

# EXPOSURE DRAFT



EXPOSURE DRAFT (08/10/2018)

## Telstra Corporation (Ownership—Interests in Shares) Regulations 2018

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Mitch Fifield [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for Communications and the Arts

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Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Telstra Corporation (Ownership—Interests in Shares) Regulations 2018*.

### 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Note: This table relates only to the provisions of this instrument as originally made.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 *Telstra Corporation Act 1991*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) sale-scheme trustee;
- (b) Telstra;
- (c) Telstra sale scheme;
- (d) unacceptable foreign-ownership situation.

- (1) In this instrument:

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## Part 1 Preliminary

### Section 6

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*Act* means the *Telstra Corporation Act 1991*.

*American Depositary Share* means a security, known by that name, representing an interest in another security.

*instalment receipt* means a security, issued by a sale-scheme trustee for a Telstra sale scheme, that confers a beneficial interest in a Telstra share.

*Interim American Depositary Share* means an American Depositary Share representing an interest in an instalment receipt.

*investment fund* means:

- (a) a fund of the kind generally known as a unit trust (except a unit trust of the kind generally known as a discretionary trust); or
- (b) a life insurance company, in respect only of its administration of a statutory fund, within the meaning of the *Life Insurance Act 1995*; or
- (c) a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
- (d) an exempt public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

- (2) An expression used in this instrument and in the Schedule to the Act has the same meaning as it has in the Schedule to the Act.

Note: The following are examples of expressions used in this instrument and in the Schedule to the Act:

- (a) associate;
- (b) company;
- (c) foreign person;
- (d) interest in a share;
- (e) ownership provisions;
- (f) share;
- (g) stake.

## 6 Beneficial interest in the capital or income of investment fund

- (1) A reference in this instrument to a person who holds a beneficial interest in the capital, or income, of an investment fund includes a reference to a person who holds:
  - (a) an interest of that kind jointly with another person; and
  - (b) an interest of that kind that is prospective because the person:
    - (i) has entered into a contract to purchase a beneficial interest; or
    - (ii) has a right, otherwise than by reason of holding a present interest of any kind, to have a beneficial interest transferred to the person or to the person's order (whether exercisable presently or in the future, and whether or not subject to a condition); or
    - (iii) has a right to acquire a beneficial interest under an option (whether exercisable presently or in the future, and whether or not subject to a condition).

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Preliminary **Part 1**

Section 6

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- (2) Subsection (1) applies regardless of:
  - (a) the remoteness of the interest; or
  - (b) the way in which the interest arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to a restraint or restriction.
- (3) For the purposes of subsection (1), an interest is not a beneficial interest if:
  - (a) the interest is held solely as security under a moneylending agreement that has not ceased to have effect; and
  - (b) the ordinary business of the interest-holder includes the lending of money.

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## Part 2 Giving of information

### Section 7

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## Part 2—Giving of information

### 7 Purposes of this Part

For the purposes of paragraph 8BN(1)(b) of the Act, this Part makes provision for and in relation to requiring a person to give information to the Minister that is relevant to an ownership matter.

### 8 Information about unacceptable foreign-ownership situations

- (1) Telstra must give the Minister written notice that an unacceptable foreign-ownership situation may exist in relation to Telstra if:
  - (a) Telstra has reason to believe that a situation of that kind may exist; and
  - (b) the Minister has directed Telstra to give notices of that kind.
- (2) The Minister's direction may require the notice to be given:
  - (a) under particular circumstances; and
  - (b) in a particular manner; and
  - (c) within a certain time (not being a time earlier than 14 days after the direction is given).
- (3) The notice must include the following information:
  - (a) the reason for the belief;
  - (b) the steps taken, or intended to be taken, by Telstra to determine whether, in fact, the unacceptable foreign-ownership situation does exist;
  - (c) the steps intended to be taken by Telstra to remedy the unacceptable foreign-ownership situation, if that situation does exist.

### 9 Other information about ownership matters

- (1) The Minister may require, by written notice given to Telstra, that Telstra give the Minister written information about an ownership matter mentioned in the notice.
- (2) The notice may require the information to be given in a particular manner and within a certain time (not being a time earlier than 14 days after the notice is given).
- (3) Telstra must comply with the Minister's notice within the time mentioned in the notice, or, if no time is mentioned, before the end of 14 days after the notice is received.



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Interests in shares that are to be disregarded **Part 3**

Section 10

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## Part 3—Interests in shares that are to be disregarded

### 10 Purposes of this Part

For the purposes of paragraph 9(1)(d) of the Schedule to the Act, this Part sets out:

- (a) prescribed kinds of interests in shares; and
- (b) prescribed persons who hold those kinds of interests.

Note: Under paragraph 9(1)(d) of the Schedule to the Act, an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed, must be disregarded for the purposes of the ownership provisions.

### 11 Trustees, managers etc. of investment funds

- (1) An interest in a share is an interest of a prescribed kind if:
  - (a) the interest exists solely as a result of an action taken by the interest-holder in relation to an investment fund:
    - (i) in the interest-holder's capacity as trustee or manager of the fund; or
    - (ii) in the case of a statutory fund within the meaning of the *Life Insurance Act 1995*—in the interest-holder's capacity as the life insurance company administering the fund; or
    - (ii) because the interest-holder has a custodial responsibility of another kind in relation to the fund; and
  - (b) the interest-holder is a person mentioned in subsection (2).
- (2) The interest-holder is a prescribed person if the investment fund in relation to which the person has a function mentioned in subparagraph (1)(a) (i), (ii) or (iii) is a substantially Australian investment fund.
- (3) For the purposes of subsection (2), a **substantially Australian investment fund** is an investment fund that, in the reasonable opinion of the interest-holder, is a fund in which:
  - (a) in the case of a life insurance company, in its administration of a statutory fund within the meaning of the *Life Insurance Act 1995*—no more than 40% of policyholder liabilities of the statutory fund are owed to foreign persons; and
  - (b) in any other case—a beneficial interest in less than 40% of the capital, and 40% of the income for distribution, is held by foreign persons.

### 12 Agents

- (1) An interest in a share is an interest of a prescribed kind if the interest exists solely as a result of an action taken by the interest-holder in the interest-holder's capacity as depositary or custodian for, or nominee of, another person.

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## Part 3 Interests in shares that are to be disregarded

### Section 13

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- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder does not:
  - (a) hold a beneficial interest in the share; or
  - (b) have authority, by proxy or any other arrangement with the holder of the beneficial interest in the share, to exercise in a discretionary way the voting rights attaching to the share.
- (3) For the avoidance of doubt, action of the kind mentioned in subsection (1) includes action by a person who is:
  - (a) a depositary in connection with a program for the issue of Interim American Depositary Shares or American Depositary Shares; or
  - (b) a custodian for a depositary mentioned in paragraph (a); or
  - (c) a clearing agency registered under section 17a of the Securities Exchange Act of 1934 of the United States of America, as in force at the commencement of this instrument; or
  - (d) a nominee of a clearing agency mentioned in paragraph (c).

### 13 Brokers

- (1) An interest in a share is an interest of a prescribed kind if the interest exists solely as a result of an action taken by the interest-holder:
  - (a) in the interest-holder's capacity as a broker in securities, in the ordinary course of business; and
  - (b) on the express instruction of a client of the interest-holder.
- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder does not:
  - (a) hold a beneficial interest in the share; or
  - (b) have authority, by proxy or any other arrangement with the holder of the beneficial interest in the share, to exercise in a discretionary way the voting rights attaching to the share.

### 14 Indirect interest-holders

- (1) An interest in a share is an interest of a prescribed kind if the interest exists solely as a result of the interest-holder being a shareholder in a company, other than Telstra, that is not a foreign person within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*.
- (2) The interest-holder mentioned in subsection (1) is a prescribed person.

### 15 Telstra employees

- (1) An interest in a share is an interest of a prescribed kind if:
  - (a) the interest exists solely as a result of the interest-holder being a participant in an employee share plan administered by Telstra for its employees; and

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Interests in shares that are to be disregarded **Part 3**

## Section 16

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- (b) in connection with that interest, or any other interest in Telstra, the interest-holder:
  - (i) is not directly, or indirectly, controlled by a foreign person; and
  - (ii) does not act in concert with a foreign person; and
  - (iii) is not accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of a foreign person.
- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder is not a foreign person.

### **16 Australian associates of a foreign person—no action in concert etc.**

- (1) An interest in a share is an interest of a prescribed kind if, in connection with that interest or any interest in Telstra, the interest-holder, although being an associate of a foreign person:
  - (a) is not directly, or indirectly, controlled by a foreign person; and
  - (b) does not act in concert with a foreign person; and
  - (c) is not accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of a foreign person.
- (2) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder is not a foreign person.

### **17 Associates of a foreign person—action in concert etc.**

- (1) This section applies to an interest in a share held by a person (the *primary interest-holder*) whether or not the primary interest-holder, in connection with that interest or any interest in Telstra:
  - (a) is directly, or indirectly, controlled by a foreign person; or
  - (b) acts in concert with a foreign person; or
  - (c) is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of a foreign person.
- (2) The interest is an interest of a prescribed kind if:
  - (a) it is counted for the ownership provisions in determining the particular type of stake in Telstra held, respectively, by the primary interest-holder and a foreign person (if any) of a kind mentioned in subsection (1); and
  - (b) except for the operation of this section, the interest would also be counted for the ownership provisions in determining the particular type of stake held in Telstra by an irrelevant associate of the primary-interest holder.
- (3) The primary interest-holder mentioned in subsection (1) is a prescribed person.

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## Part 3 Interests in shares that are to be disregarded

### Section 18

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- (4) For the purposes of subsection (2), a person is an *irrelevant associate* of the primary interest-holder if, in connection with the interest or any interest in Telstra, although the primary interest-holder is an associate of the person:
- (a) the primary interest-holder is not directly, or indirectly, controlled by the person; and
  - (b) the primary interest-holder does not act in concert with the person; and
  - (c) the primary interest-holder is not accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the person.

### **18 Australian associates of a foreign person—avoidance of double counting**

- (1) This section applies to an interest in a share if the interest-holder, although an associate of one or more other persons in a group to which subclause 11(3) of the Schedule to the Act applies, is not a person in the group.
- (2) The interest is an interest of a prescribed kind if, after being counted once for the ownership provisions in determining the total of the stakes of a particular type that the group holds in Telstra, the interest could, except for the operation of this section, be counted again for that purpose.
- (3) The interest-holder mentioned in subsection (1) is a prescribed person if the interest-holder is not a foreign person.

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Application, savings and transitional provisions **Part 4**

Section 19

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## **Part 4—Application, savings and transitional provisions**

### **19 Things done under the *Telstra Corporation (Ownership—Interests in Shares) Regulations 1997***

- (1) If:
  - (a) a thing was done for a particular purpose under the *Telstra Corporation (Ownership—Interests in Shares) Regulations 1997* as in force immediately before those Regulations were repealed; and
  - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a direction, notice, application, authorisation or other instrument being given or made.

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Schedule 1 Repeals

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## Schedule 1—Repeals

*Telstra Corporation (Ownership—Interests in Shares)  
Regulations 1997*

### **1 The whole of the instrument**

Repeal the instrument.