



# **Register of Foreign Ownership of Agricultural Land Act 2015**

**No. 151, 2015**

**An Act to provide for the collection of information,  
and publication of statistics, about foreign interests  
in certain land, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to provide for the collection of information,  
and publication of statistics, about foreign interests  
in certain land, and for related purposes**

*[Assented to 25 November 2015]*

The Parliament of Australia enacts:

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Register of Foreign Ownership of Agricultural Land Act 2015*.

### 2 Commencement

- (1) Each provision of this Act 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 Act	At the same time as Schedule 1 to the <i>Foreign Acquisitions and Takeovers Legislation Amendment Act 2015</i> commences.	1 December 2015

Note: This table relates only to the provisions of this Act as originally enacted.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

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

### 3 Simplified outline of this Act

The Commissioner must keep a Register of Foreign Ownership of Agricultural Land, containing:

- (a) information the Commissioner obtains about foreign persons' holdings of agricultural land; and
- (b) published statistics derived from that information.

After the commencement of this Act, foreign persons must give notice to the Commissioner of:

- (a) their holdings of agricultural land as at the start of 1 July 2015; and
- (b) later events causing agricultural land to start or cease to be held by foreign persons.

The Commissioner must regularly give the Minister a report, including statistics from the Register, for presentation to the Parliament.

The provisions in Schedule 1 to the *Taxation Administration Act 1953* about confidentiality of information control what can be done with information in the Register (apart from the published statistics).

#### **4 Definitions**

In this Act:

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

Note: The rules may provide that land is not agricultural land (see section 5).

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

***cease*** to hold a freehold interest in, or right to occupy, agricultural land has a meaning affected by section 6.

***Commissioner*** means the Commissioner of Taxation.

***foreign person*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

***freehold interest*** of a person in land means a legal interest in an estate in fee simple in the land that the person holds (alone, as a tenant in common or as a joint tenant).

***land*** includes a building or a part of a building.

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**lease** includes a sublease.

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

**Register** means the Register of Foreign Ownership of Agricultural Land kept under section 13.

**registration trigger time**: the **registration trigger time** in relation to a right held by a person to occupy land under a lease or licence is the latest of the following times:

- (a) the time the person started to hold the right;
- (b) the time the person became a foreign person;
- (c) the time the land became agricultural land;
- (d) the start of 1 July 2015.

**rules** means rules made under section 35.

**start** to hold a freehold interest in, or right to occupy, land has a meaning affected by section 6.

## 5 Rules may specify that land is not agricultural land

- (1) The rules may provide that land of a specified kind is not agricultural land for the purposes of this Act.
- (2) Those rules have effect despite the definition of **agricultural land** in section 4.

## 6 Starting and ceasing to hold freehold interests in, and rights to occupy, land

### *Starting*

- (1) A person starts to hold a freehold interest in, or right to occupy, land even if:
  - (a) the person starts to hold the interest or right jointly with one or more other persons; or
  - (b) the person already holds or has previously held such an interest or right in other land.



*Ceasing*

- (2) A person ceases to hold a freehold interest in, or right to occupy, agricultural land even if the person continues to hold another such interest or right in other agricultural land.

*This section is not limiting*

- (3) This section does not limit when a person starts or ceases to hold a freehold interest in, or right to occupy, land.

**7 Extension to external Territories**

This Act extends to every external Territory.

**8 Extraterritoriality**

This Act applies both within and outside Australia.

**9 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.

**10 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 that law is capable of operating concurrently with this Act.

**11 Severability**

- (1) Without limiting its effect apart from each of the following subsections of this section, this Act also has effect as provided by that subsection.
- (2) This Act also has the effect it would have if each reference to a foreign person were expressly confined to an individual who is outside Australia.

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- (3) This Act also has the effect it would have if each reference to a foreign person were expressly confined to an alien (within the meaning of paragraph 51(xix) of the Constitution).
- (4) This Act also has the effect it would have if each reference to a foreign person were expressly confined to a corporation that:
  - (a) is described in paragraph (b) or (c) of the definition of **foreign person** in section 4 of the *Foreign Acquisitions and Takeovers Act 1975*; and
  - (b) is a foreign corporation, or a trading or financial corporation, to which paragraph 51(xx) of the Constitution applies.
- (5) This Act also has the effect it would have if each reference to a foreign person were expressly confined to a trustee who:
  - (a) is a trustee of a trust described in paragraph (d) or (e) of the definition of **foreign person** in section 4 of the *Foreign Acquisitions and Takeovers Act 1975*; and
  - (b) is:
    - (i) an individual outside Australia; or
    - (ii) an alien (within the meaning of paragraph 51(xix) of the Constitution); or
    - (iii) a foreign corporation, or a trading or financial corporation, to which paragraph 51(xx) of the Constitution applies.
- (6) This Act also has the effect it would have if each reference to land were expressly confined to land within a Territory.

## **Part 2—Register**

### **12 Simplified outline of this Part**

The Commissioner must keep a Register of Foreign Ownership of Agricultural Land, in 2 parts.

The basic part contains information the Commissioner obtains about foreign persons' holdings of agricultural land.

The statistical part, which must be published on a website, contains statistics derived from the information in the basic part.

The Commissioner may correct and update the Register.

### **13 Commissioner must keep Register**

The Commissioner must keep a Register of Foreign Ownership of Agricultural Land.

### **14 Parts of Register**

- (1) The Commissioner must keep the Register in 2 separate parts:
  - (a) the basic part; and
  - (b) the statistical part.
- (2) The basic part must contain:
  - (a) all the information obtained by the Commissioner under Part 3; and
  - (b) any information added under section 15; and
  - (c) any corrections or updates of information described in paragraph (a) or (b) that are made under section 16.
- (3) The statistical part must contain statistics derived by the Commissioner from information in the basic part of the Register, and any corrections or updates of those statistics.

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- (4) The statistics in the statistical part must not identify, or be reasonably capable of being used to identify, a person.

**15 Commissioner may add information to basic part of Register**

The Commissioner may add to the basic part of the Register any information obtained by the Commissioner (other than information obtained under Part 3) relating to:

- (a) the holding by a foreign person at the start of 1 July 2015 of an interest or right described in subsection 19(1); or
- (b) an event that is described in Subdivision B of Division 3 of Part 3 and that occurs after the start of 1 July 2015.

Note 1: Information obtained under Part 3 must be included in the basic part of the Register.

Note 2: Although the information described in this section is information about matters that must be notified to the Commissioner under Part 3, the Commissioner may obtain that information in other ways, such as by the exercise of powers under section 33 of this Act or Division 353 in Schedule 1 to the *Taxation Administration Act 1953*.

**16 Commissioner may correct or update information in Register**

The Commissioner may correct or update information in the basic part, or the statistical part, of the Register.

**17 Statistical part of Register to be published on website**

The Commissioner must publish on a website the statistical part of the Register.

## **Part 3—Requirements to give information about foreign holdings of agricultural land**

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

#### **18 Simplified outline of this Part**

After the commencement of this Act, a foreign person who held agricultural land at the start of 1 July 2015 must give the Commissioner notice of the holding.

If an event happens after the start of 1 July 2015 causing agricultural land to start or cease to be held by a particular foreign person, the person must give the Commissioner notice of the event after the commencement of this Act.

If a person required to give notice dies or is wound up before doing so, the person's executor or liquidator must give the notice. An agent may give notice for a person.

The rules may provide for exemptions from these requirements.

## **Division 2—Foreign holdings of agricultural land on 1 July 2015**

### **19 Notification of foreign persons' holdings of agricultural land as at 1 July 2015**

- (1) This section applies if, at the start of 1 July 2015, a foreign person held:
  - (a) a freehold interest in agricultural land; or
  - (b) a right to occupy agricultural land under a lease or licence whose remaining term (including any extension or renewal) was (at the start of 1 July 2015) reasonably likely to exceed 5 years.
- (2) The person must give notice of the holding to the Commissioner in the approved form before the end of 30 days starting on the day this section commences.

Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* contains rules about giving notices in the approved form. Subdivision 286-C in that Schedule provides for an administrative penalty for failure to give notice in the approved form on time.

Note 2: Division 4 requires or permits other persons to give notice of the event in some cases.

Note 3: The rules may provide for exemptions from requirements of this Part (see section 30).

## **Division 3—Changes in foreign holdings of agricultural land**

### **Subdivision A—Requirement to notify Commissioner of events affecting foreign holding of agricultural land**

#### **20 Notification of changes of foreign persons' holdings of agricultural land**

A person must give the Commissioner notice, in the approved form, of an event described in Subdivision B involving the person and occurring after the start of 1 July 2015. The person must do so before the end of 30 days after the later of:

- (a) the occurrence of the event; and
- (b) the commencement of this section.

Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* contains rules about giving notices in the approved form. Subdivision 286-C in that Schedule provides for an administrative penalty for failure to give notice in the approved form on time.

Note 2: Division 4 requires or permits other persons to give notice of the event in some cases.

Note 3: The rules may provide for exemptions from requirements of this Part (see section 30).

### **Subdivision B—Events that must be notified**

#### **21 Foreign person starting to hold agricultural land**

One event is that a foreign person starts to hold:

- (a) a freehold interest in agricultural land; or
- (b) a right to occupy agricultural land under a lease or licence whose term (including any extension or renewal) after the person starts to hold the right is reasonably likely to exceed 5 years.

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**22 Foreign person ceasing to hold agricultural land**

Another event is that a foreign person ceases to hold:

- (a) a freehold interest in agricultural land; or
- (b) a right to occupy agricultural land under a lease or licence whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

**23 Becoming a foreign person while holding agricultural land**

Another event is that a person becomes a foreign person while holding:

- (a) a freehold interest in agricultural land; or
- (b) a right to occupy agricultural land under a lease or licence whose term (including any extension or renewal) after the person becomes a foreign person is reasonably likely to exceed 5 years.

**24 Ceasing to be a foreign person while holding agricultural land**

Another event is that a person ceases to be a foreign person while holding:

- (a) a freehold interest in agricultural land; or
- (b) a right to occupy agricultural land under a lease or licence whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

**25 Land becoming agricultural land while held by a foreign person**

Another event is that land becomes agricultural land while a foreign person holds:

- (a) a freehold interest in the land; or
- (b) a right to occupy the land under a lease or licence whose term (including any extension or renewal) after the time the land becomes agricultural land is (at that time) reasonably likely to exceed 5 years.



**26 Land ceasing to be agricultural land while held by a foreign person**

Another event is that land ceases to be agricultural land while a foreign person holds:

- (a) a freehold interest in the land; or
- (b) a right to occupy the land under a lease or licence whose term (including any extension or renewal) after the registration trigger time was (at that time) reasonably likely to exceed 5 years.

## **Division 4—Giving of notice by agents**

### **27 Requirement for executors and administrators to give notice for persons who die**

- (1) If a person who is required by section 19 or 20 to give notice dies before giving the notice, the executor or administrator of the person's estate must give notice in accordance with that section.
- (2) Subsection (1) applies even if the person dies before the commencement of section 19 or 20.

### **28 Requirement for corporate liquidators to give notice**

- (1) If a person who is required by section 19 or 20 to give notice is a corporation and is wound up before giving the notice, the liquidator of the corporation must give notice in accordance with that section.
- (2) Subsection (1) applies even if the corporation is wound up before the commencement of section 19 or 20.

### **29 Agents may give notice**

A person required by section 19, 20, 27 or 28 to give notice is taken to have complied with the requirement if someone else gives notice, in accordance with that section, on the person's behalf.

## **Division 5—Exemptions from requirements to give notice**

### **30 Rules may exempt from requirements to give notice**

The rules may provide that this Part, or specified provisions of this Part, do not apply in relation to either all persons or persons specified by the rules, either generally or in circumstances specified by the rules.

## Part 4—Miscellaneous

### 31 Simplified outline of this Part

The Commissioner has the general administration of this Act, so it is a taxation law for the purposes of the *Taxation Administration Act 1953*, which contains various supplementary provisions.

The Commissioner may request a person to give information from outside Australia that is relevant to the person's compliance with Part 3.

The Commissioner must give the Minister periodic reports, at least annually, for presentation to Parliament.

The Minister may make rules for the purposes of this Act.

### 32 Commissioner has the general administration of this Act

The Commissioner has the general administration of this Act.

Note: This Act 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.

### 33 Offshore information notices for persons who may have obligations under Part 3

For the purposes of this Act, section 264A of the *Income Tax Assessment Act 1936* applies as if:

- (a) a reference in that section to an assessment of a taxpayer were a reference to the determination of either or both of the following:
  - (i) whether a person has or had an obligation under Part 3 of this Act;

- (ii) whether a person has complied with an obligation the person has or had under Part 3 of this Act; and
- (b) a reference in that section to a taxpayer were a reference to a person to whom the determination described in paragraph (a) relates or is to relate; and
- (c) a reference in that section to that Act included a reference to this Act.

Note 1: Section 264A of the *Income Tax Assessment Act 1936*:

- (a) lets the Commissioner give a taxpayer an offshore information notice requesting the taxpayer to give the Commissioner information, or a document, that is outside Australia and that the Commissioner believes is relevant to an assessment of the taxpayer; and
- (b) sets out the consequences if the taxpayer does not comply with the request.

Note 2: Division 353 in Schedule 1 to the *Taxation Administration Act 1953* also gives the Commissioner power to require a person to give the Commissioner information or documents for the administration of this Act.

### **34 Periodic report**

- (1) The Commissioner must give the Minister, for presentation to the Parliament, a report that:
  - (a) is on the operation of this Act; and
  - (b) includes statistics derived by the Commissioner from information in the basic part of the Register.
- (2) The Commissioner must do so as soon as practicable after:
  - (a) each 30 June in a year; or
  - (b) each occurrence in a year of a date prescribed by the rules.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about periodic reports.

### **35 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 20 August 2015  
Senate on 17 September 2015]*

(137/15)

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