

EXPOSURE DRAFT

EXPOSURE DRAFT - EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Foreign Acquisitions and Takeovers Act 1975

Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023

The *Foreign Acquisitions and Takeovers Act 1975* (the Act) establishes a regime for the notification, review and approval of foreign investment in Australia.

Section 139 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Regulations may also be made pursuant to section 130ZU and section 37 of the Act. Section 130ZU provides the regulations may require notice to be given to the Registrar. Section 37 enables regulations to provide for exemptions from the Act or from specified provisions of the Act.

The *Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023* (the Regulations) amends the *Foreign Acquisitions and Takeovers Regulation 2015* (the Principal Regulations) to support operation of the Register of Foreign Ownership of Australian Assets (the Register).

The Register, established by Part 7A of the Act, is an integral part of Australia's foreign investment review framework. It records foreign interests in land, water, entities, businesses and other assets in Australia in a single resource, incorporating and extending the existing Register of Foreign Ownership of Water Entitlements and Register of Foreign Ownership of Agricultural Land. The Commissioner of Taxation is the Registrar responsible for administering the Register, under the *Commonwealth Registers (Appointment of Registers) Instrument 2021*.

The Regulations support the operation of the Register by prescribing circumstances in which foreign investors must notify the Registrar of certain interests, for that information to be included on the Register. Regulatory burden is mitigated by continuing existing exemptions from notification obligations and design of the regime to minimise duplication of notifications.

Together with the Act, the Regulations enhance Government visibility of foreign ownership of Australian assets to aid policy consideration and assist efficient case processing by making more information available to decision-makers.

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

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations are exempt from the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 54(2)(b) of the Act. Item 31 of the table under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides an exemption from sunseting if the instrument is a regulation made under the Act. The Regulations are made under the Act, and are therefore exempt from sunseting.

The Regulations commenced on the day after they were registered on the Federal Register of Legislation.

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ATTACHMENT A

Details of the Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023* (the Regulations).

Section 2 – Commencement

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Foreign acquisitions and takeovers registration and other amendments

The amendments to the *Foreign Acquisitions and Takeovers Regulation 2015* (Principal Regulations) are in two parts: prescribing requirements to register and their relationship with other existing requirements, and replicating existing exemptions.

Legislative references in this attachment are to the Principal Regulations unless otherwise stated.

PART 1 – FURTHER REQUIREMENTS TO REGISTER, RELATIONSHIP WITH OTHER REQUIREMENTS, AND EXEMPTIONS

Item 1 – Register of Foreign Ownership of Australian Assets

Item 1 inserts new Part 5B into the Principal Regulations to cover matters relating to the Register of Foreign Ownership of Australian Assets (the Register).

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Within Part 5B:

- Division 1 provides a simplified outline of the new provisions (section 58A) to assist readers. However, readers should rely on substantive provisions as the outline is not intended to be comprehensive.
- Division 2 prescribes actions which require notification to the Registrar for the purposes of section 130ZU of the Act.
- Division 3 explains the relationship of the new provisions with existing notification provisions.
- Division 4 provides an exemption for Register purposes for certain kinds of interests in Australian land.

Actions covered by Part 5 of the Principal Regulations that are Registrable

Section 58B requires notice to be given to the Registrar in relation to certain significant and notifiable actions under Part 5 of the Principal Regulations.

In particular, subsection 58B(1) applies to actions by a foreign person in relation to an Australian media business under section 55, and to certain actions by foreign government investors under subsection 56(1).

A foreign person must notify the Registrar (known as giving a ‘register notice’) if:

- the foreign person takes an action that is a significant action under section 55 or subsection 56(1) of the Principal Regulations and a no objection notification or a notice imposing conditions has been given in relation to the action, and has not been revoked. Subdivision B of Part 3 of the Act deals with such notifications and notices: a no objection notification is a notice the Treasurer has no objection to the action, and a notice imposing conditions is a notice the Treasurer has no objection to the action subject to one or more conditions being imposed on the action to ensure the action will not be contrary to the national interest (subparagraph 58B(1)(a)(i)); or
- the foreign person takes an action that is a significant action under section 55 or subsection 56(1) of the Principal Regulations and before the action was taken the Treasurer gave the foreign person a notice under subsection 66A(4) of the Act, which requires the action to undergo a national security review as the Treasurer considers that the action may pose a national security concern (subparagraph 58B(1)(a)(ii)); or
- a no objection notification or a notice imposing conditions is given in relation to an action the foreign person that has already been taken and was a significant action under section 55 or subsection 56(1) of the Principal Regulations (paragraph 58B(1)(b)); or

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- the foreign person takes an action that is a notifiable action under section 55 or subsection 56(1) of the Principal Regulations (paragraph 58B(1)(c)).

The Registrar may make data standards under section 130ZZ of the Act to provide for multiple notices to be combined into a single notice, to minimise duplication. This is clarified by an explanatory note below subsection 58B(1), modelled on an equivalent note beneath subsection 130W(5) of the Act for consistency.

The table in subsection 58B(2) prescribes when registered circumstances exist and cease, as this triggers a requirement to give a register notice. However, a registered circumstance will not exist or cease in relation to an equitable interest, per subsection 58B(3).

The table in subsection 58B(2) prescribes five registered circumstances which require a register notice:

- a foreign person acquiring a direct interest in an entity or business carrying on an Australian media business;
- a foreign government investor acquiring a direct interest in an Australian entity or Australian business;
- a foreign government investor starting an Australian business;
- a foreign government investor acquiring an interest in a tenement; and
- a foreign government investor acquiring an interest of at least 10 per cent in securities in a mining, production or exploration entity.

These registered circumstances continue while the relevant interest is held, and cease when the foreign person no longer holds the interest or when the entity or business the interest relates to ceases.

For example, where a foreign government investor acquires a legal interest of 20 per cent in an Australian mining entity, a registered circumstance arises requiring the investor to notify the Registrar. If the percentage of interest held by the investor changes but some percentage continues to be held (for example: percentage held decreases to 9 per cent – which is below the initial threshold for notification but a percentage is still held), the registered circumstance remains on the Register as the investor continues to hold an interest in the Australian entity. See section 17 of the Act for the meaning of interest of a specified percentage in an entity. When the investor no longer holds the interest (that is, the investor holds 0 per cent), the registered circumstance ceases.

Subsections 58B(4) and (5) set the registrable event day for a register notice under this section. A register notice must be given to the Registrar with 30 days of the applicable registrable event day, in accordance with section 130W of the Act. In general, the registrable event day is the day on which the foreign person takes the

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action that triggers the requirement to give a register notice. For example, when a foreign government investor acquires an interest in a tenement, the registrable event day is the day on which the interest is acquired. However, there are two circumstances with a different approach, where:

- paragraph 58B(1)(a) and table item 3 of subsection 58B(2) apply (a foreign government investor starts an Australian business) – the registrable event day is the day on which the business receives notice of its Australian Business Number (ABN) or a certificate with its Australian Company Number (ACN);
- paragraph 58B(1)(b) applies (a no objection notification or a notice imposing conditions is given in relation to a significant action under section 55 or subsection 56(1) of the Principal Regulations that has already been taken) – the registrable event day is the day on which the no objection notification or notice imposing conditions is given.

Subsection 58B(6) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in items 1, 2 and 5 of the table in subsection (2). This is not relevant to items 3 and 4 of the table, which relate to interests that are not covered by section 130ZN of the Act.

Subsection 58B(7) provides that section 58B applies to all actions taken on or after the Register commencement date, regardless of when any notification or notice, other than the register notice mentioned in subsection 58B(1), is given.

Actions covered by exemption certificates that require notification to the Registrar

Subdivision B of new Part 5B prescribes actions which are covered by exemption certificates that must be notified to the Registrar. The Register covers actions that are otherwise exempt from the Act so that more detailed information about foreign ownership is available to the Government.

As such, sections 58C, 58D, 58E, 58F, 58G, 58H and 58J prescribe circumstances in which a foreign person must give a register notice to the Registrar where the foreign person has received an exemption certificate in relation to an action that would otherwise be a significant action, notifiable action, notifiable national security action or reviewable national security action if it was not covered by the exemption certificate. In prescribing registered circumstances and related details such as the registrable event day, these sections reference equivalent sections in the Act, to ensure consistent notification requirements to the Registrar are imposed on similar actions under both the Act and the Principal Regulations. Table 1, below, provides a summary of these interactions .

Table 1: Summary of actions covered by exemption certificates which must be notified to the Registrar under Subdivision B

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Section	Action	Registered circumstance exists consistent with ...	Registered circumstance ceases consistent with ...	Registrable event day is consistent with ...
58C	action relating to land that would be a significant action, notifiable action, notifiable national security action or reviewable national security action if not covered by an exemption certificate	subsection 130ZA(2) of the Act, which outlines when a registered circumstance exists when a foreign person acquires interest in Australia land	subsection 130ZA(3) of the Act, which outlines when a registered circumstance ceases when a foreign person acquires interest in Australia land	subsection 130ZA(5) of the Act, which outlines the registrable event day for when a foreign person acquires interest in Australia land
58D	action relating to a tenement that would be a significant action, notifiable action or notifiable national security actions if not covered by an exemption certificate	subsection 130ZB(2) of the Act, which outlines when a registered circumstance exists when a foreign person acquires interest in an exploration tenement	subsection 130ZB(3) of the Act, which outlines when a registered circumstance ceases when a foreign person acquires interest in an exploration tenement	subsection 130ZB(4) of the Act, which outlines the registrable event day for when a foreign person acquires interest in an exploration tenement
58E	action relating to an entity that would be a significant action or a notifiable action if not covered by an exemption certificate	subsections 130ZH(2) to (3) the Act, which outline when a registered circumstance exists when a foreign person takes a significant action under section 40 of the Act (entities)	subsections 130ZH(2) to (3) of the Act, which outline when a registered circumstance ceases when a foreign person takes a significant action under section 40 of the Act (entities)	subsection 130ZH(4) of the Act, which outlines the registrable event day for when a foreign person takes a significant action under section 40 of the Act (entities)

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Section	Action	Registered circumstance exists consistent with ...	Registered circumstance ceases consistent with ...	Registrable event day is consistent with ...
58F	action relating to a business that would be a significant action or notifiable action if not covered by an exemption certificate	subsections 130ZI(2) to (3) the Act, which outline when a registered circumstance exists when a foreign person takes a significant action under section 41 of the Act (businesses)	subsections 130ZI(2) to (3) of the Act, which outline when a registered circumstance ceases when a foreign person takes a significant action under section 41 of the Act (businesses)	subsection 130ZI(4) of the Act, which outlines the registrable event day for when a foreign person takes a significant action under section 41 of the Act (businesses)
58G	action that would be a notifiable national security action if not covered by an exemption certificate	subsections 130ZK(2) to (3) the Act, which outline when a registered circumstance exists when a foreign person takes a notifiable national security action under section 55B of the Act	subsections 130ZK(2) to (3) of the Act, which outline when a registered circumstance ceases when a foreign person takes a notifiable national security action under section 55B of the Act	subsection 130ZK(4) of the Act, which outlines the registrable event day for when a foreign person takes a notifiable national security action under section 55B of the Act
58H	action relating to an entity that would be a reviewable national security action if not covered by an exemption certificate	subsections 130ZL(2) to (3) the Act, which outline when a registered circumstance exists when a foreign person takes a reviewable national security	subsections 130ZL(2) to (3) of the Act, which outline when a registered circumstance ceases when a foreign person takes a reviewable national security	subsection 130ZL(4) of the Act, which outlines the registrable event day for when a foreign person takes a reviewable national security action under section 55D of the Act (entities)

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Section	Action	Registered circumstance exists consistent with ...	Registered circumstance ceases consistent with ...	Registrable event day is consistent with ...
		action under section 55D of the Act (entities)	action under section 55D of the Act (entities)	
58J	action relating to a business that would be a reviewable national security action if not covered by an exemption certificate	subsections 130ZM(2) to (3) the Act, which outline when a registered circumstance exists when a foreign person takes a reviewable national security action under section 55E of the Act (businesses)	subsections 130ZM(2) to (3) of the Act, which outline when a registered circumstance ceases when a foreign person takes a reviewable national security action under section 55E of the Act (businesses)	subsection 130ZM(4) of the Act, which outlines the registrable event day for when a foreign person takes a reviewable national security action under section 55E of the Act (businesses)

Section 58C – Actions relating to land that would be significant actions, notifiable actions, notifiable security actions or reviewable national security actions if not covered by exemption certificates

Section 58C works with sections 130ZA and 130ZU of the Act to require a foreign person who takes an action relating to Australian land which is covered by an exemption certificate to notify the Registrar of the action.

Subsection 58C(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to Australian land and would be a significant action, notifiable action, notifiable national security action or reviewable national security action if it was not covered by an exemption certificate.

For the avoidance of doubt, note 1 under subsection 58C(1) explains that subparagraph 58C(1)(b)(i) includes an action to which subparagraph 56(1)(c)(i) of the Principal Regulations applies, that is the acquisition by the person (as a foreign government investor) of a legal interest in a mining or production tenement.

The actions in subsection 58C(1) may overlap, meaning multiple register notices may be required. As explained in note 2 under subsection 58C(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with

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equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Subsection 58C(2) sets out the interaction between this section of the Principal Regulations, section 130ZA of the Act (when interests in Australian land must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZA(2) to (5) apply to actions covered by subsection 58C(1). This means the existence and cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Section 58D – Actions relating to tenements that would be significant actions, notifiable actions or notifiable national security actions if not covered by exemption certificates

Section 58D works with sections 130ZB and 130ZU of the Act to require a foreign person who takes an action relating to a tenement which is covered by an exemption certificate to notify the Registrar of the action.

Subsection 58D(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to tenements and would be a significant action, notifiable action or notifiable security action if it was not covered by an exemption certificate.

For the avoidance of doubt, note 1 under subsection 58D(1) explains that paragraph 58D(1)(a) includes an action to which subparagraph 56(1)(c)(i) of the Principal Regulations applies, that is the acquisition by the person (as a foreign government investor) of a legal interest in a mining or production tenement.

The actions in subsection 58D(1) may overlap, meaning multiple register notices may be required. As explained in note 2 under subsection 58D(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Paragraph 58D(2)(b) specifies that ‘interest’ has the same meaning in relation to a tenement covered by subparagraph 43(1)(a)(i) of the Principal Regulations or paragraph 55B(1)(e) of the Act as it has in relation to Australian land. This ensures consistent meaning of ‘interest’ in a tenement within the existing and new provisions of the Principal Regulations, as well as being consistent with the Act.

Section 58E – Actions relating to entities that would be significant actions or notifiable actions if not covered by exemption certificates

Section 58E works with sections 130ZH and 130ZU of the Act to require a foreign person who takes an action relating to entities which is covered by an exemption certificate to notify the Registrar of the action.

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Subsection 58E(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to entities and would be a significant action, or notifiable action if it was not covered by an exemption certificate.

For the avoidance of doubt, note 1 under subsection 58E(1) explains that paragraphs 58E(1)(a) and (b) include an action to which subparagraph 56(1)(c)(ii) of the Principal Regulations applies, that is the acquisition by the person (as a foreign government investor) of an interest of at least 10 per cent in securities in a mining, production or exploration entity.

The actions in subsection 58E(1) may overlap, meaning multiple register notices may be required. As explained in note 2 under subsection 58E(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Subsection 58E(2) sets out the interaction between this section of the Principal Regulations, section 130ZH of the Act (what interests in entities must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZH(2) to (5) apply to actions covered by subsection 58E(1). This means the existence and cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Subsection 58E(3) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZH(2) of the Act (as that table item applies because of subsection 58E(2)).

Section 58F – Actions relating to businesses that would be significant actions or notifiable actions if not covered by exemption certificates

Section 58F works with sections 130ZI and 130ZU of the Act to require a foreign person who takes an action relating to businesses (including Australian media businesses and agribusinesses) which is covered by an exemption certificate to notify the Registrar of the action.

Subsection 58F(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to an Australian business and would be a significant action or notifiable action if it was not covered by an exemption certificate.

These actions may overlap, meaning multiple register notices may be required. As noted under subsection 58F(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

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Subsection 58F(2) sets out the interaction between this section of the Principal Regulations, section 130ZI of the Act (what interests in Australian businesses must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZI(2) to (5) apply to actions covered by subsection 58F(1). This means the existence and cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Subsection 58F(3) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZI (2) of the Act (as that table item applies because of subsection 58F(2)).

Section 58G – Actions that would be notifiable national security actions if not covered by exemption certificates

Section 58G works with sections 130ZK and 130ZU of the Act to require a foreign person who takes an action which is covered by an exemption certificate and that would be a notifiable national security action if not covered by the exemption certificate to notify the Registrar of the action.

Subsection 58G(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action would be a notifiable national security action if it was not covered by an exemption certificate.

These actions may overlap, meaning multiple register notices may be required. As noted under subsection 58G(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Subsection 58G(2) sets out the interaction between this section of the Principal Regulations, section 130ZK of the Act (what notifiable national security actions must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZK(2) to (5) apply to actions covered by subsection 58G(1). This means the existence and cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Subsection 58G(3) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in item 2 or 3 of the table in subsection 130ZK(2) of the Act (as that table item applies because of subsection 58G(2)).

Section 58H – Actions relating to entities that would be reviewable national security actions if not covered by exemption certificates

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Section 58H works with sections 130ZL and 130ZU of the Act to require a foreign person who takes an action relating to entities which is covered by an exemption certificate to notify the Registrar of the action.

Subsection 58H(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to entities and would be a reviewable national security action if it was not covered by an exemption certificate.

These actions may overlap, meaning multiple register notices may be required. As noted under subsection 58H(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Subsection 58H(2) sets out the interaction between this section of the Principal Regulations, section 130ZL of the Act (what interests in entities must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZL(2) to (5) apply to actions covered by subsection 58H(1). This means the existence and cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Subsection 58H(3) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in item 1 of the table in subsection 130ZL(2) of the Act (as that table item applies because of subsection 58H(2)).

Section 58J – Actions relating to businesses that would be reviewable national security actions if not covered by exemption certificates

Section 58J works with sections 130ZM and 130ZU of the Act to require a foreign person who takes an action relating to entities which is covered by an exemption certificate to notify the Registrar of the action.

Subsection 58J(1) prescribes the circumstances in which notice must be given to the Registrar – effectively, the action relates to businesses and would be a reviewable national security action if it was not covered by an exemption certificate.

These actions may overlap, meaning multiple register notices may be required. As noted under subsection 58J(1), the Registrar may make data standards under section 130ZZ of the Act to allow multiple notices to be combined into a single notice – to reduce duplication. This note is consistent with equivalents elsewhere in Part 5B of the Principal Regulations and in section 130W of the Act.

Subsection 58J(2) sets out the interaction between this section of the Principal Regulations, section 130ZM of the Act (what interests in businesses must be notified to the Registrar) and section 130ZU of the Act (what regulations may provide for). The effect is that the requirements for a register notice under subsection 130ZM(2) to (5) apply to actions covered by subsection 58E(1). This means the existence and

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cessation of registered circumstances, registrable event day, and application of requirements are consistent under the Act and the Principal Regulations.

Subsection 58J(3) clarifies that section 130ZN of the Act (which covers a change in interest in an entity or business) applies to a registered circumstance mentioned in item 1 or 2 of the table in subsection 130ZM(2) of the Act (as that table item applies because of subsection 58J(2)).

Relationship with other notification requirements

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

Section 58K manages the relationship of the new notification provisions (Division 2) with existing notification provisions (sections 98C, 98D and 98E of the Act). The section provides that foreign persons can satisfy the notification requirements to the Treasurer in sections 98C, 98D and 98E of the Act in relation to a core Part 3 action in the Act (provided it is a kind for which register notices must be given to the Registrar for the purposes of Part 7A of the Act) through the provision of register notices to the Registrar in relation to the same action for the purposes of Part 7A of the Act. The effect is to ease regulatory burden by minimising duplicative notification requirements in relation to the same action.

Exemption for Register purposes for certain kinds of interests in Australian land

Paragraph 37(1)(b) of the Act allows regulations to be made that provide that the Act or certain provisions of the Act do not apply to certain kinds of interests or in prescribed circumstances. Pursuant to this, section 58L provides that Part 7A of the Act (which contains requirements and other provisions relating to the Register) does not apply in relation to an interest in Australian land that is not:

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

Note 1 under section 58L explains that the exemption extends to regulations made for the purposes of Part 7A of the Act (for example, section 58C). This ensures consistency across registration obligations to the Registrar under both the Act and the Principal Regulations in relation to an interest in Australian land. Note 2 under section 58L clarifies that Part 7A of the Act continues to apply to interests in exploration tenements, as these interests are not interests in Australian land.

The effect of this section is to limit the range of interests in land that must be registered under the Register for registration obligations under both the Act and the Principal Regulations to only the interests that are most important and sensitive.

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PART 2 – REPLICATING EXISTING EXEMPTIONS

The Register will consolidate the Register of Foreign Ownership of Water Entitlements and Register of Foreign Ownership of Agricultural Land into one resource. Existing exemptions under those regimes will continue to apply under the new Register to provide consistency of information and approach, and to not increase regulatory burden on foreign investors.

Item 2 – Rights that are not registrable water entitlements

Paragraph 26A(2)(d) of the Act provides that regulations may be made that specify that a right of a kind is not a registrable water entitlement for the purposes of the Act.

Pursuant to this, item 2 inserts new section 22A into the Principal Regulations to provide that a right held by an irrigation infrastructure operator is not a registrable water entitlement to the extent that the right is used to meet an irrigation infrastructure operator's obligations to supply water to its customers.

In practice, this means notice need not be given to the Registrar in relation to such interests.

Section 22A continues the effect of section 5A of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* and section 7 of the *Register of Foreign Ownership of Water or Agricultural Land Rules 2017*, with provisions specifying that certain rights held by an irrigation infrastructure operator are not registrable water entitlements that need to be registered for the Register of Foreign Ownership of Water Entitlements. Section 22A ensures consistency with the existing Register of Foreign Ownership of Water Entitlements framework, and that an increased regulatory burden is not imposed on foreign investors.

Example 1

Dynamic Irrigation Cooperative (DIC) is an irrigation infrastructure operator operating in NSW which meets the definition of foreign person.

DIC has four water access entitlements which are used to meet its customers' irrigation rights and account for the water that is lost through transit. The rights held by DIC are not registrable water entitlements.

Example 2

Sunny Valley is an irrigation infrastructure operator in South Australia which meets the definition of foreign person.

Sunny Valley holds three water access entitlements which give it access to water with a nominal volume of 2,500 ML.

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Sunny Valley determines that 1,500 ML is subject to customers' irrigation rights and to cover irrigation system distribution losses.

That part of Sunny Valley's water holdings will not meet the definition of registrable water entitlement.

The remaining 1,000 ML will meet the definition of registrable water entitlements.

Item 3 – Exemption for persons holding water entitlements because of enforcement of securities for moneylending agreements

Item 3 amends subsection 27(1) to extend the moneylending exemption in the Principal Regulations to interests in a registrable water interest.

The purpose of the amendment is to maintain and not increase the regulatory burden for foreign investors by ensuring consistent treatment of registrable water interests under the new Register with treatment of such interests under the existing Register of Foreign Ownership of Water Entitlements framework given this framework is being absorbed into the Register.

The amendment is consistent with section 30U of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* and section 9 of the *Register of Foreign Ownership of Water or Agricultural Land Rules 2017*, which provide an exemption from registration to persons holding registrable water entitlements by way of enforcement of a security held solely for the purposes of a moneylending agreement and the person is either the person who entered into the moneylending agreement or a subsidiary or holding entity of that person. The exemption under the Register of Foreign Ownership of Water Entitlements will continue to have effect under the new Register through the amendment to subsection 27(1).