

EXPOSURE DRAFT



EXPOSURE DRAFT

Foreign Acquisitions and Takeovers Amendment Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name	1
2	Commencement	1
3	Authority	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Moneylending agreements		2
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		2
Part 2—Australian media businesses		4
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		4
Part 3—Unlisted Australian land entities		5
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		5
Part 4—Acquisitions of interests in securities where proportionate share or unit holding will not increase		6
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		6
Part 5—Meaning of rights issue		7
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		7
Part 6—Foreign custodian corporations		8
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		8
Part 7—Application of amendments		9
<i>Foreign Acquisitions and Takeovers Regulation 2015</i>		9

EXPOSURE DRAFT

1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Act 1975*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Moneylending agreements

Schedule 1—Amendments

Part 1—Moneylending agreements

Foreign Acquisitions and Takeovers Regulation 2015

1 Section 5 (definition of *moneylending agreement*)

Repeal the definition, substitute:

moneylending agreement means:

- (a) an agreement entered into:
 - (i) in good faith and on ordinary commercial terms; and
 - (ii) in the ordinary course of carrying on a moneylending business; except an agreement dealing with any matter unrelated to the carrying on of that business; or
- (b) an agreement entered into:
 - (i) in good faith and on ordinary commercial terms; and
 - (ii) relating to the purpose of lending money or otherwise providing financial accommodation; and
 - (iii) by an entity that was created predominantly for that purpose by a person or entity in the ordinary course of carrying on a moneylending business; except if the entity, before entering into the agreement, began carrying on a business unrelated to that purpose; or
- (c) for a person or entity that:
 - (i) is carrying on a moneylending business; or
 - (ii) was created predominantly for the purpose of lending money or otherwise providing financial accommodation by a person or entity in the ordinary course of carrying on a moneylending business; or
 - (iii) is a subsidiary or holding entity of a person or entity covered by subparagraph (i) or (ii);an agreement to acquire an interest arising from a moneylending agreement (within the meaning of paragraph (a) or (b)).

2 Section 5

Insert:

moneylending business means a business of lending money or otherwise providing financial accommodation.

3 Subparagraph 27(1)(b)(iii)

Omit “the first entity”, substitute “an entity mentioned in subparagraph (i) or (ii)”.

4 Subparagraph 27(1)(b)(iv)

Omit “the first entity”, substitute “a person or entity mentioned in any of subparagraphs (i) to (iii)”.

EXPOSURE DRAFT

Amendments **Schedule 1**
Moneylending agreements **Part 1**

5 Subparagraph 27(1)(b)(v)

After “appointed”, insert “by or”.

6 After subparagraph 27(2)(b)(i)

Insert:

(ia) there are at least 100 members of the key entity; or

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Australian media businesses

Part 2—Australian media businesses

Foreign Acquisitions and Takeovers Regulation 2015

7 Subparagraph 13A(3)(a)(iii)

Repeal the subparagraph.

8 Subsection 13A(4)

After “10,000 people”, insert “in Australia”.

9 Section 55

Omit “an interest of at least 5%”, substitute “a direct interest”.

EXPOSURE DRAFT

Amendments **Schedule 1**
Unlisted Australian land entities **Part 3**

Part 3—Unlisted Australian land entities

Foreign Acquisitions and Takeovers Regulation 2015

10 Paragraph 37(4)(c)

Omit “5%”, substitute “10%”.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 4 Acquisitions of interests in securities where proportionate share or unit holding will not increase

Part 4—Acquisitions of interests in securities where proportionate share or unit holding will not increase

Foreign Acquisitions and Takeovers Regulation 2015

11 Subsection 41(2)

Omit “an acquisition”, substitute “a person’s acquisition”.

12 Subparagraphs 41(2)(a)(i) and (b)(iii)

Before “acquisition”, insert “person’s”.

13 At the end of subsection 41(2)

Add:

; or (c) both of the following apply:

- (i) immediately before the person’s acquisition the person holds an interest of a particular percentage in the entity;
- (ii) there are reasonable grounds to believe that this percentage interest that the person holds in the entity will not increase as a result of the person’s acquisition.

EXPOSURE DRAFT

Amendments **Schedule 1**
Meaning of rights issue **Part 5**

Part 5—Meaning of rights issue

Foreign Acquisitions and Takeovers Regulation 2015

14 Subparagraph 41(2)(a)(i)

After “rights issue”, insert “(within the meaning of the *Corporations Act 2001*)”.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 6 Foreign custodian corporations

Part 6—Foreign custodian corporations

Foreign Acquisitions and Takeovers Regulation 2015

15 Section 30

Before “The”, insert “(1)”.

16 Section 30

After “acquisition of an interest”, insert “(the *subject interest*)”.

17 Paragraphs 30(b) and (c)

Omit “the interest”, substitute “the subject interest”.

18 Paragraphs 30(d) and (e)

Repeal the paragraphs, substitute:

- (d) each equitable interest (other than a right covered by subsection (2)) in the securities, assets, trust, land or tenement is not held by any foreign person; and
- (e) if voting rights are associated with the subject interest—the foreign person exercises those voting rights only at, or in accordance with, the direction of:
 - (i) another person that is providing custodian services to a person in relation to the holding of the subject interest; or
 - (ii) the holder of an equitable interest in the securities, assets, trust, land or tenement that is receiving custodian services that are related to that equitable interest.

19 At the end of section 30

Add:

- (2) For the purposes of paragraph (1)(d), this subsection covers a right to be indemnified for any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, in the provision or purported provision of the custodian services referred to in paragraph (1)(a) or (e).

20 Paragraphs 41A(2)(b) and (c)

Omit “30(a)”, substitute “30(1)(a)”.

21 Subsection 41A(2) (example)

Omit “30(a)”, substitute “30(1)(a)”.

Part 7—Application of amendments

Foreign Acquisitions and Takeovers Regulation 2015

22 In the appropriate position in Part 7

Insert:

77 Application of the Foreign Acquisitions and Takeovers Amendment Regulations 2022

Application of amendments about moneylending agreements

- (1) The amendments made by Part 1 of Schedule 1 to the amending regulations apply in relation to moneylending agreements entered into on or after 1 April 2022.

Application of other amendments

- (2) The amendments made by Parts 2 to 6 of Schedule 1 to the amending regulations apply in relation to an action taken, or proposed to be taken, on or after 1 April 2022.

Definitions

- (3) In this section:

amending regulations means the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*.