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| **EXPOSURE DRAFT** |

Inserts for

Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020: Improving compliance and additional enforcement tools

| Commencement information | | |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
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Schedule 2—Compliance measures

Part 1—Remedy incorrect statements

Foreign Acquisitions and Takeovers Act 1975

1 At the end of section 70

Add:

(3) This section is subject to section 76A (revocation of no objection notification).

2 At the end of Subdivision B of Division 2 of Part 3

Add:

76A Revocation of no objection notification

(1) The Treasurer may revoke a no objection notification given to a person (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)) if the requirements in subsections (2), (4) and (5) are satisfied.

(2) The requirement in this subsection is that the Treasurer reasonably believes that before the no objection notification was given the person gave the Treasurer information that was or documents that were:

(a) relevant to the no objection notification; and

(b) false or misleading in a material particular.

(3) To avoid doubt, for the purposes of paragraph (2)(b), information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

(4) The requirement in this subsection is that the material particular mentioned in paragraph (2)(b) influenced the Treasurer in making the decision mentioned in paragraph 74(2)(a) or 75(2)(a).

(5) The requirement in this subsection is that the revocation is made no later than 120 days after the Treasurer forms the belief mentioned in subsection (2).

(6) The Treasurer must notify the person, in writing, of the revocation before the end of 10 days after the revocation is made.

(7) If the Treasurer revokes a no objection notification under subsection (1) (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)):

(a) the Treasurer may make an order under section 67 or 68 or 69, or a decision under subsection 74(2)(a) or 75(2)(a), as if the no objection notification had never been given (and the relevant decision had never been made); and

(b) section 77 applies as if the Treasurer had received, in relation to each action to which the no objection notification related, a notice of the kind mentioned in subsection 77(1) from the person on the day the Treasurer gives the person the notice under subsection (6) of this section.

(8) Despite subsection (7), the Treasurer cannot make an order under section 67 or 68 if the significant action in relation to which the no objection notification was given had already been taken before the revocation.

(9) Subsection (1) does not limit the circumstances in which the Treasurer may revoke a no objection notification.

76B Revocation of no objection notification—decisions and notices under former version of this Act

(1) To avoid doubt, section 76A applies to an old law no objection advice (and the relevant old law no objection decision) in respect of a person (including a person that is a corporation) in the same way that it applies to a no objection notification given to the person (and the relevant decision mentioned in paragraph 74(2)(a) or 75(2)(a)).

Note: See items 5 to 8 of the table in subitem 5(1) of Schedule 3 to the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015* for transitional rules relating to such decisions and advice.

(2) If an old law no objection advice (and the relevant old law no objection decision) is revoked under subsection 76A(1), a no objection notification cannot be given under section 74 or 75 in relation to the circumstances in respect of which the advice was given.

(3) In this section:

***old law no objection advice*** means an advice under subsection 25(1B) of this Act (as in force before the commencement of Schedule 1 to the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015*).

***old law no objection decision*** means a decision under subsection 25(1A) of this Act (as in force before the commencement of Schedule 1 to the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015*).

3 At the end of Division 3 of Part 5

Add:

Subdivision D—Other civil penalties

98A False or misleading information and documents

(1) A person is liable to a civil penalty if:

(a) the person is given a no objection notification; and

(b) before the no objection notification was given, the person gave the Treasurer information that was or documents that were:

(i) relevant to the no objection notification; and

(ii) false or misleading in a material particular.

(2) The maximum penalty for the contravention is the lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) if the no objection notification relates to one or more significant actions—the sum of the amounts worked out under section 98P for each of those significant actions.

(3) To avoid doubt, for the purposes of subparagraph (1)(b)(ii), information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

4 Application

The amendments made by this Part apply in relation to information or documents given to the Treasurer before, on or after the commencement of this item.

Part 2—Directions powers

Foreign Acquisitions and Takeovers Act 1975

5 At the end of Part 3

Add:

Division 4—Treasurer directions

Subdivision A—Directions to persons

79A Treasurer may give direction to person

(1) The Treasurer may make a direction under subsection (3) if any of the following conditions are met:

(a) the Treasurer has reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention (the ***relevant contravention***) of a provision of this Act;

(b) the Treasurer has reason to believe that a person will engage in conduct that would constitute a contravention (also the ***relevant contravention***) of a provision of this Act.

(2) If the conditions in either or both of paragraphs (1)(a) and (b) are met in respect of 2 or more relevant contraventions, the direction may relate to any or all of those relevant contraventions.

(3) The Treasurer may direct the person in writing to engage in conduct specified in the direction in order to:

(a) if paragraph (1)(a) applies—address the relevant contravention; and

(b) if paragraph (1)(b) applies—prevent the relevant contravention; and

(c) in any case—prevent a similar or related contravention.

(4) Without limiting the scope of subsection (3), the direction may direct the person to engage in specified conduct:

(a) during a specified period; or

(b) by or until a specified time; or

(c) until a specified condition is met.

(5) Without limiting the scope of subsections (3) and (4), the conduct to be engaged in as specified in the direction may include any of the following:

(a) to comply with one or more specified provisions of this Act;

(b) if the relevant contravention relates to one or more conditions in a no objection notification or exemption certificate—to comply with those conditions in the no objection notification or exemption certificate;

(c) to engage in specified conduct that is necessary to address or prevent consequences arising from the relevant contravention that the Treasurer is satisfied are contrary to the national interest;

(d) to take specified steps that are ancillary to conduct mentioned in the previous paragraphs of this subsection;

(e) any other conduct of a kind specified in the regulations.

(6) Subsection (7) applies if a consequence or possible consequence arising from the relevant contravention is that the composition of the group of senior officers of a corporation is a composition that the Treasurer is satisfied is contrary to the national interest.

(7) Without limiting the scope of subsections (3) and (4) and paragraph (5)(c), the conduct to be engaged in as specified in the direction may include any of the following, to the extent necessary to address or prevent the consequence or possible consequence mentioned in subsection (6):

(a) to ensure that specified persons cease to be senior officers of the corporation;

(b) to ensure that specified persons do not become senior officers of the corporation;

(c) to ensure that specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons) cease to be senior officers of the corporation;

(d) to ensure that specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons) do not become senior officers of the corporation;

(e) to ensure that a specified proportion of the senior officers of the corporation are not specified kinds of person (such as persons who are not Australian citizens, or who are foreign persons).

(8) Despite section 46AA of the *Acts Interpretation Act 1901*, a direction under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(9) A direction under subsection (3) is not a legislative instrument.

79B Registration of direction

(1) A direction made by the Treasurer under subsection 79A(3) must be registered on the Federal Register of Legislation as soon as practicable after it is made.

(2) If a direction has not yet been registered on the Federal Register of Legislation, the Treasurer may decide, in writing, that registering it on the Federal Register of Legislation would be contrary to the national interest.

(3) If the Treasurer makes a decision under subsection (2) in relation to a direction, subsection (1) does not apply to the direction.

(4) The direction is not invalid merely because of a failure to comply with subsection (1).

79C When direction takes effect

A direction under subsection 79A(3) takes effect at the later of the following times:

(a) the time when it is given to the person in respect of which it was made;

(b) the time specified in the direction as the time when it takes effect.

79D Opportunity for submissions

(1) The Treasurer must not make a direction under subsection 79A(3) in respect of a person unless the Treasurer has given the person an opportunity to make submissions to the Treasurer on the matter.

(2) A failure to comply with subsection (1) does not invalidate a direction.

79E Varying and revoking directions

(1) The Treasurer may, by notice in writing to the person in respect of which a direction under subsection 79A(3) was made, vary the direction if, at the time of the variation, the Treasurer considers that the variation is appropriate and is not contrary to the national interest.

(2) Section 79D (opportunity for submissions) applies to a variation under this section in the same way as it applies to the making of a direction under subsection 79A(3).

(3) The Treasurer may, by notice in writing to the person in respect of which a direction under subsection 79A(3) was made, revoke the direction if, at the time of the revocation, the Treasurer considers that:

(a) the direction is no longer appropriate; and

(b) revoking the direction is not contrary to the national interest.

(4) A variation or revocation under this section must be registered on the Federal Register of Legislation as soon as practicable after it is made.

(5) If a variation or revocation has not yet been registered on the Federal Register of Legislation, the Treasurer may decide, in writing, that registering it on the Federal Register of Legislation would be contrary to the national interest.

(6) If the Treasurer makes a decision under subsection (5) in relation to a variation or revocation, subsection (4) does not apply to the variation or revocation.

(7) The direction is not invalid merely because of a failure to comply with subsection (1).

(8) A variation or revocation under this section of a direction takes effect at the later of the following times:

(a) the time when it is given to the person in respect of which the direction was made;

(b) the time specified in the variation or revocation as the time when it takes effect.

Subdivision B—Interim directions to persons

79F Treasurer may give interim direction to person

(1) The Treasurer may make an interim direction under subsection (3) if:

(a) any of the following conditions are met:

(i) the Treasurer has reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention (the ***relevant contravention***) of a provision of this Act;

(ii) the Treasurer has reason to believe that a person will engage in conduct that would constitute a contravention (also the ***relevant contravention***) of a provision of this Act; and

(b) the Treasurer considers that a delay in making the interim direction would be contrary to the national interest.

(2) If the conditions in either or both of subparagraphs (1)(a)(i) and (ii) are met in respect of 2 or more relevant contraventions, the interim direction may relate to any or all of those relevant contraventions.

(3) The Treasurer may direct the person in writing to engage in conduct specified in the interim direction in order to:

(a) if subparagraph (1)(a)(i) applies—address the relevant contravention; and

(b) if subparagraph (1)(a)(ii) applies—prevent the relevant contravention; and

(c) in any case—prevent a similar or related contravention.

(4) Without limiting the scope of subsection (3), the interim direction may direct the person to engage in specified conduct:

(a) during a specified period; or

(b) by or until a specified time; or

(c) until a specified condition is met.

(5) Without limiting the scope of subsections (3) and (4), the conduct to be engaged in as specified in the interim direction may include any of the following:

(a) to comply with one or more specified provisions of this Act;

(b) if the relevant contravention relates to one or more conditions in a no objection notification or exemption certificate—to comply with those conditions in the no objection notification or exemption certificate;

(c) to engage in specified conduct that is necessary to address or prevent consequences arising from the relevant contravention that the Treasurer is satisfied are contrary to the national interest;

(d) to take specified steps that are ancillary to conduct mentioned in the previous paragraphs of this subsection;

(e) any other conduct of a kind specified in the regulations.

(6) Despite section 46AA of the *Acts Interpretation Act 1901*, an interim direction under subsection (3) may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(7) An interim direction under subsection (3) is not a legislative instrument.

79G When interim direction takes effect

An interim direction under subsection 79F(3) takes effect at the later of the following times:

(a) the time when it is given to the person in respect of which it was made;

(b) the time specified in the interim direction as the time when it takes effect.

79H Expiry of interim direction

(1) Subsection (2) applies if:

(a) the Treasurer makes an interim direction under subsection 79F(3) in respect of a person because a condition in subparagraph 79F(1)(a)(i) or (ii) was met in relation to a relevant contravention of a provision; and

(b) after the day on which the interim direction takes effect, the Treasurer makes a direction under subsection 79A(3) in respect of the person because a condition in paragraph 79A(1)(a) or (b) was met in relation to the relevant contravention.

(2) The interim direction ceases to have effect at the time the direction takes effect.

(3) To avoid doubt, subsection (1) does not prevent the Treasurer from revoking the interim direction under section 79J.

79J Varying and revoking interim directions

(1) The Treasurer may, by notice in writing to the person in respect of which an interim direction under subsection 79F(3) was made, vary the interim direction if, at the time of the variation, the Treasurer considers that the variation is appropriate and is not contrary to the national interest.

(2) The Treasurer may, by notice in writing to the person in respect of which an interim direction under subsection 79F(3) was made, revoke the interim direction if, at the time of the revocation, the Treasurer considers that:

(a) the interim direction is no longer appropriate; and

(b) revoking the interim direction is not contrary to the national interest.

(3) A variation or revocation under this section of an interim direction takes effect at the later of the following times:

(a) the time when it is given to the person in respect of which the interim direction was made;

(b) the time specified in the variation or revocation as the time when it takes effect.

Subdivision C—Miscellaneous

79K Limitation of other provisions

(1) Subsection (2) applies if:

(a) the Treasurer has made a direction under subsection 79A(3) or an interim direction under subsection 79F(3) in respect of a person; and

(b) the person engages in conduct that is necessary to comply with the direction.

(2) The person does not contravene any laws covered by subsection (3), whether enacted before or after the commencement of this section, merely because the person engages in conduct as mentioned in paragraph (1)(b).

(3) This subsection covers the following laws:

(a) the *Australian Prudential Regulation Authority Act 1998*;

(b) the *Australian Securities and Investments Commission Act 2001*;

(c) the *Competition and Consumer Act 2010*;

(d) the *Corporations Act 2001*;

(e) the *Financial Sector (Shareholdings) Act 1998*;

(f) the *Insurance Acquisitions and Takeovers Act 1991*;

(g) the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*;

(h) a taxation law (within the meaning of the *Income Tax Assessment Act 1997)*;

(i) a law specified in regulations made for the purposes of this paragraph.

6 At the end of Division 2 of Part 5

Add:

88A Contravening directions and interim directions

A person commits an offence if:

(a) the person has been directed by the Treasurer under subsection 79A(3) or 79F(3); and

(b) the person engages in conduct; and

(c) the person does so in contravention of the direction.

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

7 At the end of Division 3 of Part 5

Add:

Subdivision D—Civil penalties relating to directions

98A Contravening directions and interim directions

(1) A person contravenes this subsection if:

(a) the person:

(i) has been directed by the Treasurer under subsection 79A(3) in relation to a relevant contravention as mentioned in subsection 79A(1); or

(ii) has been directed by the Treasurer under subsection 79F(3) in relation to a relevant contravention as mentioned in subsection 79F(1); and

(b) the provision to which the relevant contravention relates is a civil penalty provision; and

(c) the person engages in conduct; and

(d) the person does so in contravention of the direction.

(2) A person who contravenes subsection (1) is liable to a civil penalty.

(3) The maximum penalty for a contravention of subsection (1) is the maximum amount of the civil penalty that could be imposed for the relevant contravention (if a court was satisfied that it was established).

8 Application

(1) A direction under subsection 79A(3) of the *Foreign Acquisitions and Takeovers Act 1975* (as inserted by this Schedule) may be made on or after the time this item commences, if the relevant condition mentioned in paragraph 79A(1)(a) or (b) of that Act (as inserted by this Schedule) for making the direction was met at or after that time.

(2) An interim direction under subsection 79F(3) of the *Foreign Acquisitions and Takeovers Act 1975* (as inserted by this Schedule) may be made on or after the time this item commences, if the relevant condition mentioned in subparagraph 79F(1)(a)(i) or (ii) of that Act (as inserted by this Schedule) for making the interim direction was met at or after that time.

Part 3—Notifications of actions

Foreign Acquisitions and Takeovers Act 1975

9 At the end of Division 3 of Part 5

Add:

98B Failure to notify Treasurer of taking of action specified in no objection notification

(1) Subsection (2) applies if:

(a) a person is given a no objection notification specifying one or more significant actions; and

(b) the person takes one of those significant actions.

(2) The person must give the Treasurer a notice in accordance with subsection (3) no later than 30 days after taking the significant action.

(3) The notice must:

(a) describe the significant action; and

(b) state the day on which it was taken; and

(c) meet any other requirements specified in regulations made for the purposes of this paragraph.

(4) A person who contravenes subsection (2) is liable to a civil penalty.

(5) The maximum penalty for the contravention is the lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action.

98C Failure to notify taking of action related to exemption certificate

(1) Subsection (2) applies if:

(a) a person is given an exemption certificate that relates to one or more significant actions; and

(b) the person takes one of those significant actions.

(2) The person must give the Treasurer a notice in accordance with subsection (3) no later than 30 days after taking the significant action.

(3) The notice must:

(a) describe the significant action; and

(b) state the day on which it was taken; and

(c) meet any other requirements specified in regulations made for the purposes of this paragraph.

(4) A person who contravenes subsection (2) is liable to a civil penalty.

(5) The maximum penalty for the contravention is the lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action.

98D Failure to notify Treasurer of situations following significant action

(1) Subsection (2) applies if:

(a) a person:

(i) is given a no objection notification specifying one or more significant actions; or

(i) is given an exemption certificate that relates to one or more significant actions; and

(b) the person takes one of those significant actions; and

(c) a situation mentioned in subsection (2) arises after the person takes that significant action.

(2) The situations are as follows:

(a) if none of the following paragraphs apply—there is a change in control of the entity or business to which the significant action relates;

(b) if the significant action is an acquisition of a direct interest in an Australian entity mentioned in paragraph 40(2)(a)—the person ceases to have a direct interest in the Australian entity;

(c) if the significant action is an acquisition of an interest in Australian land mentioned in section 43—the person cease to hold all or part of that interest;

(d) if the significant action is an action specified in regulations made for the purposes of section 44 and the regulations specify one or more situations for the significant action for the purposes of this paragraph—any of those situations cease to exist;

(e) if the significant action is an action specified in regulations made for the purposes of section 44 and paragraph (d) does not apply:

(i) if the significant action relates to acquiring an interest of at least a certain percentage in an entity or business—the person ceases to have an interest of at least that percentage in the entity or business; or

(ii) if the significant action relates to acquiring a direct interest in an entity or business—the person ceases to have a direct interest in the entity or business; or

(iii) if the significant action relates to starting a business—the person ceases to carry on the business; or

(iv) if the significant action relates to acquiring an interest in a tenement—the person cease to hold all or part of that interest; or

(v) if the significant action relates to acquiring an interest of at least a certain percentage of the securities of an entity—the person ceases to have an interest of at least that percentage of the securities of an entity.

(3) The person must give the Treasurer a notice in accordance with subsection (4) no later than 30 days after the situation mentioned in subsection (2) arose.

(4) The notice must:

(a) describe the significant action; and

(b) state the day on which it was taken; and

(c) describe the situation mentioned in subsection (2) that arose;

(d) state the day on which it arose;

(e) meet any other requirements specified in regulations made for the purposes of this paragraph.

(5) A person who contravenes subsection (3) is liable to a civil penalty.

(6) The maximum penalty for the contravention is the lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action.

10 After paragraph 135(3)(b)

Insert:

(bb) a notification for the purposes of subsection 98B(2), 98C(2) and 98D(3) (notices after no objection notification); and

11 Application

The amendments made by this Part apply in relation to no objection notifications and exemption certificates given on or after 1 January 2021.

Part 4—Expand the availability of infringement notices

Foreign Acquisitions and Takeovers Act 1975

12 Section 4

Insert:

***tier 3 infringement notice*** has the meaning given by subsection 101(3).

13 Paragraph 100(1)(a)

Repeal the paragraph, substitute:

(a) the provisions of Division 3 (civil penalties);

14 At the end of subsection 100(6)

Add:

; and (c) for a tier 3 infringement notice (see subsection 101(3)):

(i) given to an individual—300 penalty units; and

(ii) given to a corporation—1500 penalty units.

15 Subsection 101(1)

Omit “the Commonwealth” (wherever occurring), substitute “the Treasurer (or the Commissioner of Taxation on behalf of the Treasurer) for the purposes of this Act”.

16 Subsection 101(2)

Repeal the subsection, substitute:

(2) An infringement notice is a ***tier 2 infringement notice*** if:

(a) the notice relates to an alleged contravention by a person of a civil penalty provision of this Act; and

(b) subsection (1) does not apply in relation to the person and the conduct constituting the alleged contravention; and

(c) either:

(i) the requirement in subsection 101AA(1) is met in relation to the alleged contravention; or

(ii) the civil penalty provision is subsection 94(1) or (2), subsection 96(1) or (2), subsection 97(1) or (2), subsection 115D(1), 115DA(1) or 115G(1).

(3) An infringement notice is a ***tier 3 infringement notice*** if:

(a) the notice relates to an alleged contravention by a person of a civil penalty provision of this Act; and

(b) subsections (1) and (2) do not apply in relation to the person and the conduct constituting the alleged contravention.

(4) Despite subsections (2) and (3), an infringement notice is a ***tier 2 infringement notice*** (and is not a ***tier 3 infringement notice***) if:

(a) apart from this subsection, the infringement notice would be a tier 3 infringement notice; and

(b) the Treasurer has decided that the infringement notice is covered by subsection (5).

(5) The Treasurer may decide that an infringement notice is covered by this subsection if:

(a) the infringement notice has not yet been given to the person; and

(b) the Treasurer considers that it is appropriate for the infringement notice to be covered by this subsection, having regard to the matters set out in subsection (6).

(6) For the purposes of paragraph (5)(b), the matters are as follows:

(a) the conduct of the person after the alleged contravention, including:

(i) the nature of the steps (if any) that the person has taken to address the alleged contravention; and

(ii) the extent (if any) to which the person has cooperated with the Treasurer and the Commissioner of Taxation to address the alleged contravention;

(b) whether the infringement notice being covered by subsection (5) would not be contrary to the national interest.

17 At the end of Subdivision A of Division 4 of Part 5

Add:

101AA Matters relating to distinction between tier 2 infringement notices and tier 3 infringement notices

(1) The requirement in this subsection is met in relation to the alleged contravention if:

(a) where the civil penalty provision is section 89 or 92, or subsection 93(1)—the value mentioned in column 2 of the table in section 51 for the significant action to which the alleged contravention relates falls short of the relevant value mentioned in subsection (2); or

(b) where the civil penalty provision is section 91—the amount worked out under subsection (5) falls short of the relevant value mentioned in subsection (2); or

(c) where the civil penalty provision is subsection 93(2)—the value of the action falls short of the relevant value mentioned in subsection (2); or

(d) where the civil penalty provision is a provision of Subdivision C of Division 3 (other than subsection 95(1) or (3))—the greater of the following falls short of the relevant value mentioned in subsection (2):

(i) the value of the consideration for the acquisition of the interest in residential land to which the alleged contravention relates;

(ii) the market value of that interest;

(e) where the civil penalty provision is subsection 95(1)—the greater of the following falls short of the relevant value mentioned in subsection (2):

(i) the value of the consideration for the acquisitions of the interests in established dwellings to which the alleged contravention relates;

(ii) the market value of those interests;

(f) where the civil penalty provision is subsection 95(4)—the greater of the following falls short of the relevant value mentioned in subsection (2):

(i) the value of the consideration for the acquisition of the interest in an established dwelling to which the alleged contravention relates;

(ii) the market value of that interest.

(2) For the purposes of subsection (1):

(a) the value mentioned in paragraphs (1)(a), (b) and (c) is $275,000,000; and

(b) the value mentioned in paragraphs (1)(d), (e) and (f) is $5,000,000.

(3) To avoid doubt, the values mentioned in subsection (2) may be indexed in accordance with regulations made for the purposes of subsection 139(2).

(4) For the purposes of paragraph (1)(a), if no value is mentioned in column 2 of the table in section 51 for the significant action to which the alleged contravention relates, treat the reference in that paragraph to that value as being a reference to the greater of the following:

(a) the value of the consideration for the action;

(b) the market value of the benefit obtained by the action.

(5) For the purposes of paragraph (1)(b), the amount is as follows:

(a) if the notifiable action to which the alleged contravention relates is an acquisition of a direct interest mentioned in paragraph 47(2)(a)—the value mentioned in column 2 of the table in section 51 for the notifiable action;

(b) if that notifiable action is an acquisition of a substantial interest mentioned in paragraph 47(2)(b)—the value of the action;

(c) if that notifiable action is an acquisition of an interest in Australian land mentioned in paragraph 47(2)(c)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the interest;

(d) if the notifiable action is an action specified in regulations made for the purposes of section 48 and the regulations specify, or set out a method for determining, an amount for the action for the purposes of this paragraph—that amount;

(e) if the notifiable action is an action specified in regulations made for the purposes of section 48 and paragraph (d) does not apply—the greater of the following:

(i) the value of the consideration for the action;

(ii) the market value of the benefit obtained by the action.

18 After paragraph 135(3)(b)

Insert:

(ba) a notification for the purposes of paragraph 101(1)(b) or (c); and

19 Application

The amendments made by this Part apply in relation to contraventions that occur on or after 1 January 2021.

Part 5—Increase penalties

Foreign Acquisitions and Takeovers Act 1975

20 Section 84 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

21 Section 85 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

22 Section 86 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

23 Section 87 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

24 Subsection 88(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 10 years, or 15,000 penalty units, or both.

25 Section 89 (penalty)

Repeal the penalty, substitute:

Civil penalty: The lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action in relation to which the order was made.

26 Section 91 (penalty)

Repeal the penalty, substitute:

Civil penalty: The lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the notifiable action.

27 Section 92 (penalty)

Repeal the penalty, substitute:

Civil penalty: The lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action.

28 Section 93

Repeal the section, substitute:

93 Contravening conditions

Conditions in no objection notifications

(1) A person who is given a no objection notification under section 74 (no objection notification imposing conditions) that relates to a significant action must not contravene a condition specified in the notification.

Civil penalty: The lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the significant action in relation to which the no objection notification was given.

(2) A person who is given a no objection notification under section 74 (no objection notification imposing conditions) that does not relate to a significant action must not contravene a condition specified in the notification.

Civil penalty: The lesser of the following:

(a) 2,500,000 penalty units;

(b) the greater of the following:

(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation);

(ii) the amount worked out under section 98P for the action in relation to which the no objection notification was given.

Conditions in exemption certificates

(3) A person who is specified in an exemption certificate that relates to a significant action must not contravene a condition specified in the certificate.

Civil penalty: 5,000 penalty units (or 50,000 penalty units if the person is a corporation).

(4) A person who is specified in an exemption certificate that does not relate to a significant action must not contravene a condition specified in the certificate.

Civil penalty: 5,000 penalty units (or 50,000 penalty units if the person is a corporation).

29 Subsection 94(4)

Repeal the subsection, substitute:

Penalty

(4) The maximum penalty for the contravention is the greatest of the following:

(a) the amount of the capital gain that was made or would be made on the disposal of the interest in the relevant residential land;

(b) 25% of the consideration for the residential land acquisition;

(c) 25% of the market value of the interest in the relevant residential land.

Note 1: ***Consideration*** is defined by the regulations (see section 4).

Note 2: For how to work out the capital gain, see section 98.

30 At the end of Division 3 of Part 5

Add:

Subdivision E—Miscellaneous

98P Civil penalty amounts for penalty provision based on value (sections 89, 91 and 92, subsections 93(1) and (2) and section 98B)

(1) The amount under this section for a significant action is 75% of the following amount:

(a) if the significant action is an acquisition of a direct interest mentioned in paragraph 40(2)(a)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the direct interest;

(b) if the significant action is an acquisition of interests in securities mentioned in paragraph 40(2)(b)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the interests;

(c) if the significant action is an issue of securities mentioned in paragraph 40(2)(c)—the greater of the following:

(i) the value of the consideration for the issue;

(ii) the market value of the securities;

(d) if the significant action is entering into an agreement mentioned in paragraph 40(2)(d)—the greater of the following:

(i) the value of the consideration for the entering into the agreement;

(ii) the market value of the benefit obtained by the entering into the agreement;

(e) if the significant action is an alteration of a constituent document mentioned in paragraph 40(2)(e)—the greater of the following:

(i) the value of the consideration for the alteration;

(ii) the market value of the benefit obtained by the alteration;

(f) if the significant action is an acquisition of a direct interest mentioned in paragraph 41(2)(a)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the direct interest;

(g) if the significant action is an acquisition of interests in assets mentioned in paragraph 41(2)(b)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the interests;

(h) if the significant action is entering into or terminating a significant agreement mentioned in paragraph 41(2)(c)—the greater of the following:

(i) the value of the consideration for the entering into or terminating of the significant agreement;

(ii) the market value of the benefit obtained by the entering into or terminating of the significant agreement;

(j) if the significant action is an acquisition of an interest in Australian land mentioned in section 43—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the interest;

(k) if the significant action is an action specified in regulations made for the purposes of section 44 and the regulations specify, or set out a method for determining, an amount for the action for the purposes of this paragraph—that amount;

(l) if the significant action is an action specified in regulations made for the purposes of section 44 and paragraph (k) does not apply—the greater of the following:

(i) the value of the consideration for the action;

(ii) the market value of the benefit obtained by the action.

(2) The amount under this section for a notifiable action is 75% of the following amount:

(a) if the notifiable action is an acquisition of a direct interest mentioned in paragraph 47(2)(a)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the direct interest;

(b) if the notifiable action is an acquisition of a substantial interest mentioned in paragraph 47(2)(b)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the substantial interest;

(c) if the notifiable action is an acquisition of an interest in Australian land mentioned in paragraph 47(2)(c)—the greater of the following:

(i) the value of the consideration for the acquisition;

(ii) the market value of the interest;

(d) if the notifiable action is an action specified in regulations made for the purposes of section 48 and the regulations specify, or set out a method for determining, an amount for the action for the purposes of this paragraph—that amount;

(e) if the notifiable action is an action specified in regulations made for the purposes of section 48 and paragraph (d) does not apply—the greater of the following:

(i) the value of the consideration for the action;

(ii) the market value of the benefit obtained by the action.

(3) For the purposes of this section:

(a) if there is no consideration for a thing—treat the value of the consideration for the thing as nil; and

(b) if the market value of a thing cannot be ascertained—treat the market value of the thing as nil.

(4) To avoid doubt, if there is no consideration for a thing and the market value of the thing cannot be ascertained, the amount worked out under the relevant paragraph of subsection (1) or (2) in respect of the thing is nil.

31 Section 119 (penalty)

Repeal the penalty, substitute:

Penalty: 250 penalty units.

32 Subsection 133(5) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months or 250 penalty units, or both.

33 Application

The amendments made by this Part apply in relation to contraventions that occur on or after 1 January 2021.

Part 6—New civil penalty for vacancy fee lodgements

Foreign Acquisitions and Takeovers Act 1975

34 After subparagraph 100(5)(b)(v)

Insert:

(va) subsection 115DA(1) (vacancy fee liability—false or misleading vacancy fee return);

35 After section 115D

Insert:

115DA Vacancy fee liability—false or misleading vacancy fee return

(1) A person who gives a vacancy fee return to the Commissioner of Taxation under subsection 115D(1) must ensure that the return does not contain information that is false or misleading in a material particular.

Civil penalty: 250 penalty units.

(2) To avoid doubt, for the purposes of subsection (1), information or documents may be false or misleading in a material particular because of the omission of a matter or thing.

36 After subparagraph 115(2)(b)(i)

Insert:

(ia) subsection 115DA(1) (vacancy fee liability—false or misleading vacancy fee return);

37 Application

The amendments made by this Part apply in relation to returns given on or after 1 January 2021.

Part 7*—*Application of the Regulatory Powers (Standard Provisions) Act 2014

Division 1—Amendments

Foreign Acquisitions and Takeovers Act 1975

38 Section 4

Insert:

***authorised officer*** means a person appointed as an authorised officer under subsection 101E(1).

39 Subdivision A of Division 4 of Part 5 (heading)

Repeal the heading, substitute:

Subdivision A—Application of the Regulatory Powers Act—Civil penalty provisions

40 After section 99

Insert:

Subdivision AA—Application of the Regulatory Powers Act—Infringement notices

41 Before Subdivision B of Division 4 of Part 5

Insert:

Subdivision AB—Application of the Regulatory Powers Act—Monitoring powers

101A Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Note 2: Some provisions of this Act are taxation laws for the purposes of the *Taxation Administration Act 1953* (see subsections 115B(2) and 137(1)). For provisions dealing with the Commissioner of Taxation’s powers to obtain information and evidence in relation to taxation laws, see Division 353 in Schedule 1 to that Act.

Information subject to monitoring

(2) Information given in compliance or purported compliance with this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, each of the following provisions is related to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) an offence provision, or a civil penalty provision, of the *Taxation Administration Act 1953*;

(b) an offence provision, or a civil penalty provision, of the *Corporations Act 2001*;

(c) a provision in Part 3 or 3B of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*.

Authorised applicant

(4) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) the Secretary;

(b) an authorised officer.

(5) The Secretary may, in writing, delegate the powers and functions of the Secretary under Part 2 of the Regulatory Powers Act as an authorised applicant in relation to the provisions mentioned in subsection (1), and the information mentioned in subsection (2), to a person who may be appointed as an authorised officer under section 101E.

(6) In exercising powers or performing functions delegated under subsection (5), a delegate must comply with any directions of the delegator.

Authorised person

(7) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

(8) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

(a) a magistrate;

(b) a Judge of a court of a State or Territory;

(c) a Judge of the Federal Circuit Court of Australia or of the Federal Court of Australia.

Relevant chief executive

(9) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

(10) The Secretary may, in writing, delegate the powers and functions of the Secretary under Part 2 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1), and the information mentioned in subsection (2), to any of the following:

(a) an SES employee, or acting SES employee, in the Department;

(b) the Commissioner of Taxation.

(11) If a power or function is delegated to the Commissioner of Taxation under subsection (10), the Commissioner may, in writing, subdelegate the power or function to an SES employee, or acting SES employee, in the Australian Taxation Office.

(12) In exercising powers or performing functions delegated under subsection (10) or (11), a delegate must comply with any directions of the delegator.

Relevant court

(13) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant courtin relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) the Federal Court of Australia;

(b) the Federal Circuit Court of Australia;

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(14) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Extension to external Territories

(15) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1)and the information mentioned in subsection (2), extends to every external Territory.

Subdivision AC—Application of the Regulatory Powers Act—Investigation powers

101B Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence provision of this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):

(a) an offence provision, or a civil penalty provision, of the *Taxation Administration Act 1953*;

(b) an offence provision, or a civil penalty provision, of the *Corporations Act 2001*;

(c) a provision in Part 3 or 3B of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) the Secretary;

(b) an authorised officer.

(4) The Secretary may, in writing, delegate the powers and functions of the Secretary under Part 3 of the Regulatory Powers Act as an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1) to a person who may be appointed as an authorised officer under section 101E.

(5) In exercising powers or performing functions delegated under subsection (4), a delegate must comply with any directions of the delegator.

Authorised person

(6) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(7) For the purposes of Part 3 of the Regulatory Powers Act, each of the following is an issuing officer in relation to evidential material that relates to the provisions mentioned in subsection (1):

(a) a magistrate;

(b) a Judge of a court of a State or Territory;

(c) a Judge of the Federal Circuit Court of Australia or of the Federal Court of Australia.

Relevant chief executive

(8) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

(9) The Secretary may, in writing, delegate the powers and functions of the Secretary under Part 3 of the Regulatory Powers Act as the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1) to any of the following:

(a) an SES employee, or acting SES employee, in the Department;

(b) the Commissioner of Taxation.

(10) If a power or function is delegated to the Commissioner of Taxation under subsection (9), the Commissioner may, in writing, subdelegate the power or function to an SES employee, or acting SES employee, in the Australian Taxation Office.

(11) In exercising powers or performing functions delegated under subsection (9) or (10), a delegate must comply with any directions of the delegator.

Relevant court

(12) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) the Federal Court of Australia;

(b) the Federal Circuit Court of Australia;

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(13) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories

(14) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provisionmentioned in subsection (1), extends to every external Territory.

Subdivision AD—Application of the Regulatory Powers Act—Enforceable undertakings

101C Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Treasurer is an authorised person in relation to the provisions mentioned in subsection (1).

(3) The Treasurer may, in writing, delegate the powers and functions of the Treasurer under Part 6 of the Regulatory Powers Act as an authorised person in relation to the provisions mentioned in subsection (1) to any of the following:

(a) the Secretary;

(b) an SES employee, or acting SES employee, in the Department;

(c) the Commissioner of Taxation.

(4) If a power or function is delegated to the Commissioner of Taxation under subsection (3), the Commissioner may, in writing, subdelegate the power or function to an SES employee, or acting SES employee, in the Australian Taxation Office.

(5) In exercising powers or performing functions delegated under subsection (3) or (4), a delegate must comply with any directions of the delegator.

Relevant court

(6) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

(a) the Federal Court of Australia;

(b) the Federal Circuit Court of Australia;

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

(7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to a provisionmentioned in subsection (1), extends to every external Territory.

101D Publication of undertakings

(1) If the Treasurer accepts an undertaking in relation to a provision mentioned in subsection 101C(1), the Treasurer must ensure that the undertaking is published on the Department’s website as soon as practicable after it is accepted.

(2) If an undertaking has not yet been published on the Department’s website, the Treasurer may decide, in writing, that publishing the undertaking on the website would be contrary to the national interest.

(3) If the Treasurer makes a decision under subsection (2) in relation to an undertaking, subsection (1) does not apply to the undertaking.

(4) A failure to comply with subsection (1) in relation to an undertaking does not affect the enforceability of the undertaking under Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 101C(1).

Subdivision AE—Application of the Regulatory Powers Act—Miscellaneous

101E Appointment of authorised officers

(1) The Secretary may, in writing, appoint a person who is an APS employee who holds or performs the duties of an APS Level 6 position, or an equivalent or higher position, in the Department as an authorised officer for the purposes of this Division.

(2) The Secretary must not appoint a person as an authorised officer under subsection (1) unless the Secretary is satisfied that the person has suitable training or experience to properly perform the functions, or exercise the powers, of an authorised officer.

(3) An authorised officer must, in performing the authorised officer’s functions or exercising the authorised officer’s powers, comply with any directions of the Secretary.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Division 2—Application provisions

42 Application provision—monitoring powers

Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 5 of the *Foreign Acquisitions and Takeovers Act 1975*, applies in relation to the following:

(a) determining whether a provision mentioned in subsection 101A(1) of the *Foreign Acquisitions and Takeovers Act 1975* has been complied with before, on or after the commencement of this Part;

(b) determining whether information given in compliance, or purported compliance, with the *Foreign Acquisitions and Takeovers Act 1975* before, on or after that commencement is correct.

43 Application provision—investigation powers

Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 5 of the *Foreign Acquisitions and Takeovers Act 1975*, applies in relation to a contravention, or suspected contravention, of a provision mentioned in subsection 101B(1) of the *Foreign Acquisitions and Takeovers Act 1975* that occurs before, on or after the commencement of this Part.

44 Application provision—enforceable undertakings

Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 5 of the *Foreign Acquisitions and Takeovers Act 1975*, applies in relation to undertakings given on or after the commencement of this Part.