



Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020

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 03 September 2020

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020*.

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.	4 September 2020

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Foreign Acquisitions and Takeovers Regulation 2015

1 Section 49

Omit:

This Part prescribes nil as the value for that test. Some land has no threshold value.

substitute:

Nil is the value for that test in several circumstances.

Some land has no threshold value.

There is a threshold value that is more than nil for some interests in commercial land that is not vacant.

2 Subsection 52(1)

Repeal the subsection, substitute:

Land without threshold value

- (1) For the purposes of subsection 52(1) of the Act, all land other than the following is prescribed:
- (a) agricultural land;
 - (b) commercial land that is not vacant.

Interests in agricultural land

3 At the end of section 52

Add:

Interests in commercial land that is not vacant

- (3) The following table prescribes a value for the purposes of paragraph 52(3)(b) of the Act for an interest in commercial land that is not vacant.

Threshold value for an interest in commercial land that is not vacant		
Item	For this kind of interest in such land...	the value (in millions of dollars) is ...
1	an interest if: (a) the conditions in subsection (4) of this section are met for the interest; and (b) the interest is being acquired by a foreign person who is an agreement country or region investor	1,192.
2	an interest if:	275.

Threshold value for an interest in commercial land that is not vacant

Item	For this kind of interest in such land...	the value (in millions of dollars) is ...
	(a) the conditions in subsection (4) of this section are met for the interest; and (b) the interest is being acquired by a foreign person who is not an agreement country or region investor and who is not a foreign government investor	
3	an interest for which no other item of this table applies	nil.

- (4) The conditions in this subsection are met for an interest in the land that is being acquired by a foreign person if:
- (a) the interest is an interest as lessee in a lease (the *proposed lease*); and
 - (b) the interest is substantially the same as an interest (the *March interest*) held by the foreign person as lessee in a lease over the land immediately before the March announcement; and
 - (c) none of the following will apply when the proposed lease is entered into:
 - (i) the land will be leased to the Commonwealth, a State, a Territory or a Commonwealth, State or Territory body, except to one or more bodies covered by subsection (5);
 - (ii) the land will be fitted out specifically for a business of a kind mentioned in subsection (6);
 - (iii) the land will be fitted out specifically to store, handle or dispose of biological agents on the List of Security-sensitive Biological Agents (within the meaning of the *National Health Security Act 2007*);
 - (iv) an authorisation under a law of the Commonwealth, a State or a Territory will allow materials that are regulated under that law to be produced or stored on the land;
 - (v) a mining operation will operate on the land;
 - (vi) a stored communication (within the meaning of the *Telecommunications (Interception and Access) Act 1979*) will be stored on the land;
 - (vii) the failure of part of a network unit (within the meaning of the *Telecommunications Act 1997*) on the land will result in telephony or internet services not being provided on other land;
 - (viii) servers critical to an ADI (within the meaning of the *Banking Act 1959*) or a stock exchange in Australia will be located on the land;
 - (ix) public infrastructure will be located on the land.
- Note 1: For paragraph (a), for when an interest in land is an interest as lessee in a lease, see paragraph 12(1)(c) of the Act.
- Note 2: The proposed lease may cover less (but not more) land than the lease in existence immediately before the March announcement.
- Note 3: Altering or varying the March lease will only be a significant action or notifiable action if the alterations or variations are material (see subsections 15(1) and 25(1) and paragraphs 43(a) and 47(2)(c) of the Act).
- (5) This subsection covers a corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) other than any of the following bodies:
- (a) the Australian Nuclear Science and Technology Organisation;

- (b) Comcare (the body corporate established under section 68 of the *Safety, Rehabilitation and Compensation Act 1988*);
 - (c) the CSC (short for Commonwealth Superannuation Corporation) within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*;
 - (d) the Commonwealth Scientific and Industrial Research Organisation;
 - (e) the Reserve Bank of Australia.
- (6) For the purpose of subparagraph (4)(c)(ii), the businesses are:
- (a) a business of a kind covered by paragraph 22(2)(b) (about sensitive businesses); or
 - (b) a business of providing storage of bulk data.

Definitions

- (7) In this section:

March announcement means 10.30 pm, by legal time in the Australian Capital Territory, on 29 March 2020.

4 In the appropriate position in Part 7

Insert:

75 Application of the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020* apply in relation to an action taken on or after the commencement of those Regulations.