section 67 before the end of the period specified in the interim order;
 - (v) an order or decision under Division 2 was not made by the Treasurer in relation to the action before the end of the decision period;
 - (vi) a person was given a notice imposing conditions under section 79H in relation to the action; and
- (b) any of the following apply:
- (i) the person notified the action to the Treasurer and made a statement, whether orally or in that notification, that was false or misleading in a material particular, or that omitted a matter or thing without which the statement was misleading in a material particular;
 - (ii) the business, structure or organisation of the person has, or the person's activities have, materially changed since the time paragraph (a) was satisfied;
 - (iii) the circumstances or market in which the action was, or is proposed to be, taken have materially changed since the time paragraph (a) was satisfied.

Treasurer to decide whether a national security risk exists

(2) When reviewing an action under this section, the Treasurer must decide whether a national security risk relating to the action exists. In doing so, the Treasurer must obtain, and have regard to, advice from an agency in the national intelligence community about national security risks in relation to the action.

Note: A person may apply to the Administrative Review Tribunal for review of a decision that a national security risk relating to the action exists: see section 130A.

Treasurer may give notice of review

(3) If the Treasurer reviews an action under this section:

- (a) the Treasurer must, unless it would prejudice Australia's national security interests to do so, notify the person, in writing, of the review; and
- (b) if the action has not been taken—the giving of the notice prohibits, by force of this paragraph, the taking of the action until the review of the action is completed and:
 - (i) an order made under this Division is registered under section 79M; or
 - (ii) a no objection notification is varied under section 79G; or
 - (iii) a notice imposing conditions is given to the person under section 79H or is varied under section

(iii) a notice imposing conditions is given to the person under section 79I or is varied under section 79J; or

(iv) a notice is given under section 79B advising that a national security risk does not exist in relation to the action; and

(c) if the action has been taken—the Treasurer may:

(i) in the notice—give any direction to the person in relation to the action or a related activity that the Treasurer considers necessary to address the national security risk; and

(ii) in writing and before the review is completed—give any subsequent direction to the person in relation to the action or a related activity that the Treasurer considers necessary to address the national security risk.

(4) For the purposes of paragraph (3)(b) and an exemption certificate, the giving of the notice also prohibits, by force of this subsection, an action in relation to interests or kinds of interests, or the kinds of actions, to which the certificate relates until the review of the action is completed and an event mentioned in any of subparagraphs (3)(b)(i) to (iv) has occurred.

(5) For the purposes of paragraph (3)(c), the Treasurer may not give a direction that would require the person to take action of a kind mentioned in section 79E.

79B When an action creates a national security risk

(1) If the Treasurer reviews an action, as allowed by section 79A, the Treasurer must:

(a) give written notice to the person who proposes to take, or took, the action of the review; and

(b) either:

(i) if the Treasurer decides that a national security risk does not exist in relation to the action—include a statement to that effect in the notice; or

(ii) if the Treasurer decides that a national security risk exists in relation to the action—include the Treasurer's reasons for deciding that the risk exists in the notice.

(2) The Treasurer may redact from the written notice to the person who proposes to take, or took, the action:

(a) any reasons that would disclose the national security risk or result in prejudice to Australia's national security interests; or

(b) any information relied on in carrying out the review of the action on grounds of national security.

(3) To avoid doubt, a written notice to the person who proposes to take, or took, the action may be validly given under subsection (1) even if all the contents of the notice are redacted.

Subdivision B—Orders

79C Considerations required by Treasurer before any order given

If the Treasurer proposes to give an order to a person relating to an action under this Subdivision:

(a) the Treasurer must be satisfied that the action has been reviewed under Subdivision A; and

(b) the Treasurer must be reasonably satisfied that:

(i) in a case in which subparagraph 79A(1)(b)(i) applies—the false or misleading statement or the omission directly relates to the national security risk; or

(ii) in a case in which subparagraph 79A(1)(b)(ii) applies—the national security risk posed by the material change could not have been reasonably foreseen, or could have been reasonably foreseen but was only a remote possibility, at the time paragraph 79A(1)(a) was satisfied; or

(iii) in a case in which subparagraph 79A(1)(b)(iii) applies—the material change alters the nature of the national security risk posed at the time paragraph 79A(1)(a) was satisfied; and

(c) the Treasurer must also be satisfied that:

(i) reasonable steps have been taken to negotiate in good faith with the person to achieve an outcome of eliminating or reducing the national security risk relating to the action that the Treasurer has decided exists so as to avoid an order being given; and

(ii) requiring the person to comply with an order is reasonably necessary for purposes relating to eliminating or reducing the national security risk; and

(iii) the use of existing regulatory systems of the Commonwealth, a State or a Territory would not adequately eliminate or reduce the national security risk.

79D Order prohibiting proposed actions

(1) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

(a) an action is proposed to be taken; and

(b) taking the action would be contrary to national security.

Note: See also Part 5 (offences and civil penalties).

(2) The Treasurer may make an order in accordance with the following table.

Powers of Treasurer to prohibit proposed actions. [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

starting;

The Treasurer may make an order prohibiting:

Item 1: The whole or a part of the proposed acquisition, if the action is to acquire:

- (a) a direct interest in an entity or Australian business; or
- (b) a direct interest in an Australian entity, or an Australian business, that is an agribusiness; or
- (c) an interest in securities in an entity; or
- (d) an interest of any percentage in an entity or an Australian business; or
- (e) an interest in assets of an Australian business; or
- (f) a direct interest in a national security business; or
- (g) a legal or equitable interest in an exploration tenement, and that action is to be taken by a foreign person who is not a foreign government investor.

Item 2: The whole or a part of the proposed issue of the securities, if the action is to issue securities in an entity.

Item 3: Entering the proposed agreement, if the action is to enter an agreement mentioned in paragraph 40(2)(d) or subparagraph 55D(2)(a)(ii).

Item 4: The proposed alteration, if the action is to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) or subparagraph 55D(2)(a)(iii).

Item 5: The starting of the whole or a part of the Australian business, if the action is to start an Australian business, and that action is to be taken by a foreign person who is not a foreign government investor.

Item 6: The starting of the whole or a part of the national security business, if the action is to start a national security business.

Item 7: Entering the proposed agreement, if the action is to enter a significant agreement with an Australian business

Item 8: The termination of the existing agreement, if the action is to terminate a significant agreement with an Australian business.

Item 9: The proposed acquisition, if the action is to acquire an interest in Australian land.

Item 10: Anything prescribed by regulations made for the purposes of this item, if the action is to take any significant action prescribed by regulations made for the purposes of section 44.

(3) If the Treasurer makes an order under subsection (2), the Treasurer may, by notifiable instrument, also make an order in accordance with the following table.

Additional orders (Note: The Table in the original text is converted into narrative to match the platform. Please refer to the original law for exact text)

The Treasurer may also make an order

Item 1: Directing a specified foreign person (whether alone or with specified associate or class of associates) not to:

- (a) increase the proportion of the total voting power, or the total potential voting power, in the entity that the person is in a position to control (or increase that proportion beyond a specified proportion); or
- (b) increase the proportion of interests in issued securities in the entity that the person holds (or increase that proportion beyond a specified proportion)

if the action is to acquire:

- (a) a direct interest in an entity; or
- (b) a direct interest in an Australian entity that is an agribusiness; or
- (c) an interest of any percentage in an entity; or
- (d) an interest in securities in an entity

Item 2: Directing a specified foreign person (whether alone or with specified associate or class of associates):

- (a) not to acquire any interests in that business or the assets of that business; or
- (b) to acquire any such interests only to a specified extent

if the action is to acquire:

- (a) a direct interest in an Australian business that is an agribusiness; or
- (b) a direct interest in a national security business; or
- (c) an interest in assets of an Australian business; or
- (d) an interest of any percentage in an Australian business

Item 3: Directing a specified foreign person (whether alone or with specified associate or class of associates):

- (a) not to acquire any interests in the land or other thing concerned; or
- (b) to acquire any such interests only to a specified extent

if the action is to acquire an interest in Australian land.

Any order or prohibition of a prohibition, notification, or action, in relation to a prohibition

Automatic revocation or no objection notification or notice imposing conditions

(4) If the Treasurer makes an order under subsection (2), any no objection notification or notice imposing conditions given in relation to the action is revoked by force of this subsection on the day that the order commences.

Note: For when an order commences, see section 79M.

79E Disposal orders

(1) The Treasurer may, by notifiable instrument, make an order under subsection (2) if the Treasurer is satisfied that:

- (a) an action has been taken; and
- (b) the result of the action is contrary to national security.

Note: See also Part 5 (offences and civil penalties).

(2) The Treasurer may make an order in accordance with the following table.

Powers of Treasurer to require disposal of interests (Note: The Table in the original text is converted into narrative to match the platform. Please refer to the original law for exact text)

The Treasurer may make an order directing:

Item 1: the person who acquired the interest to dispose of the interest within a specified period to one or more persons who are not associates of the person, if the action was to acquire:

- (a) a direct interest in an entity or Australian entity; or
- b) a direct interest in an Australian entity, or Australian business, that is an agribusiness; or
- (c) an interest in securities in an entity; or
- (d) a direct interest in a national security business; or
- (e) a legal or equitable interest in an exploration tenement, and that action is to be taken by a foreign person who is not a foreign government investor

The Treasurer may make an order directing specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind, if the action was:

Item 2: to acquire:

- (a) an interest of any percentage in an entity or an Australian business; or
- (b) an interest in assets of an Australian business

Item 3: to enter an agreement mentioned in paragraph 40(2)(d) or subparagraph 55D(2)(a)(ii)

Item 4: to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) or subparagraph 55D(2)(a)(iii)

Item 5: The Treasurer may make an order directing the person who started the business to dispose of the business within a specified period to one or more persons who are not associates of the person, if the action was to start

- (a) an Australian business, and that action was taken by a foreign person who is not a foreign government investor; or
- (b) a national security business

Item 6: The Treasurer may make an order directing specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind, if the action was to enter or terminate a significant agreement with an Australian business

Item 7: The Treasurer may make an order directing the person who acquired the interest to dispose of that interest within a specified period to one or more persons who are not associates of the person, if the action was to acquire an interest in Australian land.

Item 8: The Treasurer may make an order directing specified persons to do a thing prescribed by regulations made for the purposes of this item, if the action was to take any significant action prescribed by regulations made for the purposes of section 44.

Orders made under table item 7

(3) Without limiting item 7 of the table in subsection (2):

(a) a foreign person is taken to have acquired an interest in Australian land if the person becomes (with or without the knowledge of the person) a beneficiary in a trust that consists of or includes the interest; and

(b) if the trust is a discretionary trust—a reference to the disposal of the interest of the foreign person is a reference to the disposal of any assignable benefits in relation to that trust that may ultimately vest in that foreign person.

Orders made under table items 2, 3, 4 or 6

(4) Before the end of a period specified in an order made under any of items 2, 3, 4 or 6 of the table in subsection (2) (or that period as extended under a previous application of this subsection), the Treasurer may, in writing, extend the period. The order has effect as if the period as extended had been specified in the order.

Automatic revocation of no objection notification or notice imposing conditions

(5) If the Treasurer makes an order under subsection (2), any no objection notification or notice imposing conditions given in relation to the action is revoked by force of this subsection on the day that the order commences.

Note: For when an order commences, see section 79M.

Subdivision C—Other powers of Treasurer

79F Considerations required by Treasurer before any power exercised

If the Treasurer proposes to exercise powers under this Subdivision in relation to an action taken, or proposed to be taken, by a person:

- (a) the Treasurer must be satisfied that the action has been reviewed under Subdivision A; and
- (b) the Treasurer must be reasonably satisfied that:
 - (i) in a case in which subparagraph 79A(1)(b)(i) applies—the false or misleading statement or the omission directly relates to the national security risk; or
 - (ii) in a case in which subparagraph 79A(1)(b)(ii) applies—the national security risk posed by the material change could not have been reasonably foreseen, or could have been reasonably foreseen but was only a remote possibility, at the time paragraph 79A(1)(a) was satisfied; or
 - (iii) in a case in which subparagraph 79A(1)(b)(iii) applies—the material change alters the nature of the national security risk posed at the time paragraph 79A(1)(a) was satisfied; and
- (c) the Treasurer must also be satisfied that:
 - (i) reasonable steps have been taken to negotiate in good faith with the person to achieve an outcome of eliminating or reducing the national security risk relating to the action that the Treasurer has decided exists so as to avoid an order being given; and
 - (ii) requiring the person to comply with an order is reasonably necessary for purposes relating to eliminating or reducing the national security risk; and
 - (iii) the use of existing regulatory systems of the Commonwealth, a State or a Territory would not adequately eliminate or reduce the national security risk.

79G Varying or revoking conditions of no objection notification

If a person was given a no objection notification in relation to an action, the Treasurer may decide to vary the no objection notification by:

- (a) revoking a condition; or
- (b) imposing a new condition; or
- (c) varying an existing condition; or
- (d) varying the information specified under section 76;

if the Treasurer is satisfied that the variation is reasonably necessary for purposes relating to eliminating or reducing the national security risk relating to the action.

79H Notice imposing conditions

Imposition of conditions

(1) If a person was not given a no objection notification in relation to an action, the Treasurer may:

- (a) decide that the Commonwealth has no objection to the action if one or more conditions were imposed that the Treasurer is satisfied would be reasonably necessary for purposes relating to eliminating or reducing the national security risk relating to the action; and
- (b) notify the person, in writing (the notice imposing conditions), of the conditions.

(2) The notice imposing conditions:

- (a) must be given before the end of 10 days after the decision is made; and
- (b) if a notice relating to the action was given—may be given to the person at an address (including an electronic address) specified in that notice as the address for service of notices relating to the action.

Content of notice

(3) A notice imposing conditions must:

- (a) specify the following:
 - (i) the one or more actions to which the notice relates;
 - (ii) the one or more foreign persons to which the notice relates; and
 - (b) include the following:
 - (i) a requirement that the actions to which the notice relates, if taken, must be taken before the end of a specified period after the day the notice is given;
 - (ii) a statement to the effect that the Treasurer may, in certain circumstances, review the actions to which the notification relates under Division 3 and exercise powers under that Division.
- (4) The notice imposing conditions may specify a foreign person by specifying:
- (a) a foreign person that:
 - (i) is not yet incorporated; or
 - (ii) is a trustee of a trust that is not yet established; and
 - (b) the way in which the foreign person is to be incorporated or the trust is to be established.
- (5) A foreign person is taken not to be specified in a notice imposing conditions if:

- (a) the notice specified the foreign person under subsection (4) before the foreign person was incorporated or the trust was established; and
- (b) the foreign person is not incorporated or the trust is not established in the way specified in the notice.
- (6) The period mentioned in paragraph (3)(b) is:
 - (a) the period prescribed by the regulations; or
 - (b) if the Treasurer is satisfied that a longer period is not contrary to national security or the national interest—that longer period.

79J Variation of notice imposing conditions

If a person was given a notice imposing conditions in relation to an action, the Treasurer may decide to vary the notice imposing conditions by:

- (a) revoking a condition; or
- (b) imposing a new condition; or
- (c) varying an existing condition; or
- (d) varying the information specified under section 79H;

if the Treasurer is satisfied that the variation is reasonably necessary for purposes relating to eliminating or reducing the national security risk relating to the action.

Note: See also sections 79P (variation with consent or without disadvantage) and 79Q (variation on application).

Subdivision D—Miscellaneous

79K Exercise of powers under this Division

In exercising a power under this Division, the Treasurer:

- (a) may have regard to any matter; and
- (b) is not required to have regard to a particular matter, unless otherwise required by this Division.

Division 4—Administrative provisions

Subdivision A—Orders

79L Variation and revocation of orders

Variations or revocations not contrary to the national interest

- (1) The Treasurer may vary or revoke an order of a kind mentioned in subsection (2) at any time if:
 - (a) the Treasurer is satisfied that the variation or revocation is not contrary to the national interest; and
 - (b) for a variation:
 - (i) the person consents to the variation; or
 - (ii) the Treasurer is satisfied that the variation does not disadvantage the person.
- (2) Subsection (1) applies in relation to the following kinds of orders:
 - (a) an order made under subsection 67(2) because the Treasurer was satisfied as mentioned in subsection 67(1);
 - (b) an order made under section 68 because the Treasurer was considering making an order mentioned in paragraph (a);
 - (c) an order made under subsection 69(2) because the Treasurer was satisfied as mentioned in subsection 69(1).

Variations or revocations not contrary to the national security

- (3) The Treasurer may vary or revoke an order:
 - (a) made under subsection 67(2) because the Treasurer was satisfied as mentioned in subsection 67(1A); or
 - (b) made under section 68 because the Treasurer was considering making an order mentioned in paragraph (a); or
 - (c) made under subsection 69(2) because the Treasurer was satisfied as mentioned in subsection 69(1A); or
 - (d) made under Division 3;
 at any time if the Treasurer is satisfied that the variation or revocation is not contrary to national security.

Subsection 33(3) of the Acts Interpretation Act not to apply

- (4) Subsection 33(3) of the Acts Interpretation Act 1901 does not apply in relation to a power under this Part to make an order.

79M Registration and commencement of orders

Registration of orders

- (1) An order made by the Treasurer under this Part must be:
 - (a) in writing; and
 - (b) registered on the Federal Register of Legislation within 10 days after it is made.

When an order commences

when an order commences

(2) An order under this Part commences:

- (a) for an order under subsection 67(3) or 79D(3) (additional orders) or section 69 or 79E (disposal orders)—on the day specified in the order that is at least 30 days after the order is registered; and
- (b) for any other order—on the day the order is registered.

79N Actions of more than one kind

If a single action is covered by more than one of the following (because an action is an action of more than one kind):

- (a) the definition of notifiable national security action;
 - (b) paragraph 40(2)(a), (b), (c), (d) or (e);
 - (c) paragraph 41(2)(a), (b) or (c);
 - (d) paragraph 43(a);
 - (e) a provision of regulations made for the purposes of section 44;
 - (f) an action in respect of which the Treasurer has given a notice under subsection 66A(4);
- the Treasurer may make any of the orders under this Part that the Treasurer could make in relation to the single action.

Subdivision B—Variation of notices imposing conditions

79P Variation with consent or without disadvantage

(1) The Treasurer may, subject to subsection (3), vary a notice imposing conditions by:

- (a) revoking a condition; or
- (b) imposing a new condition; or
- (c) varying an existing condition; or
- (d) varying the information specified under section 79H;

if the Treasurer is satisfied that the variation is not contrary to national security.

(2) The variation may be made on the Treasurer's own initiative.

(3) The Treasurer may vary a notice imposing conditions given to a person by imposing a new condition or varying an existing condition only if:

- (a) the person consents to the new condition or the variation; or
- (b) the Treasurer is satisfied that the new condition or variation does not disadvantage the person.

79Q Variation on application

(1) A person given a notice imposing conditions may apply to the Treasurer for a variation of the notice (including after the action specified in the notice is taken).

Note: See also Part 6 (fees) and section 135 (manner and form for notices and applications).

(2) An application for an extension of a period specified in a notice imposing conditions must be made 2 months before the end of the period.

(3) The Treasurer may vary a notice imposing conditions if the Treasurer is satisfied that the variation is not contrary to national security.

Division 5—Treasurer directions

Subdivision A—Directions to persons

79R Treasurer may give direction to person

(1) The Treasurer may make a direction under subsection (3) if any of the following conditions are met:

- (a) the Treasurer has reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention (the relevant contravention) of a provision of this Act;
- (b) the Treasurer has reason to believe that a person will engage in conduct that would constitute a contravention (also the relevant contravention) of a provision of this Act.

(2) If the conditions in either or both of paragraphs (1)(a) and (b) are met in respect of 2 or more relevant contraventions, the direction may relate to any or all of those relevant contraventions.

(3) The Treasurer may direct the person in writing to engage in conduct specified in the direction in order to:

- (a) if paragraph (1)(a) applies—address the relevant contravention; and
- (b) if paragraph (1)(b) applies—prevent the relevant contravention; and
- (c) in any case—prevent a similar or related contravention.

(4) Without limiting the scope of subsection (3), the direction may direct the person to engage in specified conduct:

- (a) during a specified period; or
- (b) by or until a specified time; or
- (c) until a specified condition is met.

(5) Without limiting the scope of subsections (3) and (4), the conduct to be engaged in as specified in the direction may include any of the following:

- (a) to comply with one or more specified provisions of this Act;

- (b) if the relevant contravention relates to one or more conditions in a no objection notification or exemption certificate—to comply with those conditions in the no objection notification or exemption certificate;
 - (c) to engage in specified conduct that is necessary to address or prevent consequences arising from the relevant contravention that the Treasurer is satisfied are contrary to the national interest;
 - (d) to take specified steps that are ancillary to conduct mentioned in the previous paragraphs of this subsection;
 - (e) any other conduct of a kind specified in the regulations.
- (6) Subsection (7) applies if a consequence or possible consequence arising from the relevant contravention is that the composition of the group of senior officers of a corporation is a composition that the Treasurer is satisfied is contrary to the national interest.
- (7) Without limiting the scope of subsections (3) and (4) and paragraph (5)(c), the conduct to be engaged in as specified in the direction may include any of the following, to the extent necessary to address or prevent the consequence or possible consequence mentioned in subsection (6):
- (a) to ensure that specified persons cease to be senior officers of the corporation;
 - (b) to ensure that specified persons do not become senior officers of the corporation;
 - (c) to ensure that specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons) cease to be senior officers of the corporation;
 - (d) to ensure that specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons) do not become senior officers of the corporation;
 - (e) to ensure that a specified proportion of the senior officers of the corporation are not specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons).
- (8) Despite section 46AA of the Acts Interpretation Act 1901, a direction under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (9) A direction under subsection (3) is not a legislative instrument.

79S Publication of directions

- (1) If the Treasurer makes a direction under subsection 79R(3), the Treasurer must ensure that the direction is published on a website maintained by the Department as soon as practicable after it is made.
- (2) If a direction under subsection 79R(3) has not yet been published on a website maintained by the Department, the Treasurer may decide, in writing, that publishing the direction on such a website would be contrary to the national interest.
- (3) If the Treasurer makes a decision under subsection (2) in relation to a direction, subsection (1) does not apply to the direction.
- (4) The direction is not invalid merely because of a failure to comply with subsection (1).

79T When direction takes effect

A direction under subsection 79R(3) takes effect at the later of the following times:

- (a) the time when it is given to the person in respect of which it was made;
- (b) the time specified in the direction as the time when it takes effect.

79U Varying and revoking directions

- (1) The Treasurer may, by notice in writing to the person in respect of which a direction under subsection 79R(3) was made, vary the direction if, at the time of the variation, the Treasurer considers that the variation is appropriate and is not contrary to the national interest.
- (2) The Treasurer may, by notice in writing to the person in respect of which a direction under subsection 79R(3) was made, revoke the direction if, at the time of the revocation, the Treasurer considers that:
 - (a) the direction is no longer appropriate; and
 - (b) revoking the direction is not contrary to the national interest.
- (3) If the Treasurer makes a variation or revocation under this section, the Treasurer must ensure that the variation or revocation is published on a website maintained by the Department as soon as practicable after it is made.
- (4) If a variation or revocation under this section has not yet been published on a website maintained by the Department, the Treasurer may decide, in writing, that publishing the variation or revocation on such a website would be contrary to the national interest.
- (5) If the Treasurer makes a decision under subsection (4) in relation to a direction, subsection (3) does not apply to the variation or revocation.
- (6) The variation or revocation is not invalid merely because of a failure to comply with subsection (3).
- (7) A variation or revocation under this section of a direction takes effect at the later of the following times:
 - (a) the time when it is given to the person in respect of which the direction was made;
 - (b) the time specified in the variation or revocation as the time when it takes effect.

Subdivision B—Interim directions to persons

79V Treasurer may give interim direction to person

(1) The Treasurer may make an interim direction under subsection (3) if:

(a) any of the following conditions are met:

(i) the Treasurer has reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention (the relevant contravention) of a provision of this Act;

(ii) the Treasurer has reason to believe that a person will engage in conduct that would constitute a contravention (also the relevant contravention) of a provision of this Act; and

(b) the Treasurer considers that a delay in making the interim direction would be contrary to the national interest.

(2) If the conditions in either or both of subparagraphs (1)(a)(i) and (ii) are met in respect of 2 or more relevant contraventions, the interim direction may relate to any or all of those relevant contraventions.

(3) The Treasurer may direct the person in writing to engage in conduct specified in the interim direction in order to:

(a) if subparagraph (1)(a)(i) applies—address the relevant contravention; and

(b) if subparagraph (1)(a)(ii) applies—prevent the relevant contravention; and

(c) in any case—prevent a similar or related contravention.

(4) Without limiting the scope of subsection (3), the interim direction may direct the person to engage in specified conduct:

(a) during a specified period; or

(b) by or until a specified time; or

(c) until a specified condition is met.

(5) Without limiting the scope of subsections (3) and (4), the conduct to be engaged in as specified in the interim direction may include any of the following:

(a) to comply with one or more specified provisions of this Act;

(b) if the relevant contravention relates to one or more conditions in a no objection notification or exemption certificate—to comply with those conditions in the no objection notification or exemption certificate;

(c) to engage in specified conduct that is necessary to address or prevent consequences arising from the relevant contravention that the Treasurer is satisfied are contrary to the national interest;

(d) to take specified steps that are ancillary to conduct mentioned in the previous paragraphs of this subsection;

(e) any other conduct of a kind specified in the regulations.

(6) Despite section 46AA of the Acts Interpretation Act 1901, an interim direction under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(7) An interim direction under subsection (3) is not a legislative instrument.

79W When interim direction takes effect

An interim direction under subsection 79V(3) takes effect at the later of the following times:

(a) the time when it is given to the person in respect of which it was made;

(b) the time specified in the interim direction as the time when it takes effect.

79X Expiry of interim direction

(1) Subsection (2) applies if:

(a) the Treasurer makes an interim direction under subsection 79V(3) in respect of a person because a condition in subparagraph 79V(1)(a)(i) or (ii) was met in relation to a relevant contravention of a provision; and

(b) after the day on which the interim direction takes effect, the Treasurer makes a direction under subsection 79R(3) in respect of the person because a condition in paragraph 79R(1)(a) or (b) was met in relation to the relevant contravention.

(2) The interim direction ceases to have effect at the time the direction takes effect.

(3) To avoid doubt, this section does not prevent the Treasurer from revoking the interim direction under section 79Y.

79Y Varying and revoking interim directions

(1) The Treasurer may, by notice in writing to the person in respect of which an interim direction under subsection 79V(3) was made, vary the interim direction if, at the time of the variation, the Treasurer considers that the variation is appropriate and is not contrary to the national interest.

(2) The Treasurer may, by notice in writing to the person in respect of which an interim direction under subsection 79V(3) was made, revoke the interim direction if, at the time of the revocation, the Treasurer considers that:

(a) the interim direction is no longer appropriate; and

(b) revoking the interim direction is not contrary to the national interest.

(3) A variation or revocation under this section of an interim direction takes effect at the later of the following times:

- (a) the time when it is given to the person in respect of which the interim direction was made;
- (b) the time specified in the variation or revocation as the time when it takes effect.

Part 4—Notices required for notifiable actions and notifiable national security actions, and may be given of other actions

80 Simplified outline of this Part

A foreign person must give the Treasurer a notice before taking a notifiable action or notifiable national security action or, if section 18A (increasing percentage of interests without acquiring additional interests in securities) applies, before the end of 30 days after the action is taken.

A foreign person must not take an action during a certain period (unless the person is given a no objection notification or section 18A applies) if:

- (a) the foreign person chooses to notify the Treasurer of the action despite not being required to do so; or
- (b) the foreign person is given a notice by the Treasurer under subsection 66A(4) (actions that may pose a national security concern).

Generally, the period is 40 days from receiving the notice, or up to 90 days from the registration of an interim order. The person may be prevented from taking the action by an order under Part 3.

81 Compulsory notice of notifiable actions and notifiable national security actions

(1) A foreign person who proposes to take a notifiable action or notifiable national security action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)) must give a notice to the Treasurer before taking the action.

(1A) A foreign person who takes a notifiable action or notifiable national security action because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities) must give a notice to the Treasurer before the end of 30 days after the action is taken.

Note: The notice may be given before or after the action is taken.

(2) If a person takes an action by entering an agreement, the notice must deal with each notifiable action or notifiable national security action covered by the agreement.

Note: See also subsections 15(4) and (5) (provisions of agreements that are not currently binding), Parts 5 (offences and civil penalties) and 6 (fees) and section 135 (manner and form for notices and applications).

82 Limitation on taking actions after notice given

(1) This section applies (subject to subsection (3)) in relation to:

(a) a foreign person who gives a notice to the Treasurer stating that any of the following actions are proposed to be taken:

- (i) a significant action (including a significant action that is a notifiable action);
- (ii) a notifiable national security action;
- (iii) a reviewable national security action; or

(b) a foreign person who proposes to take an action in respect of which the Treasurer has given a notice under subsection 66A(4).

Note: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

(2) The foreign person must not take the action before the earliest of the following:

- (a) the day that is 10 days after the end of the decision period mentioned in section 77;
- (b) if an interim order is made—the end of the period specified in the order;
- (c) the day a no objection notification is given to the person.

Note 1: See also Part 5 (offences and civil penalties).

Note 2: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

(3) This section does not apply if the proposed action arises because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities).

Part 5—Offences and civil penalties

Division 1—Simplified outline of this Part

83 Simplified outline of this Part

To ensure that persons comply with their obligations under this Act, this Part provides for a range of enforcement options, including criminal offences and civil penalties.

There are additional civil penalties in relation to residential land. Some of these penalties may be calculated by reference to the market value of, or consideration for, the acquisition of the interest in the residential land or the capital gain from disposing of the interest.

Part 2.4 of the Criminal Code, which among other things extends criminal responsibility to those who attempt to commit an offence or incite another person to commit an offence, applies to offences against this Act. A similar provision for civil penalty provisions is found in section 92 of the Regulatory Powers Act, and applies to civil penalty provisions in this Act.

An officer of a corporation who authorises or permits the corporation to commit an offence or contravene a civil penalty provision may also commit an offence or contravene a civil penalty provision. Similarly, an officer of a corporation may contravene a civil penalty provision by failing to prevent a contravention of the civil penalty provision by the corporation.

The Regulatory Powers Act applies in relation to civil penalty orders, infringement notices, searches and enforceable undertakings under this Act. The Treasurer may give directions if the Treasurer has reason to believe that a person has engaged, or is engaging, in conduct that contravenes, or will contravene, this Act.

A charge on Australian land may apply for unpaid penalties under this Act.

Division 2—Offences

84 Failing to give notice

Failing to give notice—general case

(1) A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the person takes an action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)); and
- (c) the action is a notifiable action or notifiable national security action; and
- (d) a notice is not given under subsection 81(1) in relation to the action before the action is taken.

Note: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

Failing to give notice—increasing percentage of interests without acquiring additional interests in securities

(2) A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the person takes an action because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities); and
- (c) the action is a notifiable action or a notifiable national security action; and
- (d) the person does not give a notice as required by subsection 81(1A) before the end of 30 days after the action is taken.

Note: The notice may be given before or after the action is taken.

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

85 Taking action before end of period

(1) A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the person gives a notice to the Treasurer stating that a significant action (including a significant action that is a notifiable action), a notifiable national security action or a reviewable national security action is proposed to be taken; and
- (c) the person takes the action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)); and
- (d) the action is taken before the day mentioned in section 82; and
- (e) if a change in control is required for the action to be a significant action—there is a change in control as a result of the action.

Note 1: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

Note 2: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

(2) A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the Treasurer gives the person a notice under subsection 66A(4) in relation to an action; and

- (b) the Treasurer gives the person a notice under subsection 69A(4) in relation to an action; and
- (c) at the time the Treasurer gave the notice to the person, the action had not been taken; and
- (d) the person takes the action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)); and
- (e) the action is taken before the day mentioned in section 82; and
- (f) if a change in control is required for the action to be a significant action—there is a change in control as a result of the action.

Note 1: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

Note 2: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

85A Taking action while prohibited by this Act

A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken when prohibited by paragraph 79A(3)(b) or subsection 79A(4).

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

86 Contravening orders under Part 3

A person commits an offence if:

- (a) a person engages in conduct; and
- (b) the conduct contravenes an order made under Part 3.

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

87 Contravening conditions

A person commits an offence if:

- (a) any of the following applies:
 - (i) the person is given a no objection notification under section 74;
 - (ii) the person is given a notice imposing conditions;
 - (iii) the person is specified in an exemption certificate; and
- (b) the notification, notice or certificate includes a condition; and
- (c) the person engages in conduct; and
- (d) the conduct contravenes the condition.

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

88 Failing to advertise new dwellings

(1) A person (the developer) commits an offence if:

- (a) the developer is specified in an exemption certificate given under section 57 in relation to an interest in Australian land on which a new dwelling will be, is being or has been built; and
- (b) the developer disposes of an interest in the dwelling to a foreign person; and
- (c) the certificate includes a condition requiring the sale of the dwelling to be advertised (however described) in Australia; and
- (d) at the time the foreign person acquires the interest, the dwelling has not been advertised in accordance with the condition.

Penalty: Imprisonment for 10 years, or 30,000 penalty units (or 300,000 penalty units if the developer is a corporation), or both.

(2) Paragraph (1)(c) does not limit where the sale of a new dwelling may otherwise be advertised.

88A Contravening directions and interim directions

A person commits an offence if:

- (a) the person has been directed by the Treasurer under subsection 79R(3) or 79V(3); and
- (b) the person engages in conduct; and
- (c) the person does so in contravention of the direction.

Penalty: Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.

Division 3—Civil penalties

Subdivision A—Civil penalties relating to actions generally

89 Contravening orders under Part 3

(1) A person must not contravene an order made under Part 3.

(2) A person who contravenes subsection (1) is liable to a civil penalty.

Penalty

(3) The maximum penalty for the contravention is the lesser of the following:

- (a) 2,500,000 penalty units;

(b) the greater of the following:

- (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
- (ii) the amount worked out under section 98F for the action in relation to which the order was made.

Subdivision B—Civil penalties relating to actions (except in relation to residential land)

90 Application

This Subdivision does not apply in relation to:

- (a) a significant action relating to an interest in residential land; or
- (b) a notifiable action or a notifiable national security action relating to an interest in residential land; or
- (c) a reviewable national security action relating to an interest in residential land.

91 Failing to give notice

Failing to give notice—general case

(1) A foreign person who proposes to take a notifiable action or notifiable national security action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)) must give a notice under subsection 81(1) before taking the action.

Note: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

Failing to give notice—increasing percentage of interests without acquiring additional interests in securities

(2) A foreign person who takes a notifiable action or notifiable national security action because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities) must give a notice to the Treasurer before the end of 30 days after the action is taken.

Note: The notice may be given before or after the action is taken.

Civil penalty provisions

(3) A person who contravenes subsection (1) or (2) is liable to a civil penalty.

(4) The maximum penalty for the contravention is the lesser of the following:

- (a) 2,500,000 penalty units;
- (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the amount worked out under section 98F for the action.

92 Taking action before end of period

(1) A foreign person who proposes to take an action (other than because of the operation of section 18A (increasing percentage of interests without acquiring additional interests in securities)) must not take the action before the day mentioned in section 82 if:

(a) either:

- (i) the person gives a notice to the Treasurer stating that the action is proposed to be taken; or
 - (ii) the action is an action in respect of which the Treasurer has given a notice under subsection 66A(4);
- and
- (b) if a change in control is required for the action to be a significant action—the action would result in a change in control.

Note 1: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

Note 2: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

(2) A person who contravenes subsection (1) is liable to a civil penalty.

Penalty

(3) The maximum penalty for the contravention is the lesser of the following:

- (a) 2,500,000 penalty units;
- (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the amount worked out under section 98F for the action.

92A Taking action while prohibited by this Act

(1) A person must not take an action when prohibited by paragraph 79A(3)(b) or subsection 79A(4).

(2) A person who contravenes subsection (1) is liable to a civil penalty.

Penalty

(3) The maximum penalty for the contravention is the lesser of the following:

- (a) 2,500,000 penalty units;
- (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the amount worked out under section 98F for the action.

93 Contravening conditions

Conditions in no objection notifications

- (1) A person who is given a no objection notification must not contravene a condition specified in the notification that relates to a core Part 3 action.
- (2) A person who contravenes subsection (1) is liable to a civil penalty.
- (3) The maximum penalty for the contravention is the lesser of the following:
 - (a) 2,500,000 penalty units;
 - (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the amount worked out under section 98F for the core Part 3 action.

Conditions in notice imposing conditions

- (4) A person who is given a notice imposing conditions must not contravene a condition specified in the notice that relates to an action.
- (5) A person who contravenes subsection (4) is liable to a civil penalty.
- (6) The maximum penalty for the contravention is the lesser of the following:
 - (a) 2,500,000 penalty units;
 - (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the amount worked out under section 98F for the action.

Conditions in exemption certificates

- (7) A person who is specified in an exemption certificate must not contravene a condition specified in the certificate.

Civil penalty: 5,000 penalty units (or 50,000 penalty units if the person is a corporation).

Subdivision C—Civil penalties relating to residential land

94 Acquisition of interests in residential land

- (1) A foreign person who proposes to take a notifiable action or notifiable national security action that is a residential land acquisition must not take the action if the foreign person has not given a notice relating to the action under section 81.

Note: If a person takes an action by entering an agreement, the action is not taken until the agreement is binding on the person (see subsections 15(4) and (5)).

(2) If:

- (a) a foreign person gives a notice to the Treasurer stating that any of the following actions are proposed to be taken:

- (i) a significant action (including a significant action that is a notifiable action) that is a residential land acquisition;
- (ii) a notifiable national security action that is a residential land acquisition;
- (iii) a reviewable national security action that is a residential land acquisition; or

(b) both:

- (i) a foreign person proposes to take an action that is a residential land acquisition; and
 - (ii) the Treasurer has given a notice under subsection 66A(4) in relation to the action;
- the foreign person must not take the action before the day mentioned in section 82.

- (3) A person who contravenes subsection (1) or (2) is liable to a civil penalty.

Penalty

- (4) The maximum penalty for the contravention is the greatest of the following:
 - (a) double the amount of the capital gain that was made or would be made on the disposal of the interest in the relevant residential land;
 - (b) 50% of the consideration for the residential land acquisition;
 - (c) 50% of the market value of the interest in the relevant residential land.

Note 1: Consideration is defined by the regulations (see section 4).

Note 2: For how to work out the capital gain, see section 98.

95 Acquisition of interests in established dwellings

Temporary residents

- (1) A foreign person who is a temporary resident must not hold an interest in more than one established dwelling at the same time.

Temporary residents—exceptions

- (2) Subsection (1) does not apply if:

- (a) the person is making a genuine attempt to dispose of one or more of the interests; and
- (b) if those interests were disposed of, the person would not contravene subsection (1); and
- (c) the person has been holding an interest in more than one established dwelling for less than 6 months.

- (3) Subsection (1) does not apply in relation to an interest in an established dwelling if, at the time the

interest was acquired by the person:

(a) the dwelling was a new dwelling; or

(b) the person was not prohibited from holding the interest in that dwelling at the same time as holding an interest in another established dwelling.

Note: There is another exception in subsection (5).

Other foreign persons

(4) A foreign person who is not a temporary resident must not acquire an interest in an established dwelling.

General exceptions

(5) Subsections (1), (4) and (8) do not apply in relation to an interest if the interest was, or was of a kind, specified in:

(a) an exemption certificate; or

(b) a no objection notification; or

(c) a notice imposing conditions.

Civil penalties

(6) A person who contravenes subsection (1) or (4) is liable to a civil penalty.

(7) The maximum penalty for a contravention of subsection (1) or (4) is the greatest of the following:

(a) double the amount of the capital gain that was made or would be made on the disposal of the interest mentioned in subsection (8) or (9) (whichever is applicable);

(b) 50% of the consideration for the acquisition of that interest;

(c) 50% of the market value of that interest.

Note: For how to work out the capital gain, see section 98.

(8) If the contravention is a contravention of subsection (1), the interest is:

(a) if at the time of determining the maximum penalty the foreign person still holds an interest in more than one established dwelling—the interest relating to the established dwelling or dwellings that were most recently acquired by the person; and

(b) otherwise—the interest relating to the established dwelling or dwellings that were most recently disposed of by the person.

(9) If the contravention is a contravention of subsection (4), the interest is the interest mentioned in that subsection.

95A Taking action while prohibited by this Act

(1) A person must not take an action relating to a residential land acquisition when prohibited by paragraph 79A(3)(b) or subsection 79A(4).

(2) A person who contravenes subsection (1) is liable to a civil penalty.

Penalty

(3) The maximum penalty for the contravention is the greatest of the following:

(a) double the amount of the capital gain that was made or would be made on the disposal of the interest in the relevant residential land;

(b) 50% of the consideration for the residential land acquisition;

(c) 50% of the market value of the interest in the relevant residential land.

Note 1: Consideration is defined by the regulations (see section 4).

Note 2: For how to work out the capital gain, see section 98.

96 Contravening conditions in relation to residential land

Conditions in no objection notifications

(1) A person who is given a no objection notification under section 74 (no objection notification imposing conditions) relating to a residential land acquisition must not contravene a condition (except a condition mentioned in section 97) specified in the notification.

Note: Examples of conditions that may be included in a no objection notification under section 74 are:

(a) a condition requiring a temporary resident to sell an established dwelling when the dwelling ceases to be the temporary resident's principal place of residence; and

(b) a condition prohibiting a temporary resident from leasing an established dwelling; and

(c) a condition requiring a purchaser of vacant land to begin to build a dwelling before a particular time.

Conditions in notice imposing conditions

(1A) A person who is given a notice imposing conditions relating to a residential land acquisition must not contravene a condition (except a condition mentioned in section 97) specified in the notice.

Conditions in exemption certificates

(2) A person who is specified in an exemption certificate relating to an interest in residential land must not contravene a condition (other than a condition mentioned in section 97) specified in the certificate.

Civil penalty provisions

(3) A person who contravenes subsection (1), (1A) or (2) is liable to a civil penalty.

(4) The maximum penalty for the contravention is the greatest of the following:

(a) double the amount of the capital gain that was made or would be made on the disposal of the

interest in the relevant residential land;

(b) 50% of the consideration for the acquisition of that interest;

(c) 50% of the market value of that interest.

Note: For how to work out the capital gain, see section 98.

97 Persons contravening conditions

Conditions in no objection notifications

(1) A person who is given a no objection notification under section 74 (no objection notification imposing conditions) relating to a residential land acquisition must not contravene a condition specified in the notification requiring:

(a) the person to give a notice to the Treasurer when the person acquires or disposes of the interest in the relevant residential land; or

(b) the sale of a dwelling on the relevant residential land to be advertised (however described) in Australia.

Civil penalty: 500 penalty units.

Conditions in notice imposing conditions

(1A) A person who is given a notice imposing conditions relating to a residential land acquisition must not contravene a condition specified in the notice requiring:

(a) the person to give a notice to the Treasurer when the person acquires or disposes of the interest in the relevant residential land; or

(b) the sale of a dwelling on the relevant residential land to be advertised (however described) in Australia.

Civil penalty: 500 penalty units.

Conditions in exemption certificates

(2) A person who is specified in an exemption certificate relating to residential land must not contravene a condition specified in the certificate requiring:

(a) the person to give a notice to the Treasurer when the person acquires or disposes of the interest in the residential land; or

(b) the sale of a dwelling on the residential land to be advertised (however described) in Australia.

Civil penalty: 500 penalty units.

98 Working out capital gains

For the purposes of this Subdivision, the amount of the capital gain that was made or would be made on the disposal by a person (the offender) of an interest to another person (the third party) is the higher of the following amounts:

(a) if an agreement has been entered into in relation to disposing of the interest to the third party—the difference between:

(i) the consideration for the acquisition by the third party; and

(ii) the amount for which the offender purchased the interest;

(b) in any case—the difference between:

(i) the market value of the interest; and

(ii) the amount for which the offender purchased the interest.

Subdivision D—Other civil penalties

98A Contravening directions and interim directions

(1) A person contravenes this subsection if:

(a) the person:

(i) has been directed by the Treasurer under subsection 79R(3) in relation to a relevant contravention as mentioned in subsection 79R(1); or

(ii) has been directed by the Treasurer under subsection 79V(3) in relation to a relevant contravention as mentioned in subsection 79V(1); and

(b) the provision to which the relevant contravention relates is a civil penalty provision; and

(c) the person engages in conduct; and

(d) the person does so in contravention of the direction.

(2) A person who contravenes subsection (1) is liable to a civil penalty.

(3) The maximum penalty for the contravention is:

(a) unless paragraph (b) applies—5,000 penalty units; or

(b) if the person is a corporation—50,000 penalty units.

98B False or misleading information and documents

Information or documents relevant to no objection notification

(1) A person contravenes this subsection if:

(a) the person is given a no objection notification, or is specified in a no objection notification; and

(b) before the no objection notification was given, the person gave the Treasurer information that was or documents that were:

- (i) relevant to the no objection notification; and
 - (ii) relevant to one or more core Part 3 actions to which the no objection notification relates; and
 - (c) the information was or the documents were false or misleading in a material particular.
- (2) A person who contravenes subsection (1) is liable to a civil penalty.
- (3) The maximum penalty for the contravention is the lesser of the following:
- (a) 2,500,000 penalty units;
 - (b) the greater of the following:
 - (i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);
 - (ii) the sum of the amounts worked out under section 98F for each of the core Part 3 actions mentioned in subparagraph (1)(b)(ii).

Information or documents relevant to exemption certificate

(4) A person contravenes this subsection if:

- (a) an exemption certificate relates to a person; and
- (b) before the exemption certificate was given, the person gave the Treasurer information that was or documents that were:

- (i) relevant to the exemption certificate; and
- (ii) relevant to one or more exempt core Part 3 actions to which the exemption certificate relates; and
- (c) the information was or the documents were false or misleading in a material particular.

(5) A person who contravenes subsection (4) is liable to a civil penalty.

(6) The maximum penalty for the contravention is:

- (a) unless paragraph (b) applies—5,000 penalty units; or
- (b) if the person is a corporation—50,000 penalty units.

Information or documents may be false or misleading by omission

(7) To avoid doubt, for the purposes of this section, information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

98C Failure to notify Treasurer of taking of action specified in no objection notification

(1) Subsection (2) applies if:

- (a) a person:
 - (i) is given a no objection notification specifying one or more core Part 3 actions; or
 - (ii) is specified in a no objection notification specifying one or more core Part 3 actions; and
- (b) the person takes one of those core Part 3 actions; and
- (c) if regulations made for the purposes of this paragraph specify requirements—those requirements are met.

(2) The person must give the Treasurer a notice in accordance with subsection (3) no later than 30 days after the latest of the following days:

- (a) the day on which the person took the core Part 3 action;
- (b) the day on which the no objection notice was given;
- (c) if the core Part 3 action is the acquisition of an interest in a security, asset, trust or Australian land, and section 15 applies in relation to the acquisition—the day on which the person acquired the interest in a security, asset, trust or Australian land (disregarding section 15).

Civil penalty: 250 penalty units.

(3) The notice must:

- (a) describe the core Part 3 action; and
- (b) state the day on which it was taken; and
- (c) meet any other requirements specified in regulations made for the purposes of this paragraph.

98D Failure to notify taking of action related to exemption certificate

(1) Subsection (2) applies if:

- (a) an exemption certificate relates to one or more exempt core Part 3 actions; and
- (b) the person to whom the exemption certificate relates takes one of those exempt core Part 3 actions; and
- (c) if regulations made for the purposes of this paragraph specified requirements—those requirements are met.

(2) The person must give the Treasurer a notice in accordance with subsection (3) no later than 30 days after the latest of the following days:

- (a) the day on which the person took the exempt core Part 3 action;
- (b) if the exempt core Part 3 action is the acquisition of an interest in a security, asset, trust or Australian land, and section 15 applies in relation to the acquisition—the day on which the person acquired the interest in a security, asset, trust or Australian land (disregarding section 15).

Civil penalty: 250 penalty units.

(3) The notice must:

- (a) describe the exempt core Part 3 action; and
- (b) state the day on which it was taken; and

(c) meet any other requirements specified in regulations made for the purposes of this paragraph.

98E Failure to notify Treasurer of situations following core Part 3 action

(1) Subsection (2) applies if:

(a) any of the following conditions are satisfied:

- (i) a person is given a no objection notification specifying one or more core Part 3 actions;
 - (ii) a person is specified in a no objection notification specifying one or more core Part 3 actions;
 - (iii) an exemption certificate relating to a person relates to one or more exempt core Part 3 actions; and
- (b) the person takes one of those core Part 3 actions or exempt core Part 3 actions; and
- (c) a situation mentioned in subsection (2) arises after the person takes that core Part 3 action or exempt core Part 3 action; and

(d) if that situation is the situation mentioned in paragraph (2)(a)—the person becomes aware, or ought reasonably to have become aware, of the situation; and

(e) if regulations made for the purposes of this paragraph specify requirements—those requirements are met.

(2) The situations are as follows:

(a) if none of the following paragraphs apply—there is a change in control of the entity or business to which the core Part 3 action or exempt core Part 3 action relates;

(b) if the core Part 3 action or exempt core Part 3 action is an acquisition of a direct interest in an Australian entity—the person ceases to have a direct interest in the Australian entity;

(c) if the core Part 3 action or exempt core Part 3 action is an acquisition of an interest of any percentage in an entity or a business—the person starts to hold an interest of a percentage in the entity or business that is equal to or less than the interest of the percentage that the person held in the entity or business immediately before the acquisition;

(d) if the core Part 3 action or exempt core Part 3 action is an acquisition of an interest in Australian land—the person ceases to hold all or part of that interest;

(e) if the core Part 3 action or exempt core Part 3 action is an action specified in regulations made for the purposes of section 44 and the regulations specify one or more situations for the significant action for the purposes of this paragraph—any of those situations cease to exist;

(f) if the core Part 3 action or exempt core Part 3 action is an action specified in regulations made for the purposes of section 44 and paragraph (e) of this subsection does not apply:

(i) if the core Part 3 action or exempt core Part 3 action relates to acquiring an interest of at least a certain percentage in an entity or business—the person ceases to have an interest of at least that percentage in the entity or business; or

(ii) if the core Part 3 action or exempt core Part 3 action relates to acquiring a direct interest in an entity or business—the person ceases to have a direct interest in the entity or business; or

(iii) if the core Part 3 action or exempt core Part 3 action relates to starting a business—the person ceases to carry on the business; or

(iv) if the core Part 3 action or exempt core Part 3 action relates to acquiring an interest in a tenement—the person ceases to hold all or part of that interest; or

(v) if the core Part 3 action or exempt core Part 3 action relates to acquiring an interest of at least a certain percentage of the securities of an entity—the person ceases to have an interest of at least that percentage of the securities of the entity.

(3) The person must give the Treasurer a notice in accordance with subsection (4) no later than 30 days after the later of the following days:

(a) the day on which the situation mentioned in subsection (2) arose;

(b) the day on which the no objection notice or exemption certificate was given.

Civil penalty: 250 penalty units.

(4) The notice must:

(a) describe the core Part 3 action or exempt core Part 3 action; and

(b) state the day on which it was taken; and

(c) describe the situation mentioned in subsection (2) that arose; and

(d) state the day on which it arose; and

(e) meet any other requirements specified in regulations made for the purposes of this paragraph.

Subdivision E—Miscellaneous

98F Civil penalty amounts for penalty provision based on value

(1) For the purpose of working out the maximum penalty for a contravention of a civil penalty provision, the amount under this section for an action is 75% of the amount determined under subsection (3) for the action.

(2) For the purposes of subsection (1), if the relevant civil penalty provision is subsection 98B(1), treat the amount determined under subsection (3) of this section for the action as being the sum of the amounts determined under subsection (3) of this section for each of the core Part 3 actions mentioned

in subparagraph 98B(1)(b)(ii).

(3) For the purposes of subsection (1), the amount for the action is:

(a) the value for the action worked out under the following table; or

(b) if no item of the table applies to the action:

(i) where the action is an acquisition—the value of the consideration for the acquisition; or

(ii) otherwise—the market value of the benefit obtained by the action.

Amount for actions (Table)[Omitted]

(4) In applying the table in subsection (3), disregard the effect of any exemption certificate.

(5) If the action is covered by more than one item of the table in subsection (3), treat the value of the action worked out according to that table as being the greatest of the amounts worked out under those items.

(6) For the purposes of this section:

(a) if there is no consideration for a thing—treat the value of the consideration for the thing as nil; and

(b) if the market value of a thing cannot be ascertained—treat the market value of the thing as nil.

Division 4—Miscellaneous

Subdivision A—Application of the Regulatory Powers

Act—Civil penalty provisions

99 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act:

(a) each of the Treasurer and the Commissioner of Taxation is an authorised applicant in relation to the civil penalty provisions of this Act (other than section 130ZV); and

(b) each of the Treasurer, the Commissioner of Taxation and the Registrar is an authorised applicant in relation to section 130ZV.

(2A) The Treasurer may, in writing, delegate to:

(a) the Secretary; or

(b) an SES employee, or acting SES employee, in the Department;

the Treasurer's powers and functions under Part 4 of the Regulatory Powers Act as an authorised applicant in relation to the civil penalty provisions of this Act.

(2B) The Commissioner of Taxation may, in writing, delegate to an SES employee, or acting SES employee, in the Australian Taxation Office the Commissioner's powers and functions under Part 4 of the Regulatory Powers Act as an authorised applicant in relation to the civil penalty provisions of this Act.

(2BA) The Registrar may, in writing, delegate to:

(a) any person to whom the Registrar may delegate any of the Registrar's other functions, as a kind of body or person mentioned in the definition of eligible Registrar appointee in section 4, under a law of the Commonwealth; or

(b) any person of a kind prescribed by the regulations;

the Registrar's powers and functions under Part 4 of the Regulatory Powers Act as an authorised applicant in relation to the civil penalty provisions of this Act.

(2C) In exercising powers or performing functions delegated under subsection (2A), (2B) or (2BA), a delegate must comply with any directions of the delegator.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

(a) the Federal Court of Australia;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a Supreme Court of a State or Territory.

Maximum penalties

(4) Subsection 82(5) of the Regulatory Powers Act does not apply in relation to the following provisions of this Act:

(a) section 89 (contravening orders under Part 3);

(b) section 91 (failing to give notice);

(c) section 92 (taking action before end of period);

(d) section 92A (taking action while prohibited by this Act);

(e) section 92B (contravening conditions).

- (e) section 93 (contravening conditions);
- (f) section 94 (acquisition of interests in residential land);
- (g) section 95 (acquisition of interests in established dwellings);
- (h) section 95A (taking action while prohibited by this Act);
- (i) section 96 (contravening conditions in relation to residential land);
- (j) section 98A (contravening directions and interim directions);
- (k) section 98B (false or misleading information and documents);
- (l) subsection 102(2) (liability of officers of corporations authorising or permitting contraventions);
- (m) section 103 (civil penalties for officers of corporations failing to prevent contraventions).

Extension to external Territories

(5) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Subdivision AA—Application of the Regulatory Powers Act—Infringement notices

100 Infringement notices

Provisions subject to an infringement notice

(1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

- (a) the provisions of Division 3 (civil penalties);
- (b) subsection 115D(1) (vacancy fee liability—vacancy fee return);
- (ba) subsection 115DA(1) (vacancy fee liability—false or misleading vacancy fee return);
- (c) subsection 115G(1) (vacancy fee liability—requirement to keep records);
- (d) section 130ZV (civil penalty for failing to give notice to Registrar).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act:

- (a) a person appointed under subsection (3) is an infringement officer in relation to the provisions mentioned in subsection (1) (including section 130ZV); and
 - (b) a person appointed under subsection (3A) is an infringement officer in relation to section 130ZV.
- (3) The Secretary may, in writing, appoint a person who holds, or performs the duties of, an APS 6 position, or an equivalent or higher position, within the Department or the Australian Taxation Office.
- (3A) The Registrar may, in writing, appoint a person of a kind prescribed by the regulations.

Relevant chief executive

(4) For the purposes of Part 5 of the Regulatory Powers Act:

- (a) each of the Secretary and the Commissioner of Taxation is the relevant chief executive in relation to the provisions mentioned in subsection (1) (other than section 130ZV); and
- (b) each of the Secretary, the Commissioner of Taxation and the Registrar is the relevant chief executive in relation to section 130ZV.

(4A) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).

(4B) The Commissioner of Taxation may, in writing, delegate to an SES employee, or acting SES employee, in the Australian Taxation Office the Commissioner's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).

(4BA) The Registrar may, in writing, delegate to:

- (a) any person to whom the Registrar may delegate any of the Registrar's other functions, as a kind of body or person mentioned in the definition of eligible Registrar appointee in section 4, under a law of the Commonwealth; or
- (b) any person of a kind prescribed by the regulations;

the Registrar's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).

(4C) In exercising powers or performing functions delegated under subsection (4A), (4B) or (4BA), a delegate must comply with any directions of the delegator.

(5) Subparagraphs 104(1)(e)(ii) and (iii), and subsections 104(2) and (3), of the Regulatory Powers Act do not apply in relation to an infringement notice given in relation to an alleged contravention of:

(a) for subparagraphs 104(1)(e)(ii) and (iii) of the Regulatory Powers Act—the following provisions of this Act:

- (i) subsection 89(1) (contravening orders under Part 3);
- (ii) subsections 91(1) and (2) (failing to give notice):

- (iii) subsection 92(1) (taking action before end of period);
 - (iv) section 92A (taking action while prohibited by this Act);
 - (v) subsections 93(1), (4) and (7) (contravening conditions);
 - (vi) section 94 (acquisition of interests in residential land);
 - (vii) section 95 (acquisition of interests in established dwellings);
 - (viii) section 96 (contravening conditions in relation to residential land);
 - (ix) section 98A (contravening directions and interim directions);
 - (x) section 98B (false or misleading information and documents);
 - (xi) sections 98C, 98D and 98E (failure to notify);
 - (xii) subsection 115DA(1) (vacancy fee liability—false or misleading vacancy fee return); and
 - (b) for subsection 104(2) or (3) of the Regulatory Powers Act—the provisions mentioned in paragraphs (1)(a), (b), (ba), (c) and (d) of this section.
- (6) The amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for the alleged contravention of a civil penalty provision mentioned in subsection (1) of this section is:
- (a) for a tier 1 infringement notice (see subsection 101(1)):
 - (i) given to an individual—12 penalty units; and
 - (ii) given to a corporation—60 penalty units; and
 - (b) for a tier 2 infringement notice (see subsection 101(2)):
 - (i) given to an individual—60 penalty units; and
 - (ii) given to a corporation—300 penalty units; and
 - (c) for a tier 3 infringement notice (see subsection 101(4)):
 - (i) given to an individual—300 penalty units; and
 - (ii) given to a corporation—1,500 penalty units.

Extension to external Territories

(7) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

101 Meanings of tier 1 infringement notice, tier 2 infringement notice and tier 3 infringement notice

(1) An infringement notice is a tier 1 infringement notice if:

- (a) the notice relates to an alleged contravention by a person of a civil penalty provision of this Act; and
- (b) the person:
 - (i) unless subparagraph (ii) applies—notified (for the purposes of this Act) the Treasurer (or the Commissioner of Taxation on behalf of the Treasurer) of conduct that was the same, or substantially the same, as the conduct constituting the alleged contravention; or
 - (ii) if the civil penalty provision is section 130ZV—notified (for the purposes of this Act) the Treasurer, the Commissioner of Taxation on behalf of the Treasurer or the Registrar of conduct that was the same, or substantially the same, as the conduct constituting the alleged contravention; and
- (c) at the time when the person made that notification, the Commonwealth had not yet indicated to the person, in writing, that the Commonwealth was considering investigating the conduct constituting the alleged contravention.

(1A) For the purposes of paragraph (1)(c), treat the Commonwealth as having indicated to the person, in writing, that the Commonwealth was considering investigating the conduct constituting the alleged contravention if the Commonwealth gave the person any of the following:

- (a) a notice in writing requiring or inviting the person to show cause why the Commonwealth should not investigate that conduct;
- (b) a notice in writing indicating that the Commonwealth might issue an infringement notice in relation to that conduct;
- (c) any other similar notice in writing.

(2) An infringement notice is a tier 2 infringement notice if:

- (a) the notice relates to an alleged contravention by a person of a civil penalty provision of this Act; and
- (b) subsection (1) does not apply in relation to the person and the conduct constituting the alleged contravention; and
- (c) any of the following apply:

- (i) the civil penalty provision is a provision covered by subsection (3);
- (ii) if the civil penalty provision is not subsection 95(1) or (4)—the requirement in subsection 101AA(1) is met in relation to the alleged contravention;
- (iii) if the civil penalty provision is subsection 95(1) or (4)—the requirement in subsection 101AA(6) is met in relation to the alleged contravention.

(3) For the purposes of subparagraph (2)(c)(i), this subsection covers the following provisions:

- (a) subsections 97(1), (1A) and (2);
- (b) sections 98A, 98C, 98D and 98E;
- (c) subsections 115D(1), 115DA(1) and 115E(1).

(c) subsections 110B(1), 110BA(1) and 110B(1),

(d) section 130ZV.

(4) An infringement notice is a tier 3 infringement notice if:

(a) the notice relates to an alleged contravention by a person of a civil penalty provision of this Act; and

(b) subsections (1) and (2) do not apply in relation to the person and the conduct constituting the alleged contravention.

(5) Despite subsections (2) and (4), an infringement notice is a tier 2 infringement notice (and is not a tier 3 infringement notice) if:

(a) apart from this subsection, the infringement notice would be a tier 3 infringement notice; and

(b) the Treasurer has decided that the infringement notice is covered by subsection (6).

(6) The Treasurer may decide that an infringement notice is covered by this subsection if:

(a) the infringement notice has not yet been given to the person; and

(b) the Treasurer considers that it is appropriate for the infringement notice to be covered by this subsection, having regard to the matters set out in subsection (7).

(7) For the purposes of paragraph (6)(b), the matters are as follows:

(a) the conduct of the person after the alleged contravention, including:

(i) the nature of the steps (if any) that the person has taken to address the alleged contravention; and

(ii) the extent (if any) to which the person has cooperated with the Treasurer and the Commissioner of Taxation to address the alleged contravention;

(b) whether the infringement notice being covered by subsection (6) would not be contrary to the national interest.

101AA Threshold for distinction between tier 2 infringement notices and tier 3 infringement notices

(1) The requirement in this subsection is met in relation to the alleged contravention if the value of the action to which the contravention relates, determined under subsection (3), falls short of:

(a) if the civil penalty provision is subsection 89(1):

(i) if that action is an acquisition of an interest in Australian land, and the Australian land is residential land—\$5,000,000; or

(ii) otherwise—\$275,000,000; or

(b) if the civil penalty provision is subsection 98B(1) or (4):

(i) if any of the core Part 3 actions or exempt core Part 3 actions mentioned in subparagraph

98B(1)(b)(ii) or 98B(4)(b)(ii) is an acquisition of an interest in Australian land, and the Australian land is residential land—\$5,000,000; or

(ii) otherwise—\$275,000,000; or

(c) if the civil penalty provision is subsection 91(1) or (2), section 92 or 92A or subsection 93(1), (4) or (7)—\$275,000,000; or

(d) otherwise—\$5,000,000.

(2) For the purposes of subsection (1), if the civil penalty provision is subsection 98B(1) or (4), treat the value of the action to which the contravention relates, determined under subsection (3) of this section, as being the sum of the values, determined under subsection (3) of this section, for each of the core Part 3 actions or exempt core Part 3 actions mentioned in subparagraph 98B(1)(b)(ii) or 98B(4)(b)(ii).

(3) For the purposes of subsection (1), the value of the action is:

(a) the value for the action worked out under the following table; or

(b) if no item of the table applies to the action:

(i) where the action is an acquisition—the value of the consideration for the acquisition; or

(ii) otherwise—the market value of the benefit obtained by the action.

Values of actions (Table)[Omitted]

(4) In applying the table in subsection (3), disregard the effect of any exemption certificate.

(5) If the action to which the contravention relates is covered by more than one item of the table in subsection (3), treat the value of the action worked out according to that table as being the greatest of the amounts worked out under those items.

(6) The requirement in this subsection is met in relation to the alleged contravention if:

(a) where the civil penalty provision is subsection 95(1)—the total of the market values of the interests referred to in that subsection falls short of \$5,000,000; or

(b) where the civil penalty provision is subsection 95(4)—the greater of:

(i) the value of the consideration for the acquisition referred to in that subsection; and

(ii) the market value of the interest referred to in that subsection;
falls short of \$5,000,000.

(7) The amounts mentioned in paragraphs (1)(a), (b) and (c) and (6)(a) and (b) may be indexed in accordance with regulations made for the purposes of subsection 139(2).

(8) For the purposes of this section:

(a) if there is no consideration for a thing—treat the value of the consideration for the thing as nil; and

(b) if the market value of a thing cannot be ascertained—treat the market value of the thing as nil.

Subdivision AB—Application of the Regulatory Powers Act—Monitoring powers

101A Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

- (a) a provision of this Act; or
- (b) an offence provision of the Crimes Act 1914 or the Criminal Code, to the extent that it relates to this Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Note 2: Some provisions of this Act are taxation laws for the purposes of the Taxation Administration Act 1953 (see subsection 115B(2) and section 138). For provisions dealing with the Commissioner of Taxation's powers to obtain information and evidence in relation to taxation laws, see Division 353 in Schedule 1 to that Act.

Information subject to monitoring

(2) Information given in compliance or purported compliance with this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, each of the following provisions is related to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) an offence provision, or a civil penalty provision, of the Taxation Administration Act 1953;
- (b) an offence provision, or a civil penalty provision, of the Corporations Act 2001.

Authorised applicant

(4) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) the Secretary;
- (b) an authorised officer.

Authorised person

(5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

(6) For the purposes of Part 2 of the Regulatory Powers Act, a person is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2) if:

- (a) the person is:
 - (i) a magistrate; or
 - (ii) a Judge of a court of a State or Territory; or
 - (iii) a Judge of the Federal Circuit and Family Court of Australia (Division 2) or of the Federal Court of Australia; and
- (b) if subparagraph (a)(iii) applies:
 - (i) the Minister has, in writing, nominated the person to be such an issuing officer; and
 - (ii) the person has consented to be such an issuing officer and the consent is in force.

Relevant chief executive

(7) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Relevant court

(8) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(9) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Extension to external Territories

Extension to external Territories

(10) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

Subdivision AC—Application of the Regulatory Powers Act—Investigation powers

101B Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

- (a) an offence provision of this Act; or
- (b) a civil penalty provision of this Act; or
- (c) an offence provision of the Crimes Act 1914 or the Criminal Code, to the extent that it relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):

- (a) an offence provision, or a civil penalty provision, of the Taxation Administration Act 1953;
- (b) an offence provision, or a civil penalty provision, of the Corporations Act 2001.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1):

- (a) the Secretary;
- (b) an authorised officer.

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(5) For the purposes of Part 3 of the Regulatory Powers Act, a person is an issuing officer in relation to evidential material that relates to the provisions mentioned in subsection (1) if:

- (a) the person is:
 - (i) a magistrate; or
 - (ii) a Judge of a court of a State or Territory; or
 - (iii) a Judge of the Federal Circuit and Family Court of Australia (Division 2) or of the Federal Court of Australia; and
- (b) if subparagraph (a)(iii) applies:
 - (i) the Minister has, in writing, nominated the person to be such an issuing officer; and
 - (ii) the person has consented to be such an issuing officer and the consent is in force.

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant court

(7) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(8) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories

(9) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

Subdivision AD—Application of the Regulatory Powers Act—Enforceable undertakings

101C Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Treasurer is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

(4) Part 6 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

101D Publication of undertakings

(1) If the Treasurer accepts an undertaking in relation to a provision mentioned in subsection 101C(1), the Treasurer must ensure that the undertaking is published on a website maintained by the Department as soon as practicable after it is accepted.

(2) If an undertaking has not yet been published on a website maintained by the Department, the Treasurer may decide, in writing, that publishing the undertaking on such a website would be contrary to the national interest.

(3) If the Treasurer makes a decision under subsection (2) in relation to an undertaking, subsection (1) does not apply to the undertaking.

(4) A failure to comply with subsection (1) in relation to an undertaking does not affect the enforceability of the undertaking under Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions of this Act.

Subdivision AE—Application of the Regulatory Powers Act—Miscellaneous

101E Appointment of authorised officers

(1) The Secretary may, in writing, appoint a person who is an APS employee who holds or performs the duties of an APS Level 6 position, or an equivalent or higher position, in the Department as an authorised officer for the purposes of this Division.

(2) The Secretary must not appoint a person as an authorised officer under subsection (1) unless the Secretary is satisfied that the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised officer.

(3) An authorised officer must, in performing the authorised officer's functions or exercising the authorised officer's powers, comply with any directions of the Secretary.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

101F Delegation of certain powers and functions under the Regulatory Powers Act

Scope of this section

(1) This section applies in relation to powers (relevant powers) and functions (relevant functions) under the following provisions of the Regulatory Powers Act (as it applies in relation to this Act):

- (a) Part 2 (monitoring powers);
- (b) Part 3 (investigation powers);
- (c) Part 6 (enforceable undertakings).

Note: Sections 99 and 100 deal with the delegation of powers and functions under Part 4 (civil penalty provisions) and Part 5 (infringement notices) of the Regulatory Powers Act (as it applies in relation to this Act).

Delegations by Treasurer

(2) The Treasurer may, in writing, delegate a relevant power or relevant function of the Treasurer to any of the following:

- (a) the Secretary;
- (b) an SES employee, or acting SES employee, in the Department;
- (c) the Commissioner of Taxation.

Note: For the effect of a delegation to the Commissioner of Taxation, see section 138.

Delegations by Secretary

(3) The Secretary may, in writing, delegate a relevant power or relevant function of the Secretary to any of the following:

- (a) an SES employee, or acting SES employee, in the Department;
- (b) the Commissioner of Taxation.

Note: For the effect of a delegation to the Commissioner of Taxation, see section 138.

Note: For the effect of a delegation to the Commissioner of Taxation, see section 138.

(4) However, subsection (3) does not apply in relation to the powers and functions of the Secretary as an authorised applicant under Part 2 or 3 of the Regulatory Powers Act (as it applies in relation to this Act).

Subdelegations by Commissioner of Taxation

(5) If a power or function is delegated to the Commissioner of Taxation under this section, the Commissioner may, in writing, subdelegate the power or function to an SES employee, or acting SES employee, in the Australian Taxation Office.

(6) Sections 34AA, 34AB and 34A of the Acts Interpretation Act 1901 apply in relation to the subdelegation in a way corresponding to the way in which they apply in relation to a delegation.

Directions

(7) In exercising powers or performing functions delegated or subdelegated by a person under this section, the delegate or subdelegate must comply with any directions of the person.

Delegations in relation to specified kinds of matters

(8) Without limiting this section or subsection 33(3A) of the Acts Interpretation Act 1901, a power or function may be delegated or subdelegated generally or only in relation to specified kinds of matters.

Subdivision B—Liability of officers of corporations

102 Liability of officers of corporations authorising or permitting contraventions

Offences authorised or permitted by officers

(1) A person commits an offence if:

- (a) the person is an officer of a corporation; and
- (b) the corporation is convicted of an offence against this Act; and
- (c) the person authorised or permitted the commission of the offence by the corporation.

Note: An officer may also be liable to an offence as a result of Part 2.4 of the Criminal Code (extensions of criminal responsibility).

Contraventions of civil penalty provisions authorised or permitted by officers

(2) An officer of a corporation is liable to a civil penalty if:

- (a) a civil penalty order under the Regulatory Powers Act is made against the corporation in relation to a contravention of a civil penalty provision of this Act; and
- (b) the officer authorised or permitted the contravention of the civil penalty provision by the corporation.

Note: An officer may also be liable to a civil penalty as a result of section 92 of the Regulatory Powers Act (ancillary contravention of civil penalty provisions).

Maximum penalty

(3) The maximum penalty for a contravention of subsection (1) or (2) is the maximum penalty that would apply if the officer had committed the offence mentioned in paragraph (1)(b) or contravened the civil penalty provision mentioned in paragraph (2)(a).

103 Civil penalties for officers of corporations failing to prevent contraventions

(1) An officer of a corporation is liable to a civil penalty if:

- (a) the corporation contravenes a civil penalty provision of this Act; and
- (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention.

(2) The officer was reckless as to whether the contravention would occur if:

- (a) the officer was aware of a substantial risk that the contravention would occur; and
- (b) having regard to the circumstances known to the officer, it was unjustifiable to take the risk.

(3) The officer was negligent as to whether the contravention would occur if the officer's conduct involved:

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the contravention would occur; that the conduct merits the imposition of a pecuniary penalty.

Reasonable steps to prevent contravention

(4) Without limiting this section, in determining whether an officer of a corporation failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:

(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

(i) that the corporation arranges regular professional assessments of the corporation's compliance with civil penalty provisions;

(ii) that the corporation implements any appropriate recommendations arising from such an assessment;

(iii) that the corporation's employees, agents and contractors have a reasonable knowledge and

(iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and

(b) what action (if any) the officer took when he or she became aware of the contravention.

Maximum penalty

(5) The maximum penalty for the contravention of subsection (1) is the maximum penalty that would apply if the officer had contravened the civil penalty provision mentioned in paragraph (1)(a).

Subdivision C—Recovering unpaid penalties

104 Creation of charge on land

(1) This section applies in relation to land if:

(a) a court finds that a person has contravened Division 3 of this Part (civil penalties); and

(b) a pecuniary penalty is imposed on the person in relation to the contravention; and

(c) the person has an interest in Australian land covered by subsection (2) that can be registered on a land register; and

(d) either:

(i) the contravention relates to the acquisition of the interest in the land; or

(ii) the Treasurer makes a declaration under section 105 that this section applies in relation to the land.

Note: Subsection (5) contains an exception to this section (proceeds of crime orders).

Kinds of interests covered by this subsection

(2) The interest in Australian land is either:

(a) an interest under a long term lease; or

(b) any other legal or equitable interest (within the ordinary meaning of the term) in Australian land, except:

(i) an interest under a lease (except a long term lease); or

(ii) an interest under a licence; or

(iii) an interest in a mining or production tenement; or

(iv) an interest in an easement; or

(v) an interest giving a right (known as a *profit à prendre*) to take something off another person's land, or to take something out of the soil of that land; or

(vi) an interest held on trust for another person; or

(vii) an interest of a kind prescribed by the regulations.

Creation of charge

(3) A charge is created on land to which this section applies to secure the payment of the penalty.

(4) The charge is created at the time:

(a) if subparagraph (1)(d)(i) applies—the penalty is imposed; or

(b) if subparagraph (1)(d)(ii) applies—the declaration comes into force.

Exception in relation to proceeds of crime orders

(5) This section does not apply if at the time mentioned in subsection (4):

(a) a restraining order is in force in relation to the land under Part 2□1 of the Proceeds of Crime Act 2002; or

(b) a forfeiture order is in force in relation to the land under Part 2□2 of that Act; or

(c) an order (however described) of a kind prescribed by the regulations is in force in relation to the land under a law of the Commonwealth, a State or a Territory.

105 Treasurer's declaration relating to charge

Contravention that does not relate to acquisitions of interests in land

(1) The Treasurer may declare, in writing, that section 104 applies in relation to Australian land in which a person has an interest if:

(a) paragraphs 104(1)(a) to (c) apply to the person; and

(b) the contravention mentioned in paragraph 104(1)(a) does not relate to the acquisition of the interest in the land; and

(c) the Treasurer is satisfied that the declaration is necessary to secure the payment of the penalty mentioned in paragraph 104(1)(b).

Treasurer's declaration—extending land to which charge applies

(2) The Treasurer may declare, in writing, that section 104 applies in relation to Australian land (the additional land) in which a person has an interest if:

(a) a charge is created under section 104 on other Australian land in which the person has an interest; and

(b) subparagraph 104(1)(d)(i) applies in relation to the charge; and

(c) the Treasurer is satisfied that the declaration in relation to the additional land is necessary to secure the payment of the penalty mentioned in paragraph 104(1)(b).

Content of declaration—generally

(3) A declaration under subsection (1) or (2) must specify:

(3) A declaration under subsection (1) or (2) must specify:

- (a) the period during which the declaration is in force; and
- (b) the land to which section 104 applies.

Note: For a person who has more than one interest in Australian land, see subsection (4).

Content of declaration under subsection (1)

(4) For a declaration under subsection (1), if the person has more than one interest in Australian land, the declaration must specify the land to which section 104 applies. The Treasurer may specify more than one area of Australian land only if the Treasurer is satisfied that specifying each of those areas is necessary to secure the payment of the penalty.

Declarations not legislative instruments

(5) A declaration under subsection (1) or (2) is not a legislative instrument.

106 Effect of charge on land

(1) A charge created on land under section 104 has priority over any other interest in the land (even if the interest has been registered on a land register).

(2) The charge remains in force until:

(a) all of the following amounts are paid:

(i) the penalty mentioned in subsection 104(1);

(ii) any costs of the Commonwealth that the person mentioned in that subsection is ordered to pay by a court;

(iii) any costs incurred by the Commonwealth in relation to recovering the penalty mentioned in that subsection; or

(b) the interest in the land is disposed of under section 109.

(3) To avoid doubt, the charge on the land is not affected by any change in ownership of the land.

Powers of Treasurer

(4) The Treasurer has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the charge on a land register.

(5) The Treasurer's powers under subsection (4) include:

(a) executing any instrument required to be executed; or

(b) signing any certificate that:

(i) states that a charge is created on land under section 104; and

(ii) specifies the land on which the charge is created.

107 Vesting of interest in land

(1) This section applies in relation to a person's interest in Australian land if:

(a) a charge is created on the land under section 104; and

(b) the following period ends:

(i) 3 months since the finding mentioned in subsection 104(1) was made by the court;

(ii) any longer period determined in writing by the Treasurer or by the court; and

(c) if subparagraph 104(1)(d)(ii) (charge imposed after Treasurer's declaration) applies in relation to the charge:

(i) the interest is an estate in fee simple in the land or an interest in a long term lease; and

(ii) the person holds the interest alone.

Note: Subsection (4) contains an exception to this section (proceeds of crime orders).

(2) At the end of the period mentioned in paragraph (1)(b):

(a) the interest in the Australian land vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and

(b) the Treasurer has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in the Australian land; and

(c) the Commonwealth is entitled to be registered on a land register as the owner of that property; and

(d) the Treasurer has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as the owner.

(3) The Treasurer's powers under paragraph (2)(d) include:

(a) executing any instrument required to be executed; or

(b) signing any certificate that:

(i) states that land has vested in the Commonwealth under this section; and

(ii) specifies the land that has so vested.

Exception in relation to proceeds of crime orders

(4) This section does not apply if at the end of the period mentioned in paragraph (1)(b):

(a) a restraining order is in force in relation to the land under Part 2□1 of the Proceeds of Crime Act 2002; or

(b) a forfeiture order is in force in relation to the land under Part 2□2 of that Act; or

(c) an order (however described) of a kind prescribed by the regulations is in force in relation to the land

under a law of the Commonwealth, a State or a Territory.

108 When the Commonwealth can begin dealing with interests in land

(1) The Treasurer, and persons acting on the Commonwealth's behalf, can dispose of, or otherwise deal with, a person's interest in Australian land that vests under section 107 only after the later of the following times:

- (a) if the period provided for lodging an appeal against the finding in relation to the person mentioned in subsection 104(1) has ended without such an appeal having been lodged—the end of that period;
- (b) if an appeal against the finding in relation to the person has been lodged—the appeal lapses or is finally determined.

(2) However, such disposals and dealings may occur earlier with the leave of a court and in accordance with any directions of a court.

109 Disposing of interests in land

(1) The Treasurer must, on behalf of the Commonwealth, dispose of an interest in a person's (the owner's) land that vests in the Commonwealth under section 107 as soon as practicable after the time mentioned in section 108.

(2) The Treasurer may give full and effective title to the land free of all other interests, which are extinguished at the time title is given.

Dealing with the proceeds of sale

(3) The Treasurer must apply the proceeds of the disposal of the interest in the land against:

- (a) the amounts mentioned in paragraph 106(2)(a); and
- (b) any other penalty that is due and payable to the Commonwealth under this Act by the owner; and
- (c) any costs incurred by the Commonwealth in relation to the disposal.

(4) The Treasurer must pay the remainder of the proceeds, if any, to the persons mentioned in subsection (6) in the order in which they appear in that subsection.

Note: Not all of the persons mentioned in subsection (6) may be paid if the proceeds are insufficient.

(5) If the remainder of the proceeds is insufficient to pay:

- (a) all of the persons mentioned in paragraph (6)(a); or
- (b) after paying all of the persons mentioned in paragraph (6)(a), all of the persons mentioned in paragraph (6)(b);

the Treasurer must pay each person mentioned in that paragraph proportionately.

(6) The persons are as follows:

(a) a person holding a mortgage, charge or other interest over the land if the mortgage, charge or interest:

- (i) relates to a debt due by the owner; and
- (ii) has been registered on a land register;
- (b) if subparagraph 104(1)(d)(i) applies—a person together with whom the owner holds the interest;
- (c) the Commonwealth in relation to any other penalty or debt that is due and payable to the Commonwealth by the owner;
- (d) the owner.

(7) Nothing in this section affects the right of the Commonwealth to recover penalties by other means.

110 Exemption from stamp duty and other State or Territory taxes and fees

(1) No stamp duty or other tax or fee is payable under a law of a State or a Territory in respect of the vesting of an interest in Australian land under section 107, or anything connected with the vesting of the interest, if the Treasurer, in writing:

- (a) declares that the interest in the land has vested under that section; and
- (b) specifies the interest in the land.

(2) An instrument made under subsection (1) is not a legislative instrument.

111 Compensation for acquisition of property

(1) If the operation of this Subdivision would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Note: For the definitions of acquisition of property and just terms, see section 4.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Part 6—Fees in relation to actions

112 Simplified outline of this Part

Fees are payable under this Part to ensure that foreign persons and others who take action regulated by this Act bear the costs relating to the administration of this Act.

Fees are payable for:

- (a) applying for an exemption certificate or a variation of an exemption certificate; and

- (c) giving a notice of a notifiable action or notifiable national security action; and
- (d) giving a notice relating to a significant action that is not a notifiable action or notifiable national security action; and
- (e) giving a notice relating to a reviewable national security action; and
- (f) being given a notice under subsection 66A(4); and
- (g) applying for a variation of a no objection notification or notice imposing conditions.

The Treasurer is not required to take any action before the fee is paid.

A fee is also payable if the Treasurer makes a decision or order under Part 3 relating to a significant action and a person has not notified the Treasurer of the action.

The amounts of the fees are found in regulations made under the Foreign Acquisitions and Takeovers Fees Imposition Act 2015.

A fee may be waived or remitted.

113 When fees are payable

(1) The person mentioned in column 1 of the following table must pay a fee to the Treasurer in accordance with column 2 of the table.

When fees are payable [Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

Item 1: A person who applies for an exemption certificate must pay a fee: (a) when the application is made; and (b) for a person who is given an exemption certificate under section 57 or a residential land (near new dwelling interests) certificate—at the end of each 6 month period covered by subsection (2) or (2A).

Item 2: A person who applies for a variation of an exemption certificate must pay a fee when the application is made.

Item 3: A person who gives a notice of a notifiable action or notifiable national security action under section 81 must pay a fee when the notice is given.

Item 4A: A person to whom a notice is given under subsection 66A(4) must pay a fee before the end of 30 days after the notice is given.

Item 4: A person who gives a notice to the Treasurer that the person proposes to take either of the following: (a) a significant action that is not a notifiable action or notifiable national security action; (b) a reviewable national security action must pay a fee when the notice is given.

Item 5: A person: (a) in relation to whom an order is made under Division 2 of Part 3; or (b) to whom a no objection notification is given; if both of the following apply: (c) the person did not give a notice mentioned in item 3 or 4 of this table in relation to the action specified in the order or notification; (d) the person was not given a notice under subsection 66A(4) in relation to that action must pay a fee before the end of 30 days after the order or notification is given.

Item 6: A person who applies under subsection 76(6) for a variation of a no objection notification must pay a fee when application is made.

Item 7: A person who applies under subsection 79Q(1) for a variation of a notice imposing conditions must pay a fee when application is made.

Note: The amounts of the fees are in regulations made under the Foreign Acquisitions and Takeovers Fees Imposition Act 2015.

113 – 115 [Omitted]

Part 6A—Vacancy fees for foreign acquisitions of residential land

Division 1—Simplified outline of this Part

115A Simplified outline of this Part

A vacancy fee is payable by a foreign person for any dwelling on residential land, for any year (called a vacancy year), if the dwelling is residentially occupied for less than 183 days in the year.

A dwelling is residentially occupied on a day in any of the following circumstances (or any combination of these circumstances over the vacancy year):

- (a) the foreign person, or a relative of the foreign person, genuinely occupies the dwelling as a residence (whether or not with other persons);
- (b) the dwelling is genuinely occupied as a residence under a lease or licence with a term of 30 or more days;
- (c) the dwelling is genuinely available for occupation as a residence under a lease or licence with a term of 30 or more days.

The amount of the vacancy fee is found in regulations made under the Foreign Acquisitions and Takeovers Fees Imposition Act 2015. However, a vacancy fee may be waived or remitted.

The foreign person is required to give a vacancy fee return to the Commissioner of Taxation after the end of each vacancy year for a dwelling. The person must also keep all relevant records for 5 years after disposal of the interest in residential land.

Unpaid vacancy fees for a dwelling may be recovered as a debt, or by the creation of a charge over Australian land in which an interest is held by the foreign person. The charge also secures any unpaid penalties for contraventions of civil penalty provisions under this Part relating to giving annual returns and keeping records.

115B – 115T [Omitted]

Part 7—Administrative provisions

Division 1—Simplified outline of this Part

116 Simplified outline of this Part

A person must make and keep records relating to:

- (a) actions specified in exemption certificates; and
- (b) compliance with conditions in no objection notifications and exemption certificates; and
- (c) certain disposals of interests in residential land; and
- (d) register notices.

The records must be kept for 5 years, except records that relate to conditions which must be kept for 2 years. A person may commit an offence if the person fails to make or keep the records in accordance with Division 2.

Information that is obtained for the purposes of this Act (called protected information) may be disclosed only for authorised purposes. A person who obtains, uses or discloses protected information other than as authorised by this Act may commit an offence.

A person may apply to the Administrative Review Tribunal for review of a decision of the Treasurer that a national security risk exists in relation to an action. Division 4 modifies provisions of the ART Act for this purpose.

117 – 119 [Omitted]

Division 3—Confidentiality of information

120 Meaning of protected information

(1) Information is protected information if the information is obtained under, in accordance with or for the purposes of this Act, except:

(a) information specified in an exemption certificate given under:

- (i) section 57 (exemption certificates for new dwellings); or
- (ii) regulations made for the purposes of section 63; or

(b) subject to subsection (2), information that is:

- (i) obtained by a person appointed to a position in the Australian Taxation Office, or a person engaged under the Public Service Act 1999 who is employed in the Australian Taxation Office; and
- (ii) obtained under, in accordance with or for the purposes of this Act as a result of a delegation or subdelegation under section 137, or a request under subsection 138(4).

Note: Information mentioned in paragraph (b) is protected under Division 355 in Schedule 1 to the Taxation Administration Act 1953.

(2) If:

(a) information is mentioned in paragraph (1)(b); and

(b) the information is disclosed under Subdivision 355-B in Schedule 1 to the Taxation Administration Act 1953; and

(c) the disclosure is made to:

- (i) the Secretary; or
- (ii) a person appointed or engaged under the Public Service Act 1999 who is employed in the Department; or

(iii) a person appointed by the Commonwealth for the purposes of this Act;

the information mentioned in paragraph (1)(b) is protected information in relation to further uses,

disclosures or records made of the information that arise from the disclosure mentioned in paragraph

(b) of this subsection.

121 Authorisation of disclosures etc. of protected information for the purposes of this Act

(1) A person may make a record of, disclose or otherwise use protected information if:

(a) the person makes the record, or discloses or uses the information, in performing the person's functions or duties, or exercising the person's powers, under this Act; and

(b) in relation to a disclosure—the information is disclosed to a person who is:

- (i) a Minister, an officer or an employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

- (ii) an officer or employee of a Commonwealth, State or Territory body; or
- (iii) a person appointed by the Commonwealth for the purposes of this Act.
- (2) A person may make a record of, disclose or otherwise use protected information if:
 - (a) the person obtains the information under subsection (1) or this subsection; and
 - (b) the person makes the record of, discloses or otherwise uses the information for the purposes for which the information was disclosed to the person; and
 - (c) in relation to a disclosure by the person—the information is disclosed to a person who is:
 - (i) a Minister, an officer or an employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
 - (ii) an officer or employee of a Commonwealth, State or Territory body; or
 - (iii) a person appointed by the Commonwealth for the purposes of this Act.

122 Authorisation of disclosures to Commonwealth Ministers and Commonwealth bodies

Authorisation

(1) A person may disclose protected information to a person covered by subsection (2) for the purposes of:

- (a) administering a law covered by subsection (3); or
- (b) a Minister discharging that Minister's responsibility for a matter covered by subsection (5).

Persons to whom protected information may be disclosed

(2) This subsection covers the following persons:

- (a) a Minister who has responsibility for:
 - (i) administering a law covered by subsection (3); or
 - (ii) a matter covered by subsection (5);
- (b) an individual who is employed by such a Minister under the Members of Parliament (Staff) Act 1984;
- (c) an officer or employee of a Department of State, or of an authority or agency of the Commonwealth, administered by such a Minister.

Relevant laws

(3) This subsection covers the following laws:

- (a) the Airports Act 1996;
- (b) the Australian Crime Commission Act 2002;
- (c) the Australian Prudential Regulation Authority Act 1998;
- (d) the Australian Securities and Investments Commission Act 2001;
- (e) the Australian Security Intelligence Organisation Act 1979;
- (f) the Australia's Foreign Relations (State and Territory Arrangements) Act 2020;
- (g) the Banking Act 1959;
- (h) the Competition and Consumer Act 2010;
- (i) the Corporations Act 2001;
- (j) the Defence Act 1903;
- (k) the Financial Sector (Shareholdings) Act 1998;
- (l) the Industry Research and Development Act 1986;
- (m) the Inspector-General of Intelligence and Security Act 1986;
- (n) the Insurance Acquisitions and Takeovers Act 1991;
- (o) the Intelligence Services Act 2001;
- (p) the Migration Act 1958;
- (q) the Northern Australia Infrastructure Facility Act 2016;
- (r) the Proceeds of Crime Act 2002;
- (s) the Qantas Sale Act 1992;
- (t) the Security of Critical Infrastructure Act 2018;
- (u) a taxation law (within the meaning of section 995-1 of the Income Tax Assessment Act 1997);
- (v) the Telstra Corporation Act 1991;
- (w) any law determined by the Treasurer under subsection (4).

(4) The Treasurer may, by legislative instrument, determine laws for the purposes of paragraph (3)(w).

Relevant matters

(5) This subsection covers the following matters:

- (a) agriculture;
- (b) water;
- (c) infrastructure;
- (d) telecommunications;
- (e) industry policy;
- (f) investment promotion;
- (g) taxation policy;
- (h) foreign investment in Australia;
- (i) defence;

- (i) defence;
- (j) national security.

123 Authorisation of disclosures relating to law enforcement

A person may disclose protected information to an enforcement body (within the meaning of the Privacy Act 1988) if the person reasonably believes the disclosure of the information is reasonably necessary for one or more enforcement related activities (within the meaning of that Act) conducted by or on behalf of the enforcement body.

123A Authorisation of disclosures about decisions where Commonwealth, State or Territory Minister or body etc. provided information

A person (the discloser) may disclose protected information to a person (the recipient) if:

- (a) the recipient is:
 - (i) a Minister, an officer or an employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
 - (ii) an officer or employee of a Commonwealth, State or Territory body; and
 - (b) the information relates to a decision (the relevant decision) to make, or not to make, an order or decision under Part 3; and
 - (c) either:
 - (i) the recipient; or
 - (ii) if subparagraph (a)(ii) applies—another officer or employee of the Commonwealth, State or Territory body mentioned in that subparagraph;
- provided information for the purposes of the making of the relevant decision; and
- (d) the discloser reasonably believes the disclosure of the information may assist the recipient in the performance of the recipient's functions or duties, or the exercise of the recipient's powers, as a person mentioned in subparagraph (a)(i) or (ii).

123B Authorisation of disclosures to foreign governments and separate government entities

(1) A person may disclose protected information to a foreign government or a separate government entity in relation to a foreign country (or a part of a foreign country) if:

- (a) either:
 - (i) the person discloses the information in performing the person's functions or duties, or exercising the person's powers, under this Act; or
 - (ii) the person is satisfied the disclosure of the information will assist or enable the foreign government or separate government entity to perform a function or duty, or exercise a power, of the government or entity; and
 - (b) the Treasurer is satisfied that the information relates to a matter in relation to which a national security risk may exist for Australia or the foreign country; and
 - (c) the Treasurer is satisfied that the disclosure is not contrary to the national interest; and
 - (d) the person is satisfied that the information will be used in accordance with an agreement to which subsection (2) applies; and
 - (e) the foreign government or separate government entity has undertaken not to use or further disclose the information except in accordance with the agreement or otherwise as required or authorised by law.
- (2) This subsection applies to an agreement that is in force between:
- (a) the Commonwealth or a Department of State, authority or agency of the Commonwealth; and
 - (b) one or more of the following:
 - (i) a foreign government;
 - (ii) a separate government entity.
- (3) The Treasurer may, by writing, impose conditions to be complied with by a foreign government or a separate government entity in relation to protected information disclosed to it under subsection (1).
- (4) An instrument under subsection (3) is not a legislative instrument.

124 Authorisation of disclosures of non-identifying information

A person may disclose protected information if the information does not identify, and is not reasonably capable of being used to identify, a person.

125 Authorisation of disclosures of information in the public domain

A person may disclose protected information if the information is, at the time of the disclosure, already in the public domain (except as a result of a contravention of this Division).

126 Authorisation of disclosures where consent or to person who gave information or related entity

Person to whom information relates consents

(1) A person may make a record of, or disclose or otherwise use, protected information if the person to whom the information relates gives written consent.

Person who provided information

(2) A person may disclose protected information if the disclosure is to:

- (a) the person, or an agent of the person, who provided the information under, in accordance with or for the purposes of this Act; or

(b) an entity that is a member of the same wholly owned group (within the meaning of the Income Tax Assessment Act 1997) as the person mentioned in paragraph (a).

126A Authorisation of disclosure by Registrar of information in the Register

The Registrar may disclose information included in the Register in accordance with section 130V.

127 Authorisation to use information for purposes of proceedings

(1) A person who obtains protected information may disclose the information to a court or tribunal, or in accordance with an order of a court or tribunal, (whether within or outside Australia) for the purposes of proceedings if:

- (a) the Commonwealth is a party to the proceedings; and
- (b) the Treasurer is satisfied that it is not contrary to the national interest.

Note: A person must not be required to provide information to a court or tribunal (see section 130).

(2) A person who obtains protected information under, or in accordance with, subsection (1) may make a record of, or disclose or otherwise use, the information for the purposes for which the information was disclosed under that subsection.

128 Offence relating to protected information

A person commits an offence if:

- (a) the person obtains information; and
- (b) the information is protected information; and
- (c) the person makes a record of, discloses or otherwise uses the information; and
- (d) the record, disclosure or use is not authorised by this Part.

Note: For an exception for use of information in good faith, see section 129.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

129 Exception for use of information in good faith

Section 128 does not apply if the person makes a record of, discloses or otherwise uses protected information in good faith:

- (a) in performing, or purportedly performing, his or her functions or duties under this Act; or
- (b) in exercising, or purportedly exercising, his or her powers under this Act.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the Criminal Code).

130 No requirement to provide protected information

A person (whether within or outside Australia) must not, except for the purposes of this Act, be required to disclose, or produce a document containing, protected information to:

- (a) a court; or
- (b) a tribunal, authority or person having power to require the production of documents or the answering of questions.

Division 4—Review of decisions

130A ART review of decisions

(1) An application may be made to the Tribunal for review of a decision of the Treasurer under section 79A that a national security risk exists in relation to an action.

(2) The application may be made by, or on behalf of, a person who has been given a notice by the Treasurer under subsection 79B(1) that such a national security risk exists.

Interaction with the ART Act

(3) Subsection (2) applies despite section 17 of the ART Act.

130L Restriction on Treasurer's powers after review

If the Tribunal has made findings upon a review of a reviewable decision, the Treasurer must not exercise the Treasurer's powers under this Act in respect of the action concerned that is not in accordance with those findings except on the basis:

- (a) of matters or material changes occurring after the review; or
- (b) of which evidence was not available at the time of the review.

130M Costs

(1) If:

- (a) a person makes an application to the Tribunal under section 130A for a review of a reviewable decision; and
 - (b) the applicant was, in the opinion of the Tribunal, successful, or substantially successful, in the application for review; and
 - (c) the Tribunal is satisfied that it is appropriate to do so in all the circumstances of the case;
- the Tribunal may order that the costs reasonably incurred by the applicant in connection with the application, or any of those costs that is determined by the Tribunal, be paid by the Commonwealth.

Interaction with the ART Act

(2) For the purposes of section 115 of the ART Act, the Commonwealth is taken to be a party to the proceeding referred to in subsection (1) of this section.

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

Division 1—Simplified outline of this Part

130P Simplified outline of this Part

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

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

Generally, a foreign person who acquires or disposes of such an interest must give a register notice to the Registrar. The register notice may result in there being a registered circumstance in relation to the person, and the person may be required to give further register notices in relation to the registered circumstance.

For example, a person may be required to give a further register notice in relation to a registered circumstance if the nature of the interest that gave rise to the registered circumstance changes, or if the registered circumstance ceases. The events that result in a registered circumstance ceasing are set out in this Part.

No fee is payable for giving a register 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.

Division 2—The Register of Foreign Ownership of Australian Assets

The following apply on and after the day (the Register commencement day) that Part 2 of Schedule 3 to the Foreign Investment Reform (Protecting Australia's National Security) Act 2020 commences:

130Q Register commencement day

- (a) the Registrar's obligation under section 130S to keep the Register;
- (b) a requirement for a person to give a register notice to the Registrar.

Note: In some cases, a register notice must be given (on or after the Register commencement day) in relation to an event or situation that occurred before that day. See the provisions of Division 3 for more detailed rules about the application of notice requirements.

130R Appointment of the Registrar

The Treasurer may, by notifiable instrument, appoint an eligible Registrar appointee to be the Registrar.

130S Registrar must keep Register

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

130T Information to be contained in the Register

The Register must contain:

- (a) all the information obtained by the Registrar under Division 3; and
- (b) any information added under section 130U; and
- (c) any corrections or updates of information described in paragraph (a) or (b) that are made under the data standards.

130U Registrar may add information to the Register

The Registrar may add to the Register any information obtained by the Registrar (other than information obtained under Division 3) relating to:

- (a) information obtained by the Registrar under Division 3; or
- (b) a registered circumstance (including a registered circumstance that has ceased); or
- (c) information obtained by the Registrar under Part 4 of Schedule 3 to the Foreign Investment Reform (Protecting Australia's National Security) Act 2020 .

Note: Information obtained under Division 3 must be included in the Register under section 130T.

130V Registrar may disclose information in the Register in certain circumstances

(1) The Registrar may disclose information included in the Register to the following persons for the purpose of those persons performing functions or duties, or exercising powers, under this Act:

- (a) the Treasurer;
- (b) the Secretary;
- (c) the Commissioner of Taxation;
- (d) a person engaged under the Public Service Act 1999 who is employed in the Department or the Australian Taxation Office;
- (e) a person appointed by the Commonwealth for the purposes of this Act.

(2) The Registrar may disclose information included in the Register to a person in accordance with data

- (2) The Registrar may disclose information included in the Register to a person in accordance with data standards made for the purposes of:
- (a) paragraph 130ZZ(2)(f) (making information available to person who gave register notice, or to whom registered circumstance relates); or
 - (b) paragraph 130ZZ(2)(g) (making information available to executor, administrator or liquidator).
- (3) This section does not limit the circumstances in which a person is authorised to disclose information under Division 3 of Part 7.
- 130W – 130ZG [Omitted]

Division 3—Requirements to give register notices to the Registrar

Subdivision C—Requirements relating to interests in businesses or entities

130ZH Foreign person takes action that is a significant action under section 40—entities

- (1) A foreign person must give a register notice to the Registrar if:
- (a) the foreign person takes an action that is a significant action under section 40, 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); or
 - (b) the foreign person takes an action that is a significant action under section 40, and:
 - (i) before the action was taken, the foreign person gave a notice to the Treasurer stating that the action was proposed to be taken; and
 - (ii) if the condition in subsection 40(6) (change in control) was required to be met in order for the action to be a significant action—the foreign person is aware, or ought reasonably to be aware, that that condition is met in relation to the action; or
 - (c) 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 40.
- Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).
- (2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

130ZK Foreign person takes action that is a notifiable national security action under section 55B

- (1) A foreign person must give a register notice to the Registrar if the foreign person takes an action: (a) that is a notifiable national security action under section 55B; and (b) to which paragraph 55B(1)(a), (b) or (c) applies.
- Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).
- (2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if paragraph 40(2)(a) (acquiring direct interest in Australian entity that is an agribusiness) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian entity referred to in paragraph 40(2)(a); or
- (b) the Australian entity ceases to be an Australian entity; or
- (c) the Australian entity ceases to exist.

Item 2: A registered circumstance under this section exists in relation to the foreign person if paragraph 40(2)(b) (acquiring interests in securities in entity) applies to the action.

The registered circumstance ceases if:

- a) the foreign person no longer holds an interest of any percentage in the entity referred to in paragraph 40(2)(b); or
- (b) the entity no longer meets the condition in subsection 40(4); or
- (c) the entity ceases to exist.

Item 3: A registered circumstance under this section exists in relation to the foreign person if paragraph 40(2)(c) (issuing securities in entity) applies to the action.

The registered circumstance ceases if:

- a) all of the securities mentioned in paragraph 40(2)(c) cease to exist; or
- (b) the entity mentioned in that paragraph no longer meets the condition in subsection 40(4); or

(c) the entity ceases to exist.

Item 4: A registered circumstance under this section exists in relation to the foreign person if paragraph 40(2)(d) (entering into agreement relating to affairs of entity) applies to the action.

The registered circumstance ceases if:

- (a) the agreement mentioned in paragraph 40(2)(d) ceases to be in force; or
- (b) the foreign person ceases to be a party to the agreement; or
- (c) the agreement ceases to result in the obligation mentioned in subparagraph 40(2)(d)(ii); or
- (d) the entity mentioned in paragraph 40(2)(d) no longer meets the condition in subsection 40(4); or
- (e) the entity ceases to exist.

Item 5: A registered circumstance under this section exists in relation to the foreign person if paragraph 40(2)(e) (altering constituent documents of entity) applies to the action.

The registered circumstance ceases if:

- (a) the document mentioned in paragraph 40(2)(e) ceases to be in force; or
- (b) the document ceases to produce the result mentioned in that paragraph; or
- (c) the entity mentioned in that paragraph no longer meets the condition in subsection 40(4); or
- (d) the entity ceases to exist.

[Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

(3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under item 1 or 2 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 item 1 or 2 of the table.

Registrable event day (4)[Omitted]

Application—Register commencement day (5) [Omitted]

130ZI Foreign person takes action that is a significant action under section 41—businesses

(1) A foreign person must give a notice to the Registrar if:

- (a) the foreign person takes an action that is a significant action under section 41, 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); or
- (b) the foreign person takes an action that is a significant action under section 41, and:
 - i) before the action was taken, the foreign person gave a notice to the Treasurer stating that the action was proposed to be taken; and
 - (ii) if the condition in subsection 41(5) (change in control) was required to be met in order for the action to be a significant action—the foreign person is aware, or ought reasonably to be aware, that that condition is met in relation to the action; or
- (c) 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 41.

Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).

(2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if paragraph 41(2)(a) (acquiring direct interest in Australian business that is an agribusiness) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian business referred to in paragraph 41(2)(a); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on.

Item 2: A registered circumstance under this section exists in relation to the foreign person if paragraph 41(2)(b) (acquiring interests in assets of Australian business) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian business referred to in paragraph 41(2)(b); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on.

Item 3: A registered circumstance under this section exists in relation to the foreign person if paragraph 41(2)(c) (entering or terminating significant agreement with Australian business) applies to the action, and the action consists of the foreign person entering a significant agreement mentioned in that

paragraph.

The registered circumstance ceases if:

- (a) the agreement mentioned in paragraph 41(2)(c) ceases to be in force; or
- (b) the agreement ceases to be a significant agreement; or
- (c) the foreign person ceases to be a party to the agreement; or
- (d) the Australian business referred to in that paragraph ceases to be an Australian business; or
- (e) the Australian business ceases to be carried on.

[Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

(3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under item 1 or 2 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 item 1 or 2 of the table.

Registrable event day (4) [Omitted]

Application—Register commencement day (5) [Omitted]

130ZJ Foreign person takes action that is a notifiable action under section 47—entities and businesses

(1) A foreign person must give a register notice to the Registrar if the foreign person takes an action:

- a) that is a notifiable action under section 47; and
- (b) to which paragraph 47(2)(a) (acquiring direct interest in Australian entity or business that is an agribusiness) or (b) (acquiring substantial interest in Australian entity) applies.

Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).

(2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if subparagraph 47(2)(a)(i) (acquiring direct interest in Australian entity that is an agribusiness) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian entity mentioned in subparagraph 47(2)(a)(i); or
- (b) the Australian entity ceases to be an Australian entity; or
- (c) the Australian entity ceases to exist.

Item 2: A registered circumstance under this section exists in relation to the foreign person if subparagraph 47(2)(a)(ii) (acquiring direct interest in Australian business that is an agribusiness) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian business referred to in subparagraph 47(2)(a)(ii); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on

Item 3: A registered circumstance under this section exists in relation to the foreign person if paragraph 47(2)(b) (acquiring substantial interest in Australian entity) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian entity mentioned in paragraph 47(2)(b); or
- (b) the Australian entity ceases to be an Australian entity; or
- (c) the Australian entity ceases to exist.

(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 an item of the table.

(4) The registrable event day for a register notice under this section is the day on which the foreign person takes the notifiable action.

Application—Register commencement day

(5) This section applies to actions taken on or after the Register commencement day.

130ZK Foreign person takes action that is a notifiable national security action under section 55B

(1) A foreign person must give a register notice to the Registrar if the foreign person takes an action: (a) that is a notifiable national security action under section 55B; and (b) to which paragraph 55B(1)(a), (b) or (c) applies.

Note: This section applies to actions taken on or after the Register commencement day (see subsection

Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).

(2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if paragraph 55B(1)(a) (starting national security business) applies to the action.

The registered circumstance ceases if:

(a) the foreign person no longer carries on the national security business mentioned in paragraph 55B(1)(a); or

(b) the business is neither a national security business nor an Australian business; or

(c) the business ceases to be carried on.

Item 2: A registered circumstance under this section exists in relation to the foreign person if paragraph 55B(1)(b) (acquiring direct interest in national security business) applies to the action.

The registered circumstance ceases if:

(a) the foreign person no longer holds an interest of any percentage in the business mentioned in paragraph 55B(1)(b); or

(b) the business is neither a national security business nor an Australian business; or

(c) the business ceases to be carried on.

Item 3: A registered circumstance under this section exists in relation to the foreign person if paragraph 55B(1)(c) (acquiring direct interest in entity that carries on national security business) applies to the action.

The registered circumstance ceases if:

(a) the foreign person no longer holds an interest of any percentage in the entity referred to in paragraph 55B(1)(c); or

(b) the entity no longer carries on any business; or

(c) the business carried on by the entity is neither a national security business nor an Australian business; or

(d) the entity ceases to exist.

[Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

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

Registrable event day

(4) The registrable event day for a register notice under this section is the day on which the foreign person takes the notifiable national security action.

Application—Register commencement day

(5) This section applies to actions taken on or after the Register commencement day.

130ZL Foreign person takes action that is a reviewable national security action under section 55D—entities

(1) A foreign person must give a register notice to the Registrar if:

(a) the foreign person takes an action that is a reviewable national security action under section 55D, 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 foreign person gave a notice to the Treasurer stating that the action was proposed to be taken; or

(iii) before the action was taken, the Treasurer gave the foreign person a notice under subsection 66A(4); or

(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 reviewable national security action under section 55D.

Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).

(2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if subsection 55D(1) (acquiring interest in entity) applies to the action.

The registered circumstance ceases if:

(a) the foreign person no longer holds an interest of any percentage in the entity mentioned in

subsection 55D(1); or

(b) the entity ceases to be a kind of entity described in subsection 55D(3); or

(c) the entity ceases to exist.

Item 2: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55D(2)(a)(i) (issuing securities in entity) applies to the action.

The registered circumstance ceases if:

(a) all of the securities mentioned in subparagraph 55D(2)(a)(i) cease to exist; or

(b) the entity mentioned in that subparagraph ceases to be a kind of entity described in subsection 55D(4); or

(c) the entity ceases to exist.

Item 3: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55D(2)(a)(ii) (entering into agreement relating to affairs of entity) applies to the action.

The registered circumstance ceases if:

(a) the agreement mentioned in subparagraph 55D(2)(a)(ii) ceases to be in force; or

(b) the foreign person ceases to be a party to the agreement; or

(c) the agreement ceases to result in the obligation mentioned in that subparagraph; or

(d) the entity mentioned in that subparagraph ceases to be a kind of entity described in subsection 55D(4); or

(e) the entity ceases to exist.

Item 4: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55D(2)(a)(iii) (altering constituent documents of entity) applies to the action.

The registered circumstance ceases if:

(a) the document mentioned in subparagraph 55D(2)(a)(iii) ceases to be in force; or

(b) the document ceases to produce the result mentioned in that subparagraph; or

(c) the entity mentioned in that subparagraph ceases to be a kind of entity described in subsection 55D(4); or

(d) the entity ceases to exist.

[Note that for platform compatibility, the original table is reproduced here as a narrative list. Reference should be made to the original table for precise legal drafting]

(3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under item 1 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 item 1 of the table.

Registrable event day

(4) The registrable event day for a register notice under this section is:

(a) if paragraph (1)(a) applies—the day on which the foreign person takes the action; or

(b) if paragraph (1)(b) applies—the day on which the no objection notification or notice imposing conditions is given.

Application—Register commencement day

(5) 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).

130ZM Foreign person takes action that is a reviewable national security action under section 55E—businesses

(1) A foreign person must give a register notice to the Registrar if:

(a) the foreign person takes an action that is a reviewable national security action under section 55E, 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 foreign person gave a notice to the Treasurer stating that the action was proposed to be taken; or

(iii) before the action was taken, the Treasurer gave the foreign person a notice under subsection 66A(4); or

(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 reviewable national security action under section 55E.

Note: This section applies to actions taken on or after the Register commencement day (see subsection (5)).

(2) If a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1), the following table has effect.

Item 1: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55E(1)(a)(i) (acquiring interest in Australian business) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian business mentioned in subparagraph 55E(1)(a)(i); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on.

Item 2: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55E(1)(a)(ii) (acquiring interest in assets of Australian business) applies to the action.

The registered circumstance ceases if:

- (a) the foreign person no longer holds an interest of any percentage in the Australian business mentioned in subparagraph 55E(1)(a)(ii); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on.

Item 3: A registered circumstance under this section exists in relation to the foreign person if subparagraph 55E(1)(a)(iii) (entering or terminating significant agreement with Australian business) applies to the action, and the action consists of the foreign person entering a significant agreement mentioned in that subparagraph.

The registered circumstance ceases if:

- (a) the agreement mentioned in subparagraph 55E(1)(a)(iii) ceases to be in force; or
- (b) the agreement ceases to be a significant agreement; or
- (c) the foreign person ceases to be a party to the agreement; or
- (d) the Australian business mentioned in that subparagraph ceases to be an Australian business; or
- (e) the Australian business ceases to be carried on.

Item 4: A registered circumstance under this section exists in relation to the foreign person if subsection 55E(2) (starting Australian business) applies to the action.

- (a) the foreign person no longer carries on the Australian business mentioned in subsection 55E(2); or
- (b) the Australian business ceases to be an Australian business; or
- (c) the Australian business ceases to be carried on.

(3) Disregard any interest that is an equitable interest for the purposes of working out whether a registered circumstance exists, or has ceased, under item 1 or 2 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 item 1 or 2 of the table.

Registrable event day

(4) The registrable event day for a register notice under this section is:

- (a) if paragraph (1)(a) applies—the day on which the foreign person takes the action; or
- (b) if paragraph (1)(b) applies—the day on which the no objection notification or notice imposing conditions is given.

Application—Register commencement day

(5) 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).

130ZN Change in interest in an entity or business

(1) A foreign person must give a register notice to the Registrar if:

- (a) there is a registered circumstance in relation to the foreign person under a provision mentioned in subsection (4); and
- (b) in relation to that registered circumstance, the Register records the foreign person as holding an interest in an entity or business of a particular percentage; and
- (c) the percentage interest that the foreign person holds in the entity or business differs from the percentage mentioned in paragraph (b) by 5% or more; and
- (d) the foreign person is aware, or ought reasonably to have become aware, of the difference mentioned in paragraph (1)(c).

Note 1: For example, if the Register records a foreign person as holding a 30% interest in an Australian entity, the person must give notice to the Registrar if the person is aware, or ought reasonably to have become aware, that the person's interest in the entity has changed to 35% or more or 25% or less.

Note 2: A registered circumstance may exist only on or after the Register commencement day.

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

(3) The registrable event day for a register notice under this section is the first day on which the person is aware, or ought reasonably to become aware, of the difference mentioned in paragraph (1)(c).

(4) For the purposes of paragraph (1)(a), the provisions are the following:

- (a) item 1 or 2 of the table in subsection 130ZH(2) (significant actions under section 40—entities);
- (b) item 1 or 2 of the table in subsection 130ZI(2) (significant actions under section 41—businesses);
- (c) item 1, 2 or 3 of the table in subsection 130ZJ(2) (notifiable actions under section 47—entities and

businesses);

(d) item 2 or 3 of the table in subsection 130ZK(2) (notifiable national security actions under section 55B);

(e) item 1 of the table in subsection 130ZL(2) (reviewable national security actions under section 55D—entities);

(f) item 1 or 2 of the table in subsection 130ZM(2) (reviewable national security actions under section 55E—businesses);

g) a provision of regulations made for the purposes of subsection 130ZU(1), if the regulations provide that this section applies to the registered circumstance.

130ZO Person becomes a foreign person while holding interest in an entity or business

(1) This section applies to a person who becomes a foreign person.

(2) The person must give a register notice to the Registrar if:

(a) on the day the person becomes a foreign person, the person holds: (i) a direct interest in an Australian entity that is an agribusiness; or (ii) a direct interest in an Australian business that is an agribusiness; or (iii) a substantial interest in an Australian entity; and

(b) had the person taken an action consisting of acquiring the interest on the day the person became a foreign person, the action would have been a notifiable action under either of the following:

(i) paragraph 47(2)(a) (acquiring direct interest in Australian entity or business that is an agribusiness);

(ii) paragraph 47(2)(b) (acquiring substantial interest in Australian entity).

(3) Subsections 130ZJ(2) and (3) apply in relation to the notice as if the person had taken the action mentioned in paragraph (2)(b) of this section in the same way as those subsections apply to a notice and an action of that kind under section 130ZJ.

(4) The registrable event day for a register notice under this section is the day on which the person becomes a foreign person.

Application—Register commencement day

(5) This section applies to a person who becomes a foreign person on or after the Register commencement day, regardless of when the person started to hold the interest referred to in paragraph (2)(a).

130ZP Person becomes a foreign person while carrying on or holding interest in a national security business

(1) This section applies to a person who becomes a foreign person.

(2) The person must give a register notice to the Registrar if:

(a) on the day the person becomes a foreign person, the person carries on a national security business; and

(b) had the person taken an action consisting of starting to carry on the national security business on the day the person became a foreign person, the action would have been a notifiable national security action under paragraph 55B(1)(a) (starting national security business).

(3) The person must give a register notice to the Registrar if:

(a) on the day the person becomes a foreign person, the person holds:

(i) a direct interest in a national security business; or

(ii) a direct interest in an entity that carries on a national security business; and

(b) had the person taken an action consisting of acquiring the interest on the day the person became a foreign person, the action would have been a notifiable national security action under either of the following:

(i) paragraph 55B(1)(b) (acquiring direct interest in national security business);

(ii) paragraph 55B(1)(c) (acquiring direct interest in entity that carries on national security business).

(4) Subsections 130ZK(2) and (3) apply in relation to the notice as if the person had taken the action mentioned in paragraph (2)(b) or (3)(b) of this section in the same way as those subsections apply to a notice and an action of that kind under section 130ZK.

(5) The registrable event day for a register notice under this section is the day on which the person becomes a foreign person.

Application—Register commencement day

(6) This section applies to a person who becomes a foreign person on or after the Register commencement day, regardless of when the person started to carry on the business referred to in paragraph (2)(a) or to hold the interest referred to in paragraph (3)(a).

Subdivision D—Requirements relating to registered circumstances

130ZQ - 130 ZZ [Omitted]

Part 8—Miscellaneous

131 Simplified outline of this Part

This Part contains a number of miscellaneous provisions including the following:

- (a) the power of certain courts to preserve interests, and enforce orders and conditions;
- (b) the power of the Treasurer to require additional information;
- (c) the power of the Treasurer and the Secretary to delegate his or her powers under this Act;
- (d) a provision clarifying that a failure to comply with this Act does not invalidate an action;
- (e) the requirement for applications and notices to be given in a manner or form approved by the Secretary;
- (f) a regulation-making power.

132 Powers of courts

(1) If a person (the offender) has committed an offence or contravened a civil penalty provision in Part 5, the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 2) or the Supreme Court of a State or Territory may, on application by the Treasurer, make any order it thinks fit:

- (a) if the contravention was failing to give a notice under section 81, or taking an action before the day mentioned in section 82, in relation to an acquisition of an interest in Australian land—to preserve the interest; or
- (aa) if the contravention was taking an action before a review provided for by section 79A has been completed and an event mentioned in subparagraph 79A(3)(b)(i), (ii), (iii) or (iv) occurs, in relation to an acquisition of an interest in Australian land—to preserve the interest; or
- (ab) if the contravention was holding an interest in more than one established dwelling at the same time, or acquiring an interest in an established dwelling (see section 95)—to preserve the interest; or
- (b) if the contravention was of an order made under Part 3—to achieve the purpose for which the order was made; or
- (c) if the contravention was of a condition of a no objection notification or an exemption certificate—to achieve the purpose for which the condition was imposed by the Treasurer; or
- (d) if the contravention was of a condition of a notice imposing conditions—to achieve the purpose for which the condition was imposed by the Treasurer.

(2) To avoid doubt, the court may make an order:

- (a) whether or not the offender has been convicted of an offence, or a civil penalty order has been made against the offender, in relation to the contravention; and
- (b) whether or not the contravention still continues; and
- (c) whether or not other proceedings relating to the contravention have been or are to be instituted.

Kinds of orders court may make

(3) Without limiting subsection (1), the court may make any of the following orders.

Kinds of orders court may make (Note: The Table in the original text is converted into narrative to match the platform. Please refer to the original law for exact text)

Item 1: In relation to a change of control of an Australian entity or Australian business or the acquisition of an interest in securities in, or in assets of, an Australian entity, the court may make an order:

- (a) restraining the exercise of any rights attached to securities in, or assets of, the entity or business that are held by the offender; or
- (b) prohibiting or deferring the payment of any sums due to the offender in respect of such securities or assets; or
- (c) directing the disposal of such securities or assets; or
- (d) that any exercise of rights attached to such securities or assets be disregarded; or
- (e) prohibiting a person from acting as a senior officer of the entity or from being involved in the central management and control of the entity or business; or
- (f) directing the entity to make such alterations of any of its constituent documents as are specified in the order.

Item 2: In relation to a change in the control of a foreign entity or the acquisition of an interest in securities in, or in assets of, a foreign entity, the court may make an order:

- (a) restraining the exercise of any rights attached to securities held by the foreign entity in an Australian subsidiary; or
- (b) prohibiting or deferring the payment of any sums due to the foreign entity in respect of securities held by it in an Australian subsidiary; or
- (c) directing the disposal of securities in, or assets of, an Australian subsidiary of the foreign entity; or
- (d) directing the disposal of assets of the foreign entity that consist of assets of an Australian business carried on by the foreign entity (whether alone or together with one or more other persons) or prohibiting or deferring the payment of any sums due to the foreign entity in respect of any such assets; or
- (e) that any exercise of rights attached to securities held by the foreign entity in an Australian subsidiary be disregarded: or

- (f) that any exercise of rights attached to assets of the foreign entity of a kind mentioned in paragraph (d) be disregarded; or
- (g) prohibiting a person from acting as a senior officer of, or from being concerned in the central management and control of, an Australian subsidiary of the foreign entity; or
- (h) directing an Australian subsidiary of the foreign entity to make such alterations of any of its constituent documents as are specified in the order.

Item 3: In relation to the acquisition or holding of an interest in Australian land, the court may make an order:

- (a) restraining the exercise of any rights attached to any interest held by the offender in the land or other thing concerned; or
- (b) prohibiting or deferring the payment of any sums due to the offender in respect of any such interest held by the offender; or
- (c) directing the disposal of any such interest held by the offender; or
- (d) that any exercise of rights attached to any such interest held by the offender be disregarded.

Item 4: In relation to any significant action prescribed by regulations made for the purposes of section 44, the court may make an order of a kind prescribed by regulations made for the purposes of this item.

Additional powers

(4) In addition to the other powers conferred on a court by this section, the court may make the following orders:

(a) an order directing any person to do or refrain from doing a specified act for the purpose of securing compliance with any other order made under this section;

(b) an order containing such ancillary or consequential provisions as the court thinks just.

(5) Before making an order under this section, the court may give a direction requiring either or both of the following:

(a) notice of the application by the Treasurer to be given to such persons as it thinks fit;

(b) for the application by the Treasurer to be published in such manner as it thinks fit.

(6) The court may, by order:

(a) rescind, vary or discharge an order made by it under this section; or

(b) suspend the operation of an order made by it under this section.

Other powers of court unaffected

(7) The powers conferred on a court by this section are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

133 Treasurer may require information

(1) The Treasurer may give a notice under this section if the Treasurer has reason to believe that a person can give information or produce documents relating to:

(a) matters that are relevant to the exercise by the Treasurer of the Treasurer's powers under this Act; or

(b) information that is contained in the Register, or may be added to the Register; or

(c) circumstances in which a person is required to give a notice to the Registrar under Part 7A.

(2) The Treasurer may, by notice in writing given to the person, require the person:

(a) to give any such information to the Treasurer or any other specified person acting on the Treasurer's behalf; or

(b) to produce any such documents to the Treasurer or any other specified person acting on the Treasurer's behalf.

Note: The periods mentioned in section 77 (time limit on making orders and decisions) stop until the person gives the information or produces the documents (see subsection 77(7)).

Giving information

(3) The notice must specify:

(a) in the case of an action in respect of which the Treasurer has given a notice under subsection 66A(4) or a notifiable national security action—a period (which may be less than 14 days) within which the information must be given or the documents produced; and

(aa) in any other case—a period (of at least 14 days) within which the information must be given or the documents produced; and

(b) the manner of giving the information or producing documents.

The Treasurer may, in writing, extend (or further extend) the period mentioned in paragraph (a) or (aa) if the Treasurer is satisfied that it is reasonably necessary.

(4) The information mentioned in paragraph (2)(a) must be given to the Treasurer:

(a) in writing signed by that person; or

(b) for a corporation—by a competent officer of the corporation.

Offence

(5) A person commits an offence if:

(a) the person is given a notice under this section; and

- (a) the person is given a notice under this section; and
- (b) the person does not comply with the notice.

Note: For the liability of an officer of a corporation authorising or permitting contraventions, see section 102.

Penalty: Imprisonment for 6 months or 250 penalty units, or both.

(6) Subsection (5) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the Criminal Code).

Self-incrimination

(7) A person is not excused from giving information or producing a document under this section on the ground that doing so might tend to incriminate him or her.

(8) However, in the case of an individual:

- (a) the answer or information given; or
- (b) any document produced; or
- (c) giving the information or answer, or producing the document or thing; or
- (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;

is not admissible in evidence against him or her in any criminal proceedings or in proceedings for the recovery of a civil penalty, other than proceedings under this Act or section 137.1 or 137.2 of the Criminal Code (false or misleading information or documents) relating to this Act.

134 Validity of acts done in contravention of this Act

An act is not invalidated by the fact that it constitutes an offence against or contravention of a civil penalty provision of this Act.

135 Manner and form for notices and applications

(1) A notice given, or application made, for the purposes of this Act is of no effect unless it is given or made in the manner (if any) and form (if any) approved, in writing, by the Secretary.

Note: The Secretary may approve different manners and forms for giving notices or making applications for different classes of notices or applications (see subsection 33(3A) of the Acts Interpretation Act 1901).

(2) For the purposes of subsection (1):

- (a) an approved manner may be electronic communication; and
- (b) an approved form may be an electronic form.

(2A) Strict compliance with an approved manner or an approved form is required, unless the Secretary is satisfied in relation to a particular notice or application that:

- (a) the notice or application substantially complies with the approved manner or form; and
- (b) it is appropriate in the circumstances to treat the notice or application as being effective for the purposes of this Act.

(3) To avoid doubt, a notice given for the purposes of this Act includes:

- (a) a notice required by a condition imposed in an exemption certificate or a no objection notification; and

- (aa) a notice required by a condition imposed in a notice imposing conditions; and

- (b) a notice under section 81 (notice of notifiable actions and notifiable national security actions); and

- (ba) a notification for the purposes of paragraph 101(1)(b); and

- (bb) a notification for the purposes of subsection 98C(2), 98D(2) or 98E(3) (notices after no objection notification or exemption certificate); and

- (c) a notice mentioned in item 4 of the table in subsection 113(1) (notice of certain actions).

(4) However, this section does not apply to register notices.

Note: The manner and form for giving register notices is provided for by data standards made under section 130ZZ.

135A Service of notices and other documents on persons who cannot be found, or who are not in Australia

(1) This section applies if:

- (a) a notice or other document, including (without limitation) a document in respect of a proceeding to recover an amount of a fee or penalty, needs to be served on a person for the purposes of this Act; and
- (b) the Secretary, the Treasurer or the Commissioner of Taxation, after making reasonable enquiries, is unable to find the person, or is satisfied that the person is not in Australia.

(2) The Secretary, the Treasurer or the Commissioner of Taxation, may, without the leave of a court, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any address of the person in Australia or in a foreign country (including the person's place of business or residence), or any electronic address of the person (including a personal or business electronic address of the person), that is last known to the Secretary, Treasurer or Commissioner.

136 Withdrawal of applications and notices

An application or notice that is withdrawn is of no effect.

137 Delegation of powers or functions

Delegations by Treasurer

(1) The Treasurer may, in writing, delegate to the following persons all or any of the Treasurer's powers or functions under this Act (except under subsection 122(4) or section 105, 106, 107, 110, 130R, 130ZW or regulations made for the purposes of paragraph 130Z(2)(d)):

- (a) the Secretary;
- (b) the Commissioner of Taxation;
- (c) a person engaged under the Public Service Act 1999 who is employed in the Department or the Australian Taxation Office.

Note: Subsection 122(4) is about determining laws for the purposes of disclosing protected information to Commonwealth Ministers and Commonwealth bodies.

(2) The Treasurer may delegate the Treasurer's power under section 105 (Treasurer's declaration relating to charge), 106 (effect of charge on land), 107 (vesting of interest in land), 110 (exemption from stamp duty and other State or Territory taxes and fees) or regulations made for the purposes of paragraph 130Z(2)(d) (extension of time to give register notice) to the following persons:

- (a) the Secretary;
- (b) the Commissioner of Taxation;
- (c) an SES employee, or acting SES employee, in the Department or the Australian Taxation Office.

(2A) The Treasurer may delegate the Treasurer's powers under the following provisions to the Registrar:

- (a) regulations made for the purposes of section 130Z (including the power to make an instrument under regulations made for the purposes of paragraph 130Z(2)(d));
- (b) an instrument made under regulations made for the purposes of paragraph 130Z(2)(d);
- (c) paragraph 133(1)(b) or (c) (power to require information or documents);
- (d) section 135A (service of notices and other documents) in relation to a notice under paragraph 133(1)(b) or (c).

Delegations by Secretary

(3) The Secretary may, in writing, delegate to the following persons all or any of the Secretary's powers or functions under this Act:

- (a) the Commissioner of Taxation;
- (b) a person engaged under the Public Service Act 1999 who is employed in the Department or the Australian Taxation Office.

Subdelegations by Commissioner of Taxation

(4) If a power or function is delegated to the Commissioner of Taxation under this section, the Commissioner may, in writing, subdelegate the power or function to a person engaged under the Public Service Act 1999 who is employed in the Australian Taxation Office.

Note: See section 138 for the effect of a delegation to the Commissioner of Taxation.

(5) Sections 34AA, 34AB and 34A of the Acts Interpretation Act 1901 apply in relation to the subdelegation in a way corresponding to the way in which they apply in relation to a delegation.

Directions

(6) In exercising powers or performing functions delegated or subdelegated by a person under this section, the delegate or subdelegate must comply with any directions of the person.

Delegations in relation to specified kinds of matters

(7) Without limiting this section or subsection 33(3A) of the Acts Interpretation Act 1901, a power or function may be delegated or subdelegated generally or only in relation to specified kinds of matters.

Powers and functions under the Regulatory Powers Act

(8) This section does not apply in relation to a power or function that a person has under the Regulatory Powers Act (as it applies in relation to this Act).

Note: Powers and functions of this kind may be delegated under sections 99, 100 and 101F.

138 Powers of Commissioner of Taxation

Powers of Commissioner of Taxation as a result of delegation under section 137

(1) If a power or function under a provision of this Act is delegated to the Commissioner of Taxation under section 137, the Commissioner has the general administration of this Act to the extent of administering the provision.

Note: The provision is therefore a taxation law for the purposes of the Taxation Administration Act 1953 (among other laws). That Act contains a wide range of provisions about gathering, protecting and dealing with information, the exercise of powers and the performance of functions, under taxation laws, and the enforcement of taxation laws.

(2) However, the following provisions of Schedule 1 to the Taxation Administration Act 1953 do not apply in relation to this Act:

- (a) section 255□10 (to defer the payment time);
- (b) Subdivision 255□D in that Schedule (security deposits);
- (c) Part 4□25 (charges and penalties), other than section 288□35 and Division 298 to the extent that it relates to that section;
- (d) Part 4□50 (release from particular liabilities);
- (e) paragraph 355□15(c) (application of Division 355);
- (f) Part 5□5 (rulings);
- (g) Division 444 (obligations of entities on behalf of other entities).

(3) To avoid doubt, the Secretary or a person engaged under the Public Service Act 1999 who is employed in the Department may be a taxation officer (within the meaning of subsection 8J(1) of the Taxation Administration Act 1953) to the extent that this Act is a taxation law.

Powers of Commissioner of Taxation as a result of delegation under section 101F

(3A) Subsections (1) to (3) apply in relation to a delegation to the Commissioner of Taxation under section 101F in the same way as they apply in relation to a delegation to the Commissioner under section 137.

Note: Section 101F allows for the delegation to the Commissioner of certain powers and functions under the Regulatory Powers Act (as it applies in relation to this Act).

(3B) However, for the purposes of applying subsection (2) in relation to a delegation to the Commissioner of Taxation under section 101F, treat that subsection as including the following paragraph:

(da) sections 353□10 and 353□15 (powers to obtain information and evidence and access premises); Powers of Commissioner of Taxation as a result of request by Treasurer

(4) The Treasurer may request, in writing, the Commissioner of Taxation to exercise his or her powers under section 353□10 or 353□15 (powers to obtain information and evidence and access premises) in Schedule 1 to the Taxation Administration Act 1953 in relation to a matter if a power or function has not been delegated to the Commissioner under section 137 in relation to the matter.

(5) If the Treasurer does so, the Commissioner of Taxation (or an individual authorised by the Commissioner) may exercise his or her powers under those sections of that Act as if a reference in those sections to a taxation law included a reference to this Act to the extent that it relates to the matter.

139 Regulations

(1) The Governor□General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for a method for indexing a value or an amount prescribed for the purposes of this Act.
- (3) Despite subsection 14(2) of the Legislation Act 2003, the regulations may provide in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

Endnotes

Endnote 1— [Omitted]

Endnote 2—Abbreviation key

ad = added or inserted
 am = amended
 amdt = amendment
 C[x] = Compilation No. x
 ch = Chapter(s)
 cl = clause(s)
 cont. = continued
 def = definition(s)
 Dict = Dictionary
 disallowed = disallowed by Parliament
 div = Division(s)
 ed = editorial change
 exp = expires/expired or ceases/ceased to have effect
 gaz = gazette
 LA = Legislation Act 2003
 LIA = Legislative Instruments Act 2003
 (md) = misdescribed amendment can be given effect
 (md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification
No. = Number(s)
Ord = Ordinance
orig = original
p = page(s)
para = paragraph(s)/subparagraph(s)/sub□subparagraph(s)
pres = present
prev = previous
(prev...) = previously
pt = Part(s)
r = regulation(s)/Court rule(s)
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)/subsection(s)/rule(s)/subrule(s)/order(s)/suborder(s)
sch = Schedule(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
sub ch = Sub□Chapter(s)
sub div = Subdivision(s)
sub pt = Subpart(s)
underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history [Omitted]

Endnote 4—Amendment history [Omitted]