

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Foreign Acquisitions and Takeovers Fees Imposition Act 2015

*Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Indexation)
Regulations 2021*

The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (the Act) establishes a framework to impose, as taxes, fees for the review of foreign investment applications.

Section 13 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 purpose of the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Indexation) Regulations 2021* (the Regulations) is to clarify that fees will not decrease through the indexation calculation. Fees are to be indexed for the first time on 1 July 2021, and every year after that. The Regulations ensure that after applying indexation for the first year, the fees do not result in an amount less than the base amount.

The Regulations apply to fees that become payable on or after the commencement of the Regulations.

Public consultation could not take place prior to the preparation of the Regulations. Consultation was not necessary because existing policy settings would not change. The Regulations merely clarify that after applying indexation, the fees do not result in an amount less than the base amounts. Prior to making this instrument consultation was conducted with the Australian Taxation Office.

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.

ATTACHMENT A

Details of the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Indexation) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Indexation) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section sets out the commencement details of the Regulations, which are outlined above.

Section 3 – Authority

The Regulations are made under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (the Act).

Section 4 – Schedule

This section gives legal effect to the amendments in the Schedules.

Schedule 1 – Amendments

Item 1 – Subsection 59(4)

Under Australia's foreign investment laws, fees are payable to the Treasurer for certain actions. Item 1 clarifies that fees cannot decrease through the indexation calculation. This includes indexation after the first year of the scheme, when there is no previous year indexation amount. Fees are to be indexed for the first time on 1 July 2021.

Items 2 and 3 – Application and transitional provisions

Item 3 provides that the amendments apply in relation to fees that become payable on or after the commencement of the instrument.

Item 2 makes the necessary consequential amendment to add in a heading to clarify that the existing transitional provisions in the regulations, relate to the repeal of the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2015*.

Statement of Compatibility with Human Rights

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

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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 Fees Imposition Amendment (Fee Indexation) Regulations 2021* (the Regulations), is to clarify the indexation position for the first financial year starting 1 July 2021. The Regulations ensure that after applying indexation for the first year, the fees do not result in an amount less than the base amount.

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.