

# EXPOSURE DRAFT

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1  
2 Inserts for  
3 **Foreign Investment Reform (Protecting**  
4 **Australia’s National Security) Bill 2020:**  
5 **Improving compliance and additional**  
6 **enforcement tools**  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule 2	1 January 2021.	1 January 2021

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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.

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- 1 (7) If the Treasurer revokes a no objection notification under  
2 subsection (1) (and the relevant decision mentioned in paragraph  
3 74(2)(a) or 75(2)(a)):
- 4 (a) the Treasurer may make an order under section 67 or 68 or  
5 69, or a decision under subsection 74(2)(a) or 75(2)(a), as if  
6 the no objection notification had never been given (and the  
7 relevant decision had never been made); and
- 8 (b) section 77 applies as if the Treasurer had received, in relation  
9 to each action to which the no objection notification related,  
10 a notice of the kind mentioned in subsection 77(1) from the  
11 person on the day the Treasurer gives the person the notice  
12 under subsection (6) of this section.
- 13 (8) Despite subsection (7), the Treasurer cannot make an order under  
14 section 67 or 68 if the significant action in relation to which the no  
15 objection notification was given had already been taken before the  
16 revocation.
- 17 (9) Subsection (1) does not limit the circumstances in which the  
18 Treasurer may revoke a no objection notification.

## 19 **76B Revocation of no objection notification—decisions and notices** 20 **under former version of this Act**

- 21 (1) To avoid doubt, section 76A applies to an old law no objection  
22 advice (and the relevant old law no objection decision) in respect  
23 of a person (including a person that is a corporation) in the same  
24 way that it applies to a no objection notification given to the person  
25 (and the relevant decision mentioned in paragraph 74(2)(a) or  
26 75(2)(a)).

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

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

- 35 (3) In this section:

36 *old law no objection advice* means an advice under  
37 subsection 25(1B) of this Act (as in force before the

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1 commencement of Schedule 1 to the *Foreign Acquisitions and*  
2 *Takeovers Legislation Amendment Act 2015*).

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

## 7 **3 At the end of Division 3 of Part 5**

8 Add:

### 9 **Subdivision D—Other civil penalties**

#### 10 **98A False or misleading information and documents**

- 11 (1) A person is liable to a civil penalty if:
- 12 (a) the person is given a no objection notification; and
- 13 (b) before the no objection notification was given, the person
- 14 gave the Treasurer information that was or documents that
- 15 were:
- 16 (i) relevant to the no objection notification; and
- 17 (ii) false or misleading in a material particular.
- 18 (2) The maximum penalty for the contravention is the lesser of the
- 19 following:
- 20 (a) 2,500,000 penalty units;
- 21 (b) the greater of the following:
- 22 (i) 5,000 penalty units (or 50,000 penalty units if the
- 23 person is a corporation);
- 24 (ii) if the no objection notification relates to one or more
- 25 significant actions—the sum of the amounts worked out
- 26 under section 98P for each of those significant actions.
- 27 (3) To avoid doubt, for the purposes of subparagraph (1)(b)(ii),
- 28 information or documents may be false or misleading in a material
- 29 particular because of the omission of a matter or thing.

## 30 **4 Application**

31 The amendments made by this Part apply in relation to information or

32 documents given to the Treasurer before, on or after the commencement

33 of this item.

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## 1 Part 2—Directions powers

### 2 *Foreign Acquisitions and Takeovers Act 1975*

#### 3 5 At the end of Part 3

4 Add:

#### 5 Division 4—Treasurer directions

#### 6 Subdivision A—Directions to persons

#### 7 79A Treasurer may give direction to person

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

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

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

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

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

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

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

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

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

28 (a) during a specified period; or

29 (b) by or until a specified time; or

30 (c) until a specified condition is met.

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- 1 (5) Without limiting the scope of subsections (3) and (4), the conduct  
2 to be engaged in as specified in the direction may include any of  
3 the following:
- 4 (a) to comply with one or more specified provisions of this Act;  
5 (b) if the relevant contravention relates to one or more conditions  
6 in a no objection notification or exemption certificate—to  
7 comply with those conditions in the no objection notification  
8 or exemption certificate;  
9 (c) to engage in specified conduct that is necessary to address or  
10 prevent consequences arising from the relevant contravention  
11 that the Treasurer is satisfied are contrary to the national  
12 interest;  
13 (d) to take specified steps that are ancillary to conduct mentioned  
14 in the previous paragraphs of this subsection;  
15 (e) any other conduct of a kind specified in the regulations.
- 16 (6) Subsection (7) applies if a consequence or possible consequence  
17 arising from the relevant contravention is that the composition of  
18 the group of senior officers of a corporation is a composition that  
19 the Treasurer is satisfied is contrary to the national interest.
- 20 (7) Without limiting the scope of subsections (3) and (4) and  
21 paragraph (5)(c), the conduct to be engaged in as specified in the  
22 direction may include any of the following, to the extent necessary  
23 to address or prevent the consequence or possible consequence  
24 mentioned in subsection (6):
- 25 (a) to ensure that specified persons cease to be senior officers of  
26 the corporation;  
27 (b) to ensure that specified persons do not become senior officers  
28 of the corporation;  
29 (c) to ensure that specified kinds of person (such as persons who  
30 are not Australian citizens, or who are foreign persons) cease  
31 to be senior officers of the corporation;  
32 (d) to ensure that specified kinds of person (such as persons who  
33 are not Australian citizens, or who are foreign persons) do  
34 not become senior officers of the corporation;  
35 (e) to ensure that a specified proportion of the senior officers of  
36 the corporation are not specified kinds of person (such as  
37 persons who are not Australian citizens, or who are foreign  
38 persons).
- 39 (8) Despite section 46AA of the *Acts Interpretation Act 1901*, a  
40 direction under subsection (3) may provide for a matter by
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1 applying, adopting or incorporating, with or without modification,  
2 any matter contained in an instrument or other writing as in force  
3 or existing from time to time.

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

## 5 **79B Registration of direction**

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

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

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

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

## 17 **79C When direction takes effect**

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

- 20 (a) the time when it is given to the person in respect of which it  
21 was made;  
22 (b) the time specified in the direction as the time when it takes  
23 effect.

## 24 **79D Opportunity for submissions**

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

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

## 30 **79E Varying and revoking directions**

31 (1) The Treasurer may, by notice in writing to the person in respect of  
32 which a direction under subsection 79A(3) was made, vary the

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- 1 direction if, at the time of the variation, the Treasurer considers  
2 that the variation is appropriate and is not contrary to the national  
3 interest.
- 4 (2) Section 79D (opportunity for submissions) applies to a variation  
5 under this section in the same way as it applies to the making of a  
6 direction under subsection 79A(3).
- 7 (3) The Treasurer may, by notice in writing to the person in respect of  
8 which a direction under subsection 79A(3) was made, revoke the  
9 direction if, at the time of the revocation, the Treasurer considers  
10 that:  
11 (a) the direction is no longer appropriate; and  
12 (b) revoking the direction is not contrary to the national interest.
- 13 (4) A variation or revocation under this section must be registered on  
14 the Federal Register of Legislation as soon as practicable after it is  
15 made.
- 16 (5) If a variation or revocation has not yet been registered on the  
17 Federal Register of Legislation, the Treasurer may decide, in  
18 writing, that registering it on the Federal Register of Legislation  
19 would be contrary to the national interest.
- 20 (6) If the Treasurer makes a decision under subsection (5) in relation  
21 to a variation or revocation, subsection (4) does not apply to the  
22 variation or revocation.
- 23 (7) The direction is not invalid merely because of a failure to comply  
24 with subsection (1).
- 25 (8) A variation or revocation under this section of a direction takes  
26 effect at the later of the following times:  
27 (a) the time when it is given to the person in respect of which the  
28 direction was made;  
29 (b) the time specified in the variation or revocation as the time  
30 when it takes effect.

## 31 **Subdivision B—Interim directions to persons**

### 32 **79F Treasurer may give interim direction to person**

- 33 (1) The Treasurer may make an interim direction under subsection (3)  
34 if:  
35 (a) any of the following conditions are met:
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- 1 (i) the Treasurer has reason to believe that a person has  
2 engaged, or is engaging, in conduct that constitutes a  
3 contravention (the *relevant contravention*) of a  
4 provision of this Act;
- 5 (ii) the Treasurer has reason to believe that a person will  
6 engage in conduct that would constitute a contravention  
7 (also the *relevant contravention*) of a provision of this  
8 Act; and
- 9 (b) the Treasurer considers that a delay in making the interim  
10 direction would be contrary to the national interest.
- 11 (2) If the conditions in either or both of subparagraphs (1)(a)(i) and (ii)  
12 are met in respect of 2 or more relevant contraventions, the interim  
13 direction may relate to any or all of those relevant contraventions.
- 14 (3) The Treasurer may direct the person in writing to engage in  
15 conduct specified in the interim direction in order to:
- 16 (a) if subparagraph (1)(a)(i) applies—address the relevant  
17 contravention; and
- 18 (b) if subparagraph (1)(a)(ii) applies—prevent the relevant  
19 contravention; and
- 20 (c) in any case—prevent a similar or related contravention.
- 21 (4) Without limiting the scope of subsection (3), the interim direction  
22 may direct the person to engage in specified conduct:
- 23 (a) during a specified period; or  
24 (b) by or until a specified time; or  
25 (c) until a specified condition is met.
- 26 (5) Without limiting the scope of subsections (3) and (4), the conduct  
27 to be engaged in as specified in the interim direction may include  
28 any of the following:
- 29 (a) to comply with one or more specified provisions of this Act;  
30 (b) if the relevant contravention relates to one or more conditions  
31 in a no objection notification or exemption certificate—to  
32 comply with those conditions in the no objection notification  
33 or exemption certificate;
- 34 (c) to engage in specified conduct that is necessary to address or  
35 prevent consequences arising from the relevant contravention  
36 that the Treasurer is satisfied are contrary to the national  
37 interest;
- 38 (d) to take specified steps that are ancillary to conduct mentioned  
39 in the previous paragraphs of this subsection;
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1 (e) any other conduct of a kind specified in the regulations.

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

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

## 9 **79G When interim direction takes effect**

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

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

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

## 16 **79H Expiry of interim direction**

17 (1) Subsection (2) applies if:

18 (a) the Treasurer makes an interim direction under subsection  
19 79F(3) in respect of a person because a condition in  
20 subparagraph 79F(1)(a)(i) or (ii) was met in relation to a  
21 relevant contravention of a provision; and

22 (b) after the day on which the interim direction takes effect, the  
23 Treasurer makes a direction under subsection 79A(3) in  
24 respect of the person because a condition in paragraph  
25 79A(1)(a) or (b) was met in relation to the relevant  
26 contravention.

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

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

## 31 **79J Varying and revoking interim directions**

32 (1) The Treasurer may, by notice in writing to the person in respect of  
33 which an interim direction under subsection 79F(3) was made, vary  
34 the interim direction if, at the time of the variation, the Treasurer

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- 1 considers that the variation is appropriate and is not contrary to the  
2 national interest.
- 3 (2) The Treasurer may, by notice in writing to the person in respect of  
4 which an interim direction under subsection 79F(3) was made,  
5 revoke the interim direction if, at the time of the revocation, the  
6 Treasurer considers that:
- 7 (a) the interim direction is no longer appropriate; and
  - 8 (b) revoking the interim direction is not contrary to the national  
9 interest.
- 10 (3) A variation or revocation under this section of an interim direction  
11 takes effect at the later of the following times:
- 12 (a) the time when it is given to the person in respect of which the  
13 interim direction was made;
  - 14 (b) the time specified in the variation or revocation as the time  
15 when it takes effect.

## 16 Subdivision C—Miscellaneous

### 17 79K Limitation of other provisions

- 18 (1) Subsection (2) applies if:
- 19 (a) the Treasurer has made a direction under subsection 79A(3)  
20 or an interim direction under subsection 79F(3) in respect of  
21 a person; and
  - 22 (b) the person engages in conduct that is necessary to comply  
23 with the direction.
- 24 (2) The person does not contravene any laws covered by subsection  
25 (3), whether enacted before or after the commencement of this  
26 section, merely because the person engages in conduct as  
27 mentioned in paragraph (1)(b).
- 28 (3) This subsection covers the following laws:
- 29 (a) the *Australian Prudential Regulation Authority Act 1998*;
  - 30 (b) the *Australian Securities and Investments Commission Act*  
31 *2001*;
  - 32 (c) the *Competition and Consumer Act 2010*;
  - 33 (d) the *Corporations Act 2001*;
  - 34 (e) the *Financial Sector (Shareholdings) Act 1998*;
  - 35 (f) the *Insurance Acquisitions and Takeovers Act 1991*;

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- 1 (g) the *Register of Foreign Ownership of Water or Agricultural*  
2 *Land Act 2015*;
- 3 (h) a taxation law (within the meaning of the *Income Tax*  
4 *Assessment Act 1997*);
- 5 (i) a law specified in regulations made for the purposes of this  
6 paragraph.

## 6 At the end of Division 2 of Part 5

8 Add:

### 9 88A Contravening directions and interim directions

10 A person commits an offence if:

- 11 (a) the person has been directed by the Treasurer under  
12 subsection 79A(3) or 79F(3); and
- 13 (b) the person engages in conduct; and
- 14 (c) the person does so in contravention of the direction.

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

## 17 7 At the end of Division 3 of Part 5

18 Add:

### 19 Subdivision D—Civil penalties relating to directions

#### 20 98A Contravening directions and interim directions

21 (1) A person contravenes this subsection if:

- 22 (a) the person:
- 23 (i) has been directed by the Treasurer under subsection  
24 79A(3) in relation to a relevant contravention as  
25 mentioned in subsection 79A(1); or
- 26 (ii) has been directed by the Treasurer under subsection  
27 79F(3) in relation to a relevant contravention as  
28 mentioned in subsection 79F(1); and
- 29 (b) the provision to which the relevant contravention relates is a  
30 civil penalty provision; and
- 31 (c) the person engages in conduct; and
- 32 (d) the person does so in contravention of the direction.

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

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

## 7 **8 Application**

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

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

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## 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:
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- 1 (a) a person is given an exemption certificate that relates to one  
2 or more significant actions; and  
3 (b) the person takes one of those significant actions.
- 4 (2) The person must give the Treasurer a notice in accordance with  
5 subsection (3) no later than 30 days after taking the significant  
6 action.
- 7 (3) The notice must:  
8 (a) describe the significant action; and  
9 (b) state the day on which it was taken; and  
10 (c) meet any other requirements specified in regulations made  
11 for the purposes of this paragraph.
- 12 (4) A person who contravenes subsection (2) is liable to a civil  
13 penalty.
- 14 (5) The maximum penalty for the contravention is the lesser of the  
15 following:  
16 (a) 2,500,000 penalty units;  
17 (b) the greater of the following:  
18 (i) 5,000 penalty units (or 50,000 penalty units if the  
19 person is a corporation);  
20 (ii) the amount worked out under section 98P for the  
21 significant action.

## 22 **98D Failure to notify Treasurer of situations following significant** 23 **action**

- 24 (1) Subsection (2) applies if:  
25 (a) a person:  
26 (i) is given a no objection notification specifying one or  
27 more significant actions; or  
28 (i) is given an exemption certificate that relates to one or  
29 more significant actions; and  
30 (b) the person takes one of those significant actions; and  
31 (c) a situation mentioned in subsection (2) arises after the person  
32 takes that significant action.
- 33 (2) The situations are as follows:  
34 (a) if none of the following paragraphs apply—there is a change  
35 in control of the entity or business to which the significant  
36 action relates;
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- 1 (b) if the significant action is an acquisition of a direct interest in  
2 an Australian entity mentioned in paragraph 40(2)(a)—the  
3 person ceases to have a direct interest in the Australian  
4 entity;
- 5 (c) if the significant action is an acquisition of an interest in  
6 Australian land mentioned in section 43—the person cease to  
7 hold all or part of that interest;
- 8 (d) if the significant action is an action specified in regulations  
9 made for the purposes of section 44 and the regulations  
10 specify one or more situations for the significant action for  
11 the purposes of this paragraph—any of those situations cease  
12 to exist;
- 13 (e) if the significant action is an action specified in regulations  
14 made for the purposes of section 44 and paragraph (d) does  
15 not apply:
- 16 (i) if the significant action relates to acquiring an interest of  
17 at least a certain percentage in an entity or business—  
18 the person ceases to have an interest of at least that  
19 percentage in the entity or business; or
- 20 (ii) if the significant action relates to acquiring a direct  
21 interest in an entity or business—the person ceases to  
22 have a direct interest in the entity or business; or
- 23 (iii) if the significant action relates to starting a business—  
24 the person ceases to carry on the business; or
- 25 (iv) if the significant action relates to acquiring an interest in  
26 a tenement—the person cease to hold all or part of that  
27 interest; or
- 28 (v) if the significant action relates to acquiring an interest of  
29 at least a certain percentage of the securities of an  
30 entity—the person ceases to have an interest of at least  
31 that percentage of the securities of an entity.
- 32 (3) The person must give the Treasurer a notice in accordance with  
33 subsection (4) no later than 30 days after the situation mentioned in  
34 subsection (2) arose.
- 35 (4) The notice must:
- 36 (a) describe the significant action; and  
37 (b) state the day on which it was taken; and  
38 (c) describe the situation mentioned in subsection (2) that arose;  
39 (d) state the day on which it arose;
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1 (e) meet any other requirements specified in regulations made  
2 for the purposes of this paragraph.

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

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

7 (a) 2,500,000 penalty units;

8 (b) the greater of the following:

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

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

## 13 **10 After paragraph 135(3)(b)**

14 Insert:

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

## 17 **11 Application**

18 The amendments made by this Part apply in relation to no objection  
19 notifications and exemption certificates given on or after 1 January  
20 2021.

# EXPOSURE DRAFT

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1 **Part 4—Expand the availability of infringement**  
2 **notices**

3 *Foreign Acquisitions and Takeovers Act 1975*

4 **12 Section 4**

5 Insert:

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

8 **13 Paragraph 100(1)(a)**

9 Repeal the paragraph, substitute:

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

11 **14 At the end of subsection 100(6)**

12 Add:

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

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

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

16 **15 Subsection 101(1)**

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

20 **16 Subsection 101(2)**

21 Repeal the subsection, substitute:

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

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

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

27 (c) either:

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

# EXPOSURE DRAFT

- 
- 1 (ii) the civil penalty provision is subsection 94(1) or (2),  
2 subsection 96(1) or (2), subsection 97(1) or (2),  
3 subsection 115D(1), 115DA(1) or 115G(1).
- 4 (3) An infringement notice is a *tier 3 infringement notice* if:  
5 (a) the notice relates to an alleged contravention by a person of a  
6 civil penalty provision of this Act; and  
7 (b) subsections (1) and (2) do not apply in relation to the person  
8 and the conduct constituting the alleged contravention.
- 9 (4) Despite subsections (2) and (3), an infringement notice is a *tier 2*  
10 *infringement notice* (and is not a *tier 3 infringement notice*) if:  
11 (a) apart from this subsection, the infringement notice would be  
12 a tier 3 infringement notice; and  
13 (b) the Treasurer has decided that the infringement notice is  
14 covered by subsection (5).
- 15 (5) The Treasurer may decide that an infringement notice is covered  
16 by this subsection if:  
17 (a) the infringement notice has not yet been given to the person;  
18 and  
19 (b) the Treasurer considers that it is appropriate for the  
20 infringement notice to be covered by this subsection, having  
21 regard to the matters set out in subsection (6).
- 22 (6) For the purposes of paragraph (5)(b), the matters are as follows:  
23 (a) the conduct of the person after the alleged contravention,  
24 including:  
25 (i) the nature of the steps (if any) that the person has taken  
26 to address the alleged contravention; and  
27 (ii) the extent (if any) to which the person has cooperated  
28 with the Treasurer and the Commissioner of Taxation to  
29 address the alleged contravention;  
30 (b) whether the infringement notice being covered by subsection  
31 (5) would not be contrary to the national interest.

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

32 Add:  
33

# EXPOSURE DRAFT

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

- 1  
2
- 3 (1) The requirement in this subsection is met in relation to the alleged  
4 contravention if:
- 5 (a) where the civil penalty provision is section 89 or 92, or  
6 subsection 93(1)—the value mentioned in column 2 of the  
7 table in section 51 for the significant action to which the  
8 alleged contravention relates falls short of the relevant value  
9 mentioned in subsection (2); or
- 10 (b) where the civil penalty provision is section 91—the amount  
11 worked out under subsection (5) falls short of the relevant  
12 value mentioned in subsection (2); or
- 13 (c) where the civil penalty provision is subsection 93(2)—the  
14 value of the action falls short of the relevant value mentioned  
15 in subsection (2); or
- 16 (d) where the civil penalty provision is a provision of  
17 Subdivision C of Division 3 (other than subsection 95(1) or  
18 (3))—the greater of the following falls short of the relevant  
19 value mentioned in subsection (2):
- 20 (i) the value of the consideration for the acquisition of the  
21 interest in residential land to which the alleged  
22 contravention relates;
- 23 (ii) the market value of that interest;
- 24 (e) where the civil penalty provision is subsection 95(1)—the  
25 greater of the following falls short of the relevant value  
26 mentioned in subsection (2):
- 27 (i) the value of the consideration for the acquisitions of the  
28 interests in established dwellings to which the alleged  
29 contravention relates;
- 30 (ii) the market value of those interests;
- 31 (f) where the civil penalty provision is subsection 95(4)—the  
32 greater of the following falls short of the relevant value  
33 mentioned in subsection (2):
- 34 (i) the value of the consideration for the acquisition of the  
35 interest in an established dwelling to which the alleged  
36 contravention relates;
- 37 (ii) the market value of that interest.
- 38 (2) For the purposes of subsection (1):
- 39 (a) the value mentioned in paragraphs (1)(a), (b) and (c) is  
40 \$275,000,000; and
-

# EXPOSURE DRAFT

- 
- 1 (b) the value mentioned in paragraphs (1)(d), (e) and (f) is  
2 \$5,000,000.
- 3 (3) To avoid doubt, the values mentioned in subsection (2) may be  
4 indexed in accordance with regulations made for the purposes of  
5 subsection 139(2).
- 6 (4) For the purposes of paragraph (1)(a), if no value is mentioned in  
7 column 2 of the table in section 51 for the significant action to  
8 which the alleged contravention relates, treat the reference in that  
9 paragraph to that value as being a reference to the greater of the  
10 following:  
11 (a) the value of the consideration for the action;  
12 (b) the market value of the benefit obtained by the action.
- 13 (5) For the purposes of paragraph (1)(b), the amount is as follows:  
14 (a) if the notifiable action to which the alleged contravention  
15 relates is an acquisition of a direct interest mentioned in  
16 paragraph 47(2)(a)—the value mentioned in column 2 of the  
17 table in section 51 for the notifiable action;  
18 (b) if that notifiable action is an acquisition of a substantial  
19 interest mentioned in paragraph 47(2)(b)—the value of the  
20 action;  
21 (c) if that notifiable action is an acquisition of an interest in  
22 Australian land mentioned in paragraph 47(2)(c)—the greater  
23 of the following:  
24 (i) the value of the consideration for the acquisition;  
25 (ii) the market value of the interest;  
26 (d) if the notifiable action is an action specified in regulations  
27 made for the purposes of section 48 and the regulations  
28 specify, or set out a method for determining, an amount for  
29 the action for the purposes of this paragraph—that amount;  
30 (e) if the notifiable action is an action specified in regulations  
31 made for the purposes of section 48 and paragraph (d) does  
32 not apply—the greater of the following:  
33 (i) the value of the consideration for the action;  
34 (ii) the market value of the benefit obtained by the action.

## 18 After paragraph 135(3)(b)

35 Insert:

- 36 (ba) a notification for the purposes of paragraph 101(1)(b) or (c);  
37 and  
38
-

# EXPOSURE DRAFT

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1 **19 Application**

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

# EXPOSURE DRAFT

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1 **Part 5—Increase penalties**

2 *Foreign Acquisitions and Takeovers Act 1975*

3 **20 Section 84 (penalty)**

4 Repeal the penalty, substitute:

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

7 **21 Section 85 (penalty)**

8 Repeal the penalty, substitute:

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

11 **22 Section 86 (penalty)**

12 Repeal the penalty, substitute:

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

15 **23 Section 87 (penalty)**

16 Repeal the penalty, substitute:

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

19 **24 Subsection 88(1) (penalty)**

20 Repeal the penalty, substitute:

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

23 **25 Section 89 (penalty)**

24 Repeal the penalty, substitute:

25 Civil penalty: The lesser of the following:

26 (a) 2,500,000 penalty units;

27 (b) the greater of the following:

# EXPOSURE DRAFT

- 
- 1 (i) 5,000 penalty units (or 50,000 penalty units if the  
2 person is a corporation);  
3 (ii) the amount worked out under section 98P for the  
4 significant action in relation to which the order was  
5 made.

## 6 **26 Section 91 (penalty)**

7 Repeal the penalty, substitute:

- 8 Civil penalty: The lesser of the following:  
9 (a) 2,500,000 penalty units;  
10 (b) the greater of the following:  
11 (i) 5,000 penalty units (or 50,000 penalty units if the  
12 person is a corporation);  
13 (ii) the amount worked out under section 98P for the  
14 notifiable action.

## 15 **27 Section 92 (penalty)**

16 Repeal the penalty, substitute:

- 17 Civil penalty: The lesser of the following:  
18 (a) 2,500,000 penalty units;  
19 (b) the greater of the following:  
20 (i) 5,000 penalty units (or 50,000 penalty units if the  
21 person is a corporation);  
22 (ii) the amount worked out under section 98P for the  
23 significant action.

## 24 **28 Section 93**

25 Repeal the section, substitute:

## 26 **93 Contravening conditions**

27 *Conditions in no objection notifications*

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

- 32 Civil penalty: The lesser of the following:  
33 (a) 2,500,000 penalty units;
-

# EXPOSURE DRAFT

- 
- 1 (b) the greater of the following:  
2 (i) 5,000 penalty units (or 50,000 penalty units if the  
3 person is a corporation);  
4 (ii) the amount worked out under section 98P for the  
5 significant action in relation to which the no objection  
6 notification was given.

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

11 Civil penalty: The lesser of the following:

- 12 (a) 2,500,000 penalty units;  
13 (b) the greater of the following:  
14 (i) 5,000 penalty units (or 50,000 penalty units if the  
15 person is a corporation);  
16 (ii) the amount worked out under section 98P for the action  
17 in relation to which the no objection notification was  
18 given.

19 *Conditions in exemption certificates*

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

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

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

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

## 30 **29 Subsection 94(4)**

31 Repeal the subsection, substitute:

32 *Penalty*

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

# EXPOSURE DRAFT

- 
- 1 (a) the amount of the capital gain that was made or would be  
2 made on the disposal of the interest in the relevant residential  
3 land;  
4 (b) 25% of the consideration for the residential land acquisition;  
5 (c) 25% of the market value of the interest in the relevant  
6 residential land.

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

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

## 9 **30 At the end of Division 3 of Part 5**

10 Add:

### 11 **Subdivision E—Miscellaneous**

#### 12 **98P Civil penalty amounts for penalty provision based on value** 13 **(sections 89, 91 and 92, subsections 93(1) and (2) and** 14 **section 98B)**

- 15 (1) The amount under this section for a significant action is 75% of the  
16 following amount:
- 17 (a) if the significant action is an acquisition of a direct interest  
18 mentioned in paragraph 40(2)(a)—the greater of the  
19 following:  
20 (i) the value of the consideration for the acquisition;  
21 (ii) the market value of the direct interest;
- 22 (b) if the significant action is an acquisition of interests in  
23 securities mentioned in paragraph 40(2)(b)—the greater of  
24 the following:  
25 (i) the value of the consideration for the acquisition;  
26 (ii) the market value of the interests;
- 27 (c) if the significant action is an issue of securities mentioned in  
28 paragraph 40(2)(c)—the greater of the following:  
29 (i) the value of the consideration for the issue;  
30 (ii) the market value of the securities;
- 31 (d) if the significant action is entering into an agreement  
32 mentioned in paragraph 40(2)(d)—the greater of the  
33 following:  
34 (i) the value of the consideration for the entering into the  
35 agreement;

# EXPOSURE DRAFT

- 
- 1 (ii) the market value of the benefit obtained by the entering  
2 into the agreement;
- 3 (e) if the significant action is an alteration of a constituent  
4 document mentioned in paragraph 40(2)(e)—the greater of  
5 the following:
- 6 (i) the value of the consideration for the alteration;
- 7 (ii) the market value of the benefit obtained by the  
8 alteration;
- 9 (f) if the significant action is an acquisition of a direct interest  
10 mentioned in paragraph 41(2)(a)—the greater of the  
11 following:
- 12 (i) the value of the consideration for the acquisition;
- 13 (ii) the market value of the direct interest;
- 14 (g) if the significant action is an acquisition of interests in assets  
15 mentioned in paragraph 41(2)(b)—the greater of the  
16 following:
- 17 (i) the value of the consideration for the acquisition;
- 18 (ii) the market value of the interests;
- 19 (h) if the significant action is entering into or terminating a  
20 significant agreement mentioned in paragraph 41(2)(c)—the  
21 greater of the following:
- 22 (i) the value of the consideration for the entering into or  
23 terminating of the significant agreement;
- 24 (ii) the market value of the benefit obtained by the entering  
25 into or terminating of the significant agreement;
- 26 (j) if the significant action is an acquisition of an interest in  
27 Australian land mentioned in section 43—the greater of the  
28 following:
- 29 (i) the value of the consideration for the acquisition;
- 30 (ii) the market value of the interest;
- 31 (k) if the significant action is an action specified in regulations  
32 made for the purposes of section 44 and the regulations  
33 specify, or set out a method for determining, an amount for  
34 the action for the purposes of this paragraph—that amount;
- 35 (l) if the significant action is an action specified in regulations  
36 made for the purposes of section 44 and paragraph (k) does  
37 not apply—the greater of the following:
- 38 (i) the value of the consideration for the action;
- 39 (ii) the market value of the benefit obtained by the action.
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# EXPOSURE DRAFT

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- 1 (2) The amount under this section for a notifiable action is 75% of the  
2 following amount:
- 3 (a) if the notifiable action is an acquisition of a direct interest  
4 mentioned in paragraph 47(2)(a)—the greater of the  
5 following:
- 6 (i) the value of the consideration for the acquisition;  
7 (ii) the market value of the direct interest;
- 8 (b) if the notifiable action is an acquisition of a substantial  
9 interest mentioned in paragraph 47(2)(b)—the greater of the  
10 following:
- 11 (i) the value of the consideration for the acquisition;  
12 (ii) the market value of the substantial interest;
- 13 (c) if the notifiable action is an acquisition of an interest in  
14 Australian land mentioned in paragraph 47(2)(c)—the greater  
15 of the following:
- 16 (i) the value of the consideration for the acquisition;  
17 (ii) the market value of the interest;
- 18 (d) if the notifiable action is an action specified in regulations  
19 made for the purposes of section 48 and the regulations  
20 specify, or set out a method for determining, an amount for  
21 the action for the purposes of this paragraph—that amount;
- 22 (e) if the notifiable action is an action specified in regulations  
23 made for the purposes of section 48 and paragraph (d) does  
24 not apply—the greater of the following:
- 25 (i) the value of the consideration for the action;  
26 (ii) the market value of the benefit obtained by the action.
- 27 (3) For the purposes of this section:
- 28 (a) if there is no consideration for a thing—treat the value of the  
29 consideration for the thing as nil; and
- 30 (b) if the market value of a thing cannot be ascertained—treat the  
31 market value of the thing as nil.
- 32 (4) To avoid doubt, if there is no consideration for a thing and the  
33 market value of the thing cannot be ascertained, the amount  
34 worked out under the relevant paragraph of subsection (1) or (2) in  
35 respect of the thing is nil.

## 31 Section 119 (penalty)

36 Repeal the penalty, substitute:

37  
38 Penalty: 250 penalty units.

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# EXPOSURE DRAFT

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1 **32 Subsection 133(5) (penalty)**

2 Repeal the penalty, substitute:

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

4 **33 Application**

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

# EXPOSURE DRAFT

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1 **Part 6—New civil penalty for vacancy fee lodgements**

2 *Foreign Acquisitions and Takeovers Act 1975*

3 **34 After subparagraph 100(5)(b)(v)**

4 Insert:

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

7 **35 After section 115D**

8 Insert:

9 **115DA Vacancy fee liability—false or misleading vacancy fee return**

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

14 Civil penalty: 250 penalty units.

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

18 **36 After subparagraph 115(2)(b)(i)**

19 Insert:

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

22 **37 Application**

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

# EXPOSURE DRAFT

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

3 **Division 1—Amendments**

4 *Foreign Acquisitions and Takeovers Act 1975*

5 **38 Section 4**

6 Insert:

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

9 **39 Subdivision A of Division 4 of Part 5 (heading)**

10 Repeal the heading, substitute:

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

13 **40 After section 99**

14 Insert:

15 **Subdivision AA—Application of the Regulatory Powers Act—**  
16 **Infringement notices**

17 **41 Before Subdivision B of Division 4 of Part 5**

18 Insert:

19 **Subdivision AB—Application of the Regulatory Powers Act—**  
20 **Monitoring powers**

21 **101A Monitoring powers**

22 *Provisions subject to monitoring*

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

25 (a) a provision of this Act; or

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

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# EXPOSURE DRAFT

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

4 Note 2: Some provisions of this Act are taxation laws for the purposes of the  
5 *Taxation Administration Act 1953* (see subsections 115B(2) and  
6 137(1)). For provisions dealing with the Commissioner of Taxation's  
7 powers to obtain information and evidence in relation to taxation laws,  
8 see Division 353 in Schedule 1 to that Act.

## 9 *Information subject to monitoring*

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

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

## 16 *Related provisions*

- 17 (3) For the purposes of Part 2 of the Regulatory Powers Act, each of  
18 the following provisions is related to the provisions mentioned in  
19 subsection (1) and the information mentioned in subsection (2):  
20 (a) an offence provision, or a civil penalty provision, of the  
21 *Taxation Administration Act 1953*;  
22 (b) an offence provision, or a civil penalty provision, of the  
23 *Corporations Act 2001*;  
24 (c) a provision in Part 3 or 3B of the *Register of Foreign*  
25 *Ownership of Water or Agricultural Land Act 2015*.

## 26 *Authorised applicant*

- 27 (4) For the purposes of Part 2 of the Regulatory Powers Act, each of  
28 the following persons is an authorised applicant in relation to the  
29 provisions mentioned in subsection (1) and the information  
30 mentioned in subsection (2):  
31 (a) the Secretary;  
32 (b) an authorised officer.
- 33 (5) The Secretary may, in writing, delegate the powers and functions  
34 of the Secretary under Part 2 of the Regulatory Powers Act as an  
35 authorised applicant in relation to the provisions mentioned in  
36 subsection (1), and the information mentioned in subsection (2), to  
37 a person who may be appointed as an authorised officer under  
38 section 101E.

# EXPOSURE DRAFT

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

4 *Authorised person*

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

9 *Issuing officer*

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

- 14 (a) a magistrate;  
15 (b) a Judge of a court of a State or Territory;  
16 (c) a Judge of the Federal Circuit Court of Australia or of the  
17 Federal Court of Australia.

18 *Relevant chief executive*

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

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

- 28 (a) an SES employee, or acting SES employee, in the  
29 Department;  
30 (b) the Commissioner of Taxation.

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

# EXPOSURE DRAFT

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

4 *Relevant court*

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

- 9 (a) the Federal Court of Australia;  
10 (b) the Federal Circuit Court of Australia;  
11 (c) a court of a State or Territory that has jurisdiction in relation  
12 to matters arising under this Act.

13 *Person assisting*

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

18 *Extension to external Territories*

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

22 **Subdivision AC—Application of the Regulatory Powers Act—**  
23 **Investigation powers**

24 **101B Investigation powers**

25 *Provisions subject to investigation*

- 26 (1) A provision is subject to investigation under Part 3 of the  
27 Regulatory Powers Act if it is:  
28 (a) an offence provision of this Act; or  
29 (b) a civil penalty provision of this Act; or  
30 (c) an offence provision of the *Crimes Act 1914* or the *Criminal*  
31 *Code*, to the extent that it relates to this Act.

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

# EXPOSURE DRAFT

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## *Related provisions*

- 1
- 2 (2) For the purposes of Part 3 of the Regulatory Powers Act, each of  
3 the following provisions is related to evidential material that relates  
4 to a provision mentioned in subsection (1):
- 5 (a) an offence provision, or a civil penalty provision, of the  
6 *Taxation Administration Act 1953*;
- 7 (b) an offence provision, or a civil penalty provision, of the  
8 *Corporations Act 2001*;
- 9 (c) a provision in Part 3 or 3B of the *Register of Foreign*  
10 *Ownership of Water or Agricultural Land Act 2015*.

## *Authorised applicant*

- 11
- 12 (3) For the purposes of Part 3 of the Regulatory Powers Act, each of  
13 the following persons is an authorised applicant in relation to  
14 evidential material that relates to a provision mentioned in  
15 subsection (1):
- 16 (a) the Secretary;
- 17 (b) an authorised officer.
- 18 (4) The Secretary may, in writing, delegate the powers and functions  
19 of the Secretary under Part 3 of the Regulatory Powers Act as an  
20 authorised applicant in relation to evidential material that relates to  
21 a provision mentioned in subsection (1) to a person who may be  
22 appointed as an authorised officer under section 101E.
- 23 (5) In exercising powers or performing functions delegated under  
24 subsection (4), a delegate must comply with any directions of the  
25 delegator.

## *Authorised person*

- 26
- 27 (6) For the purposes of Part 3 of the Regulatory Powers Act, an  
28 authorised officer is an authorised person in relation to evidential  
29 material that relates to a provision mentioned in subsection (1).

## *Issuing officer*

- 30
- 31 (7) For the purposes of Part 3 of the Regulatory Powers Act, each of  
32 the following is an issuing officer in relation to evidential material  
33 that relates to the provisions mentioned in subsection (1):
- 34 (a) a magistrate;
- 35 (b) a Judge of a court of a State or Territory;
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1 (c) a Judge of the Federal Circuit Court of Australia or of the  
2 Federal Court of Australia.

3 *Relevant chief executive*

- 4 (8) For the purposes of Part 3 of the Regulatory Powers Act, the  
5 Secretary is the relevant chief executive in relation to evidential  
6 material that relates to a provision mentioned in subsection (1).
- 7 (9) The Secretary may, in writing, delegate the powers and functions  
8 of the Secretary under Part 3 of the Regulatory Powers Act as the  
9 relevant chief executive in relation to evidential material that  
10 relates to a provision mentioned in subsection (1) to any of the  
11 following:
- 12 (a) an SES employee, or acting SES employee, in the  
13 Department;
  - 14 (b) the Commissioner of Taxation.
- 15 (10) If a power or function is delegated to the Commissioner of  
16 Taxation under subsection (9), the Commissioner may, in writing,  
17 subdelegate the power or function to an SES employee, or acting  
18 SES employee, in the Australian Taxation Office.
- 19 (11) In exercising powers or performing functions delegated under  
20 subsection (9) or (10), a delegate must comply with any directions  
21 of the delegator.

22 *Relevant court*

- 23 (12) For the purposes of Part 3 of the Regulatory Powers Act, each of  
24 the following courts is a relevant court in relation to evidential  
25 material that relates to a provision mentioned in subsection (1):
- 26 (a) the Federal Court of Australia;
  - 27 (b) the Federal Circuit Court of Australia;
  - 28 (c) a court of a State or Territory that has jurisdiction in relation  
29 to matters arising under this Act.

30 *Person assisting*

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

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*Extension to external Territories*

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

5 **Subdivision AD—Application of the Regulatory Powers Act—**  
6 **Enforceable undertakings**

7 **101C Enforceable undertakings**

8 *Enforceable provisions*

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

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

14 *Authorised person*

- 15 (2) For the purposes of Part 6 of the Regulatory Powers Act, the  
16 Treasurer is an authorised person in relation to the provisions  
17 mentioned in subsection (1).
- 18 (3) The Treasurer may, in writing, delegate the powers and functions  
19 of the Treasurer under Part 6 of the Regulatory Powers Act as an  
20 authorised person in relation to the provisions mentioned in  
21 subsection (1) to any of the following:  
22 (a) the Secretary;  
23 (b) an SES employee, or acting SES employee, in the  
24 Department;  
25 (c) the Commissioner of Taxation.
- 26 (4) If a power or function is delegated to the Commissioner of  
27 Taxation under subsection (3), the Commissioner may, in writing,  
28 subdelegate the power or function to an SES employee, or acting  
29 SES employee, in the Australian Taxation Office.
- 30 (5) In exercising powers or performing functions delegated under  
31 subsection (3) or (4), a delegate must comply with any directions  
32 of the delegator.

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*Relevant court*

- 1
- 2 (6) For the purposes of Part 6 of the Regulatory Powers Act, each of  
3 the following courts is a relevant court in relation to the provisions  
4 mentioned in subsection (1):  
5 (a) the Federal Court of Australia;  
6 (b) the Federal Circuit Court of Australia;  
7 (c) a court of a State or Territory that has jurisdiction in relation  
8 to matters arising under this Act.

9 *Extension to external Territories*

- 10 (7) Part 6 of the Regulatory Powers Act, as that Part applies in relation  
11 to a provision mentioned in subsection (1), extends to every  
12 external Territory.

13 **101D Publication of undertakings**

- 14 (1) If the Treasurer accepts an undertaking in relation to a provision  
15 mentioned in subsection 101C(1), the Treasurer must ensure that  
16 the undertaking is published on the Department's website as soon  
17 as practicable after it is accepted.
- 18 (2) If an undertaking has not yet been published on the Department's  
19 website, the Treasurer may decide, in writing, that publishing the  
20 undertaking on the website would be contrary to the national  
21 interest.
- 22 (3) If the Treasurer makes a decision under subsection (2) in relation  
23 to an undertaking, subsection (1) does not apply to the undertaking.
- 24 (4) A failure to comply with subsection (1) in relation to an  
25 undertaking does not affect the enforceability of the undertaking  
26 under Part 6 of the Regulatory Powers Act, as that Part applies in  
27 relation to the provisions mentioned in subsection 101C(1).

28 **Subdivision AE—Application of the Regulatory Powers Act—**  
29 **Miscellaneous**

30 **101E Appointment of authorised officers**

- 31 (1) The Secretary may, in writing, appoint a person who is an APS  
32 employee who holds or performs the duties of an APS Level 6

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1 position, or an equivalent or higher position, in the Department as  
2 an authorised officer for the purposes of this Division.

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

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

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

## 12 **Division 2—Application provisions**

### 13 **42 Application provision—monitoring powers**

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

17 (a) determining whether a provision mentioned in subsection  
18 101A(1) of the *Foreign Acquisitions and Takeovers Act 1975*  
19 has been complied with before, on or after the  
20 commencement of this Part;

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

### 25 **43 Application provision—investigation powers**

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

### 32 **44 Application provision—enforceable undertakings**

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