

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Foreign Acquisitions and Takeovers Act 1975

Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020

The *Foreign Acquisitions and Takeovers Act 1975* (the Act) establishes a regime for the notification, review and approval of foreign investment in Australia. Regulations made under the Act specify monetary thresholds above which investments may require notification to the Treasurer for approval.

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.

The significant impact of Coronavirus on the Australian economy has increased the risk of foreign investment in Australia occurring in ways that would be contrary to the national interest.

The *Foreign Acquisition and Takeovers Amendment (Threshold Test) Regulations 2020* (the Regulations) address this risk by amending the monetary value thresholds for particular significant actions and notifiable actions to nil.

This means a greater number of investments by foreign persons need to be notified to the Treasurer. By reviewing more proposed investments, the Treasurer is able to impose conditions on those actions where conditions are considered necessary to ensure the action will not be contrary the national interest. The Treasurer will be able to not allow the proposed investment to proceed if they are deemed contrary to the national interest.

The Regulations are necessary to safeguard the national interest as the Coronavirus puts intense pressure on the Australian economy and Australian businesses.

The Regulations apply to agreements entered into on or after 10:30pm AEDT on 29 March 2020. The Regulations are intended to be in place for the duration of the Coronavirus crisis.

Consultation could not take place prior to the urgent preparation of the Regulations. However, the setting of monetary thresholds to nil, which is the only substantive effect of the Regulations, is expressly contemplated and authorised by paragraph 55(1)(a) of the Act.

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

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

The Regulations commenced on the day after it was registered on the Federal Register of Legislation.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* (the Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Regulations are made under the Act.

Section 4 – Schedule

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

Schedule 1 sets out amendments to the *Foreign Acquisitions and Takeovers Regulation 2015* (the Principal Regulations).

Schedule 1 – Amendments

Item 1 – Section 5

Item 1 amends section 5 of the Principal Regulations to repeal two definitions which are no longer required because of the amendments to the monetary thresholds. The two definitions which are repealed are **existing value** and **gross domestic product implicit price deflator value**.

Item 2 – Repeal of Subsection 38(5)

Item 2 repeals subsection 38(5) of the Principal Regulations. Subsection 38(5) excluded certain acquisitions of interests in residential land used for residential care, retirement villages, or particular student accommodation from the application of the Act. However, this subsection would have had limited effect after item 4 commenced and is repealed.

Item 3 – Repeal of Subsections 40(2) and (2A)

Item 3 repeals subsections 40(2) and 40(2A) of the Principal Regulations. Subsections 40(2) and 40(2A) allowed higher monetary thresholds to apply to certain actions that would, but for those subsections, have been subject to lower monetary thresholds.

As item 4 of the Regulations lowers all monetary thresholds to nil, those subsections would have had no effect and are repealed.

Item 4 – Setting Thresholds to Nil

Part 4 sets the monetary thresholds which are a factor in determining when a proposed investment by a foreign person is required to be notified to the Treasurer. Generally, where the value of a proposed investment is above this monetary threshold, a foreign person must not take the action without first notifying the Treasurer.

Item 4 repeals Part 4 of the Principal Regulations and inserts a new Part 4.

The new Part 4 of the Principal Regulations specifies a nil monetary threshold for all relevant acquisitions and investments. Part 4 specifies a nil threshold for actions taken in relation to entities, businesses, and agricultural land; and prescribes all kinds of land other than agricultural land as land without a threshold value.

The nil threshold means that a greater number of proposed foreign investments into Australia will require approval and so the Treasurer will have oversight over a greater number of proposed foreign investments.

Item 5 – Application of the Regulations

Item 5 provides that the Regulations apply to actions taken after 10:30pm AEDT on 29 March 2020, regardless of when the Regulations are registered. However, the amendments do not apply to an action taken under an agreement which was entered into by the parties before the announcement (disregarding the application of subsection 15(5) of the Act). This ensures that parties to such agreements are not unduly affected by the changes made by the Regulations.

This item also preserves the operation of any conditions in exemption certificates that were in force at the announcement time that referred to subsections 52(6), (6A) and (7) of the *Foreign Acquisitions and Takeovers Regulation 2015*, as they existed at the time of the announcement.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Foreign Acquisition and Takeovers Amendment (Threshold Test) Regulations 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulations amend the monetary value thresholds for particular significant actions and notifiable actions which are specified in the *Foreign Acquisitions and Takeovers Regulation 2015* to nil. This requires a greater number of investments by foreign persons in Australia to be notified to the Treasurer for review to ensure they are not contrary to the national interest.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.