

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Foreign Acquisitions and Takeovers Act 1975

Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease 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.

Section 139 of the Act provides that the Governor-General may make regulations setting out certain matters. These can be any matters required or permitted by the Act to be prescribed, or any matters convenient to be prescribed for giving effect to the Act.

The purpose of the *Foreign Acquisitions and Takeover Amendment (Commercial Land Lease Threshold Test) Regulations 2020* (the Amending Regulations) is to amend the *Foreign Acquisitions and Takeovers Regulation 2015* (the Regulation) to reinstate certain monetary thresholds for leasehold interests in non-sensitive commercial land that is not vacant.

Part 4 of the Regulation specifies monetary thresholds above which certain foreign investments may require notification to the Treasurer and that the Treasurer may have powers to make certain decisions under the Act in relation to that action. The threshold test is one condition which certain types of actions need to meet to be classified as a significant or notifiable action.

In April 2020 part 4 of the Regulation was amended to reduce the monetary threshold to zero (nil) for all types of land where an action to acquire an interest in that land was taken on or after the announcement time on 29 March 2020. The measures was designed to give greater control over foreign investment at a time of disruption to the Australian economy as a result of the coronavirus pandemic.

The Amending Regulations reinstate the monetary thresholds in the Regulation in relation to the renewal of leasehold interests but only in relation to leasehold interests in non-sensitive commercial land that is not vacant and where the leaseholder held a substantially similar interest prior to the changes that were implemented in April.

This addresses concerns raised by stakeholders regarding the impact of the amendments made in April by no longer requiring notification to the Treasurer in relation to these types of actions.

To ensure these concerns are addressed as soon as possible, the Amending Regulations are being made urgently and public consultation on the Amending Regulations was not undertaken.

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

The Amending Regulations will reduce compliance costs.

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

The Amending Regulations commenced on the day after the instrument 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 (Commercial Land Lease Threshold Test) Regulations 2020*

Section 1 – Name of the Regulations

The name of the Regulations is the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020* (the Amending Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Amending Regulations are made under section 139 of the Act.

Section 4 – Schedule

This section provides that 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

Item 1 amends the Regulation to update the simple outline of the chapter to provide that some land will have a threshold value that is more than nil for some interests in commercial land, but only where that land is not vacant.

Item 2 amends section 52 of the Regulation to provide that all land other than agricultural land and commercial land that is not vacant is prescribed for the purposes of subsection 52(1) of the Act.

Item 3 of the Amending Regulations prescribes the monetary threshold values for interests for commercial land that is not vacant for the purposes of paragraph 52(3)(b) of the Act.

The values prescribed range from nil to \$1,192 million depending on the interest being acquired and who is acquiring the interest.

The amendments provide that where the interest is being acquired by a foreign person who is an agreement country or region investor (as defined by section 5 of the Regulation) and the conditions specified are met, the threshold value is \$1,192 million.

Where 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, and the conditions are met, the threshold value is \$275 million.

The prescribed values are increased to reflect indexation that has occurred since the values were last prescribed in the Regulation.

The conditions required for these thresholds to apply are that the interest the foreign person is acquiring must be an interest as a lessee in a lease and the interest that is being acquired is substantially similar to the interest that the foreign person held immediately before 10.30 pm on 29 March 2020.

Further, the land being acquired must not be sensitive land as provided in this item at the time the interest is acquired.

For all other acquisitions of commercial land that is not vacant, a nil threshold is prescribed.

Item 4 provides that the amendments made by the Amending Regulations apply to actions taken on or after the instrument commenced.

Where an application was made to the Foreign Investment Review Board since the threshold test for commercial land that is not vacant was reduced to nil by the amendments in April 2020, and the application has not been processed, the applicant will no longer require approval before taking the action where the conditions are met and the value of the interest being acquired is not more than the relevant prescribed value provided by item 3.

Statement of Compatibility with Human Rights

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

Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease 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 purpose of the *Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020* is to reinstate monetary thresholds for the acquisition of non-sensitive leasehold interests in commercial land that is not vacant where the acquirer held a substantially similar interest on or before 10.30 pm on 29 March 2020.

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.