

EXPOSURE DRAFT

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Inserts for
**Foreign Investment Reform (Protecting
Australia’s National Security) Bill 2020:
National security reviews and last resort
power**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule ##	1 January 2021.	1 January 2021
2.		
3.		

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Schedule ##—National security review powers

Part 1—Main amendments

Foreign Acquisitions and Takeovers Act 1975

1 Section 3

After:

This Act deals with certain actions to acquire interests in securities, assets or Australian land, and actions taken in relation to entities (being corporations and unit trusts) and businesses, that have a connection to Australia. These actions are called significant actions. For an action to be a significant action, the action must result in a change in control involving a foreign person or be taken by a foreign person.

insert:

This Act also deals with actions taken by foreign persons that have, or may have, implications for Australia's national security. These actions may or may not be significant actions. Actions relating to a national security business are notifiable national security actions. If an action is not a notifiable action or a notifiable security action, the Treasurer may review the action if the Treasurer considers that the action may pose a national security concern.

2 Section 3

Omit “has taken a significant action”, substitute “has taken an action”.

3 Section 3

Omit “Some significant actions (called notifiable actions) must also be”, substitute “Significant actions that are notifiable actions, and notifiable national security actions, must be”.

4 Section 4

Before “In this Act”, insert “(1)”.

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5 Section 4

Insert:

an action that may pose a national security concern means:

- (a) an action that is:
 - (i) a significant action but not a notifiable action or notifiable national security action; or
 - (ii) a reviewable national security action; and
- (b) an action in respect of which the Treasurer has given a notice under subsection 37C(3).

national intelligence community has the same meaning as in the *Office of National Intelligence Act 2018*.

national security business has the meaning prescribed by the regulations.

6 Section 4 (definition of *no objection notification*)

Repeal the definition, substitute:

no objection notification means:

- (a) a written notification given under subsection 74(2) and includes such a notification as varied under section 73L or 74; or
- (b) a written notification given under subsection 75(2) and includes such a notification as varied under section 75.

7 Section 4

Insert:

notifiable national security action means any of the following actions taken, or proposed to be taken, by a foreign person:

- (a) to acquire a direct interest in a national security business;
- (b) to acquire an interest in Australian land:
 - (i) that, at the time of acquisition, is defence premises (within the meaning of section 71A of the *Defence Act 1903*, excluding subparagraph (a)(iii) of the definition of that expression); or
 - (ii) in which an agency in the national intelligence community has, or will have, an interest if, at the time of acquisition, the foreign person could reasonably be

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1 expected to be aware of the agency's interest or
2 prospective interest; or

3 (iii) that, at the time of acquisition, is covered, in whole or in
4 part, by an area of Australian land declared by the
5 Treasurer by legislative instrument;

6 (c) to start a national security business.

7 Note: Paragraph (c), see section 8A.

8 *reviewable national security action* has the meaning given by
9 section 37B.

10 **8 At the end of section 4**

11 Add:

12 (2) For the purposes of subparagraph (b)(iii) of the definition of
13 *notifiable national security action*, the Treasurer may, by
14 legislative instrument, declare an area of Australian land.

15 **9 After section 8**

16 Insert:

17 **8A Meaning of starts a national security business**

18 (1) A foreign person *starts a national security business* if the foreign
19 person starts to carry on a national security business.

20 (2) Despite subsection (1), if a foreign person carries on a national
21 security business, the person does not start a national security
22 business merely because the foreign person, alone or together with
23 one or more persons, establishes a new entity:

24 (a) that carries on the same national security business; or

25 (b) for the purposes of acquiring interests in assets of the same
26 national security business.

27 **10 After section 37**

28 Insert:

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1 **Part 1A—Reviewable national security actions**

2 **Division 1—Simplified outline**

3 **37A Simplified outline**

4 This Part defines the concept of a *reviewable national security*
5 *action*. The Treasurer may review an action of this kind, as well as
6 a significant action that is not a notifiable action or notifiable
7 national security action, if the Treasurer considers that the action
8 may pose a national security concern.

9 The Treasurer has powers to make orders and decisions under
10 Part 3 in relation to any actions reviewed under this Part.

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1 **Division 2—Review of reviewable national security actions**

2 **37B Meaning of reviewable national security action**

3 (1) An action is a *reviewable national security action* if:

4 (a) the action is taken, or proposed to be taken, by a foreign
5 person and the action is of any of the following:

6 (i) to acquire a direct interest in an entity or an Australian
7 business;

8 (ii) to acquire an interest in Australian land;

9 (iii) to issue securities in an entity;

10 (iv) to enter or terminate a significant agreement with an
11 Australian business;

12 (v) to enter an agreement relating to the affairs of an entity
13 as mentioned in paragraph 40(2)(d);

14 (vi) to alter a constituent document of an entity as
15 mentioned in paragraph 40(2)(e);

16 (vii) to start an Australian business; and

17 (b) the action is or was not otherwise a significant action, a
18 notifiable action or a notifiable national security action.

19 (2) For the purposes of subparagraph (1)(a)(i), the entity must be:

20 (a) for an acquisition of interests in shares or an issue of shares:

21 (i) a corporation that carries on an Australian business,
22 whether alone or together with one or more other
23 persons; or

24 (ii) the holding entity of such a corporation;

25 (b) for any other action relating to a corporation:

26 (i) an Australian corporation that carries on an Australian
27 business, whether alone or together with one or more
28 other persons; or

29 (ii) the holding entity (other than a foreign corporation) of
30 such a corporation;

31 (c) for an action relating to a unit trust:

32 (i) an Australian unit trust; or

33 (ii) a holding entity of an Australian unit trust.

34 (3) For the purposes of subparagraphs (1)(a)(iii), (v) and (vi), the
35 entity must be:

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- 1 (a) for an acquisition of interests in shares or an issue of shares:
2 (i) a corporation that is a relevant entity that carries on an
3 Australian business, whether alone or together with one
4 or more other persons; or
5 (ii) the holding entity of such a corporation;
6 (b) for any other action relating to a corporation:
7 (i) an Australian corporation that carries on an Australian
8 business, whether alone or together with one or more
9 other persons; or
10 (ii) the holding entity (other than a foreign corporation) of
11 such a corporation;
12 (c) for an action relating to a unit trust:
13 (i) an Australian unit trust; or
14 (ii) a holding entity of an Australian unit trust.

15 **37C National security review of actions**

- 16 (1) Subject to subsection (3), the Treasurer may review:
17 (a) a reviewable national security action;
18 (b) a significant action that is not a notifiable action or notifiable
19 national security action;
20 if the Treasurer considers that it is an action that may pose a
21 national security concern.
- 22 Note 1: See also section 77 (time limit on making orders and decisions) and
23 Parts 5 (offences and civil penalties) and 6 (fees).
- 24 Note 2: In reviewing the reviewable national security action, the Treasurer
25 may seek information, see section 133.
- 26 (2) The Treasurer may only start a review of an action that has been
27 taken within the time prescribed by the regulations.
- 28 (3) If the Treasurer reviews an action mentioned in subsection (1), the
29 Treasurer must give written notice to the person who has taken, or
30 who proposes to take, the action, of the review.
- 31 (4) The Treasurer may not review an action under this section if, at the
32 time a review would otherwise start, any of the following apply:
33 (a) the action has been notified to the Treasurer;
34 (b) a person was given a no objection notification in relation to
35 the action;

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- 1 (c) a person was given, or was taken to have been given, an
2 exemption certificate in relation to the action;
3 (d) an order or decision under Division 2 or 3 of Part 3 has been
4 made by the Treasurer in relation to the action.

11 Section 38

5 Omit:

6
7 The concepts of *significant action* and *notifiable action* are 2 of
8 the most important concepts in this Act.

9 substitute:

10 This Part defines the concepts of *significant action* and *notifiable*
11 *action*.

12 Section 38

13 Omit:

14 These concepts are defined in this Part.

15 Section 66

16 Repeal the section, substitute:

17 66 Simplified outline of this Part

18 This Part deals with the powers that the Treasurer has if an action
19 is proposed to be taken or has been taken.

20 If an action is proposed to be taken, the Treasurer may prohibit the
21 action. The Treasurer may make an interim order before deciding
22 whether to make an order prohibiting an action.

23 If an action has been taken, the Treasurer may order that the action
24 be undone (for example, by requiring an acquisition to be disposed
25 of).

26 Instead of making an order, the Treasurer may give a notification
27 (called a no objection notification) stating that the Commonwealth

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does not object to an action. The Treasurer may impose conditions on an action.

If the Treasurer is given a notice that an action is proposed to be taken, the Treasurer must make a decision under this Part within a certain period (generally, within 30 days of receiving the notice, or within an additional period of up to 90 days from the registration of an interim order). A person must not take the action during this period unless the person is given a no objection notification.

The Treasurer also has last resort powers to deal with national security risks. If a person is given a no objection notification, was given or was taken to have been given an exemption certificate, or the Treasurer does not make a decision under this Part within the required timeframes, in relation to an action and, generally there is a change in circumstances relating to the action or the person, or new information exists, the Treasurer may review the action.

If the Treasurer considers that a national security risk exists in relation to the action, the Treasurer may make the kind of orders mentioned above to eliminate or reduce the risk. Alternatively, if the Treasurer considers that such a risk does not exist, the Treasurer may give the person a no objection notification.

A person who fails to comply with an order or notification under this Part may commit an offence or be liable to a civil penalty.

Under section 113, a fee may be payable in relation to orders or notifications given under this Part.

14 Division 2 of Part 3 (heading)

Repeal the heading, substitute:

Division 2—Orders relating to actions that are, or whose result would be, contrary to national security or the national interest

15 Subdivision A of Division 2 of Part 3 (heading)

Repeal the heading.

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1 **16 Section 67 (heading)**

2 Omit “significant”.

3 **17 Paragraph 67(1)(a)**

4 After “significant action”, insert “(other than a significant action
5 covered by subparagraph (1A)(a)(ii))”.

6 **18 After subsection 67(1)**

7 Insert:

8 (1A) The Treasurer may, by notifiable instrument, make an order under
9 subsection (2) if the Treasurer is satisfied that:

10 (a) an action of any of the following kinds is proposed to be
11 taken:

12 (i) a notifiable national security action that is not a
13 significant action;

14 (ii) an action that may pose a national security concern;

15 (iii) a reviewable national security action notified to the
16 Treasurer; and

17 (b) taking the action would be contrary to national security.

18 Note: See also section 77 (time limit on making orders and decisions) and
19 Parts 5 (offences and civil penalties) and 6 (fees).

20 **19 Subsection 67(2) (table heading)**

21 Omit “significant”.

22 **20 Subsection 67(2) (table, heading to column headed “If the
23 significant action is ...”)**

24 Omit “significant”.

25 **21 Subsection 67(2) (cell at table item 1, column headed “If
26 the significant action is ...”)**

27 Repeal the cell, substitute:

to acquire:

(a) a direct interest in:

(i) an entity or Australian
business; or

(ii) an Australian entity or an
Australian business that is
an agribusiness; or

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- (b) an interest in securities in an entity; or
 - (c) an interest in assets of an Australian business; or
 - (d) a direct interest in a national security business

1 **22 Subsection 67(2) (table item 5)**

2 Repeal the item, substitute:

5	to start an Australian business, and that action is to be taken by a foreign person who is not a foreign government investor	the starting of the whole or a part of the Australian business.
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5A	to start a national security business	the starting of the whole or a part of the national security business.
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3 **23 Subsection 67(3) (table, heading to column “If the**
4 **significant action is ...”)**

5 Omit “significant”.

6 **24 Subsection 67(3) (cell at table item 1, column headed “If**
7 **the significant action is ...”)**

8 Repeal the cell, substitute:

to acquire:

- (a) a direct interest in:
 - (i) an entity; or
 - (ii) an Australian entity that is an agribusiness; or
- (b) an interest in securities in an entity

9 **25 Subsection 67(3) (cell at table item 2, column headed “If**
10 **the significant action is ...”)**

11 Repeal the cell, substitute:

to acquire:

- (a) a direct interest in an Australian business; or
- (b) a direct interest in a national security business; or
- (c) an interest in assets of an

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Australian business

1 **26 Paragraph 69(1)(a)**

2 After “significant action”, insert “(other than a significant action
3 covered by subparagraph (1A)(a)(ii))”.

4 **27 After subsection 69(1)**

5 Insert:

6 (1A) The Treasurer may, by notifiable instrument, make an order under
7 subsection (2) if the Treasurer is satisfied that:

8 (a) an action of any of the following kinds has been taken:

9 (i) a notifiable national security action that is not a
10 significant action;

11 (ii) an action that may pose a national security concern;

12 (iii) a reviewable national security action that is notified to
13 the Treasurer; and

14 (b) the result of the action is contrary to national security.

15 Note: See also section 77 (time limit on making orders and decisions) and
16 Parts 5 (offences and civil penalties) and 6 (fees).

17 **28 Subsection 69(2) (table, heading to column headed “If the
18 significant action was ...”)**

19 Omit “significant”.

20 **29 Subsection 69(2) (cell at table item 1, column headed “If
21 the significant action was ...”)**

22 Repeal the cell, substitute:

to acquire:

(a) a direct interest in:

(i) an entity or Australian
business; or

(ii) an Australian entity or
Australian business that is
an agribusiness; or

(b) an interest in securities in an
entity; or

(c) an interest in assets of an
Australian business; or

(d) a direct interest in a national
security business

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1 **30 Subsection 69(2) (table item 4)**

2 Repeal the item, substitute:

4	to start an Australian business, and that action was taken by a foreign person who is not a foreign government investor	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
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4A	to start a national security business	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
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3 **31 Subsection 69(4)**

4 Omit “An order”, substitute “If the Treasurer is satisfied as mentioned
5 in subsection (1), an order”.

6 **32 Paragraphs 70(1)(a) and (b)**

7 Repeal the paragraphs, substitute:

- 8 (a) a person is given a no objection notification specifying one or
9 more actions proposed to be taken; and
10 (b) the actions specified in the no objection notification were
11 taken; and

12 **33 Before subsection 71(1)**

13 Insert:

14 *Variations or revocations not contrary to the national interest*

15 (1AA) Subsection (1) applies in relation to an order:

- 16 (a) made under subsection 67(2) because the Treasurer was
17 satisfied as mentioned in subsection 67(1); or
18 (b) made under section 68 because the Treasurer was considering
19 making an order mentioned in paragraph (a); or
20 (c) made under subsection 69(2) because the Treasurer was
21 satisfied as mentioned in subsection 69(1).

22 **34 Subsection 71(1)**

23 Omit “under this Subdivision”, substitute “of a kind mentioned in
24 subsection (1)”.

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35 After subsection 71(1)

Insert:

Variations or revocations not contrary to the national security

(1A) The Treasurer may vary or revoke an order:

(a) made under subsection 67(2) because the Treasurer was satisfied as mentioned in subsection 67(1A); or

(b) made under section 68 because the Treasurer was considering making an order mentioned in paragraph (a); or

(c) made under subsection 69(2) because the Treasurer was satisfied as mentioned in subsection 69(1A);

at any time if the Treasurer is satisfied that the variation or revocation is not contrary to national security.

36 Subsections 71(2) and 72(1) and (2)

Omit “Subdivision”, substitute “Division”.

37 Before paragraph 73(a)

Insert:

(aa) the definition of *an action that may pose a national security concern*;

(ab) the definition of *notifiable national security action*;

38 Section 73

Omit “Subdivision”, substitute “Division”.

39 After section 73

Insert:

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1 **Division 3—Last resort powers: orders to deal with**
2 **national security risks arising after an initial**
3 **assessment**

4 **Subdivision A—National security review required**

5 **73A National security review required before orders may be made**

6 *Bases on which Treasurer may review actions*

- 7 (1) The Treasurer may review an action if the Treasurer is satisfied
8 that:
- 9 (a) any of the following apply:
 - 10 (i) a person was given a no objection notification in
11 relation to the action;
 - 12 (ii) a person was given, or was taken to have been given, an
13 exemption certificate in relation to the action;
 - 14 (iii) an order or decision under Division 2 was not made by
15 the Treasurer in relation to the action before the end of
16 the decision period referred to in section 77;
 - 17 (iv) a person was given a notice imposing conditions under
18 section 73M in relation to the action; and
 - 19 (b) any of the following apply:
 - 20 (i) the person notified the action to the Treasurer and made
21 a statement, whether orally or in that notification, that
22 was false or misleading in a material particular, or that
23 omitted a matter or thing without which the statement
24 was misleading in a material particular;
 - 25 (ii) the business, structure or organisation of the person has,
26 or the person's activities have, materially changed since
27 the time paragraph (a) was satisfied;
 - 28 (iii) the circumstances or market in which the action was
29 taken have materially changed since the time
30 paragraph (a) was satisfied.

31 *Treasurer to decide whether a national security risk exists*

- 32 (2) When reviewing an action under this section, the Treasurer must
33 decide whether a national security risk exists in relation to the
34 action. In doing so, the Treasurer must have regard to any advice

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1 provided by an agency in the national intelligence community in
2 relation to the action.

3 *Treasurer may give notice of review*

- 4 (3) If the Treasurer reviews an action under this section:
- 5 (a) the Treasurer must, unless it would prejudice Australia's
6 national security interests to do so, notify the person, in
7 writing, of the review; and
 - 8 (b) if the action has not been taken—the giving of the notice
9 prohibits, by force of this paragraph, the taking of the action
10 until the review of the action is completed and:
 - 11 (i) a no objection notification or exemption certificate is
12 given to the person; or
 - 13 (ii) an order is registered under section 73H; or
 - 14 (iii) a notice imposing conditions is given to the person
15 under section 73M or such a notice is varied under that
16 section or section 73L; and
 - 17 (c) if the action has been taken—the Treasurer may:
 - 18 (i) in the notice—give any direction to the person in
19 relation to the action or a related activity that the
20 Treasurer considers necessary to address the national
21 security risk; and
 - 22 (ii) in writing and before the review is completed—give any
23 subsequent direction to the person in relation to the
24 action or a related activity that the Treasurer considers
25 necessary to address the national security risk.
- 26 (4) For the purposes of paragraph (3)(c) the Treasurer may not give a
27 direction that would require the person to take action of a kind
28 mentioned in section 73F.

29 **73B When an action creates a national security risk**

- 30 (1) If the Treasurer reviews an action, as allowed by section 73A, and
31 decides that a national security risk exists in relation to the action,
32 the Treasurer must give written notice to the person who proposes
33 to take, or took, the action of that fact, along with the Treasurer's
34 reasons for deciding that the risk exists.
- 35 (2) The Treasurer may redact from the written notice to the person
36 who proposes to take, or took, the action:

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- 1 (a) any reasons that would disclose the national security risk or
2 result in prejudice to Australia's national security interests; or
3 (b) any information relied on in carrying out the review of the
4 action on grounds of national security.
- 5 (3) To avoid doubt, a written notice to the person who proposes to
6 take, or took, the action may be validly given under subsection (1)
7 even if all the contents of the notice are redacted.

8 **Subdivision B—Orders**

9 **73C Prior notice of proposed order to be given**

10 If the Treasurer proposes to give an order to a person relating to an
11 action under this Subdivision, the Treasurer must be satisfied that:

- 12 (a) the action has been reviewed under Subdivision A; and
13 (b) reasonable steps have been taken to negotiate in good faith
14 with the person to achieve an outcome of eliminating or
15 reducing the national security risk relating to the action that
16 the Treasurer has decided exists so as to avoid an order being
17 given; and
18 (c) requiring the person to comply with an order is reasonably
19 necessary for purposes relating to eliminating or reducing the
20 national security risk; and
21 (d) the use of existing regulatory systems of the Commonwealth,
22 a State or a Territory would not adequately eliminate or
23 reduce the national security risk.

24 **73D Order prohibiting proposed actions**

- 25 (1) The Treasurer may, by notifiable instrument, make an order under
26 subsection (2) if the Treasurer is satisfied that:
27 (a) an action is proposed to be taken; and
28 (b) taking the action would be contrary to national security.

29 Note: See also Part 5 (offences and civil penalties).

- 30 (2) The Treasurer may make an order in accordance with the following
31 table.
32

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Powers of Treasurer to prohibit proposed actions

Item	If the action is ...	the Treasurer may make an order prohibiting ...
1	to acquire: (a) a direct interest in: (i) an entity or Australian business; or (ii) an Australian entity or Australian business that is an agribusiness; or (b) an interest in securities in an entity; or (c) an interest in assets of an Australian business; or (d) a direct interest in a national security business	the whole or a part of the proposed acquisition.
2	to issue securities in an entity	the whole or a part of the proposed issue of the securities.
3	to enter an agreement mentioned in paragraph 40(2)(d)	entering the proposed agreement.
4	to alter a constituent document of an entity as mentioned in paragraph 40(2)(e)	the proposed alteration.
5	to start an Australian business, and that action is to be taken by a foreign person	the starting of the whole or a part of the Australian business.
6	to start a national security business	the starting of the whole or a part of the national security business.
7	to enter a significant agreement with an Australian business	entering the proposed agreement.
8	to terminate a significant agreement with an Australian business	the termination of the existing agreement.
9	to acquire an interest in Australian land	the proposed acquisition.
10	to take any significant action prescribed by regulations made for the purposes of section 44	any thing prescribed by regulations made for the purposes of this item.

1 (3) If the Treasurer makes an order under subsection (2), the Treasurer
2 may, by notifiable instrument, also make an order in accordance
3 with the following table.

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1

Additional orders		
Item	If the action is ...	the Treasurer may also make an order ...
1	to acquire: (a) a direct interest in: (i) an entity; or (ii) an Australian entity that is an agribusiness; or (b) an interest in securities in an entity;	directing a specified foreign person (whether alone or with specified associate or class of associates) not to: (a) increase the proportion of the total voting power, or the total potential voting power, in the entity that the person is in a position to control (or increase that proportion beyond a specified proportion); or (b) increase the proportion of interests in issued securities in the entity that the person holds (or increase that proportion beyond a specified proportion).
2	to acquire: (a) a direct interest in an Australian business; (b) a direct interest in a national security business; (c) an interest in assets of an Australian business	directing a specified foreign person (whether alone or with specified associate or class of associates): (a) not to acquire any interests in assets of that business; or (b) to acquire any such interests only to a specified extent.
3	to acquire an interest in Australian land	directing a specified foreign person (whether alone or with specified associate or class of associates): (a) not to acquire any interests in the land or other thing concerned; or (b) to acquire any such interests only to a specified extent.

2 **73E Interim orders**

- 3 (1) For the purpose of considering whether to make an order under
4 section 73D, the Treasurer may, by notifiable instrument, make an
5 order, under this section, of the kind that the Treasurer may make
6 under that section as if that section had applied.

7 Note: See also Part 5 (offences and civil penalties).

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1 (2) An order made under this section must specify the period during
2 which the order has effect. The period must not be more than 90
3 days.

4 Note: The period does not start until the order is registered on the Federal
5 Register of Legislation (see paragraph 73H(2)(b)).

6 **73F Disposal orders**

7 (1) The Treasurer may, by notifiable instrument, make an order under
8 subsection (2) if the Treasurer is satisfied that:

9 (a) an action has been taken; and

10 (b) the result of the action is contrary to national security.

11 Note: See also Part 5 (offences and civil penalties).

12 (2) The Treasurer may make an order in accordance with the following
13 table.

14

Powers of Treasurer to require disposal of interests

Item	If the action was ...	the Treasurer may make an order directing ...
1	to acquire: (a) a direct interest in: (i) an entity; or (ii) an Australian entity or Australian business that is an agribusiness; or (b) an interest in securities in an entity; or (c) an interest in assets of an Australian business; or (d) a direct interest in a national security business	the person who acquired the interest to dispose of the interest within a specified period to one or more persons who are not associates of the person.
2	to enter an agreement mentioned in paragraph 40(2)(d)	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
3	to alter a constituent document of an entity as mentioned in paragraph 40(2)(e)	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
4	to start:	the person who started the business

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Powers of Treasurer to require disposal of interests		
Item	If the action was ...	the Treasurer may make an order directing ...
	(a) an Australian business, and that action was taken by a foreign person; or (b) a national security business	to dispose of the business within a specified period to one or more persons who are not associates of the person.
5	to enter a significant agreement with an Australian business	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
6	to terminate a significant agreement with an Australian business	specified persons to do within a specified period, or refrain from doing, specified acts or acts of a specified kind.
7	to acquire an interest in Australian land	the person who acquired the interest to dispose of that interest within a specified period to one or more persons who are not associates of the person.
8	to take any significant action prescribed by regulations made for the purposes of section 44	a specified person to do a thing prescribed by regulations made for the purposes of this item.

1

Orders made under table item 7

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(3) Without limiting item 7 of the table in subsection (2):

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(a) a foreign person is taken to have acquired an interest in Australian land if the person becomes (with or without the knowledge of the person) a beneficiary in a trust that consists of or includes the interest; and

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(b) if the trust is a discretionary trust—a reference to the disposal of the interest of the foreign person is a reference to the disposal of any assignable benefits in relation to that trust that may ultimately vest in that foreign person.

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Orders made under table items 2, 3, 5 or 6

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(4) Before the end of a period specified in an order made under any of items 2, 3, 5 or 6 of the table in subsection (2) (or that period as extended under a previous application of this subsection), the

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1 Treasurer may, in writing, extend the period. The order has effect
2 as if the period as extended had been specified in the order.

3 **73G Variation and revocation of orders**

- 4 (1) The Treasurer may vary or revoke an order under this Division at
5 any time if the Treasurer is satisfied that the variation or revocation
6 is not contrary to national security.
- 7 (2) Subsection 33(3) of the *Acts Interpretation Act 1901* does not
8 apply in relation to a power under this Division to make an order.

9 **73H Registration and commencement of orders**

10 *Registration of orders*

- 11 (1) An order made by the Treasurer under this Division must be:
12 (a) in writing; and
13 (b) registered on the Federal Register of Legislation within 10
14 days after it is made.

15 *When an order commences*

- 16 (2) An order under this Division commences:
17 (a) for an order under subsection 73D(3) (additional orders) or
18 73F (disposal orders)—on the day specified in the order that
19 is at least 30 days after the order is registered; and
20 (b) for any other order—on the day the order is registered.

21 **73J Actions of more than one kind**

22 If a single action is covered by more than one of the following
23 (because an action is an action of more than one kind):

- 24 (a) the definition of *an action that may pose a national security*
25 *concern*;
26 (b) the definition of *notifiable national security action*;
27 (c) a reviewable national security action that is notified to the
28 Treasurer;
29 (d) paragraph 40(2)(a), (b), (c), (d) or (e);
30 (e) paragraph 41(2)(a), (b) or (c);
31 (f) paragraph 43(a);

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1 (g) a provision of regulations made for the purposes of
2 section 44;
3 the Treasurer may make any of the orders under this Division that
4 the Treasurer could make in relation to the single action.

5 **Subdivision C—Other powers of Treasurer**

6 **73K Prior notice of proposed exercise of power to be given**

7 If the Treasurer proposes to exercise powers under section 73L,
8 subsection 73M(1) or section 73N in relation to an action taken, or
9 proposed to be taken, by a person, the Treasurer must be satisfied
10 that:

- 11 (a) the action has been reviewed under Subdivision A; and
- 12 (b) reasonable steps have been taken to negotiate in good faith
13 with the person to achieve an outcome of eliminating or
14 reducing the national security risk relating to the action that
15 the Treasurer has decided exists so as to avoid the powers
16 being exercised; and
- 17 (c) exercising those powers is reasonably necessary for purposes
18 relating to eliminating or reducing the national security risk;
19 and
- 20 (d) the use of existing regulatory systems of the Commonwealth,
21 a State or a Territory would not adequately eliminate or
22 reduce the national security risk.

23 **73L Varying or revoking conditions of no objection notification**

24 If a person was given a no objection notification, the Treasurer
25 may decide to vary the no objection notification by:

- 26 (a) revoking a condition; or
 - 27 (b) imposing a new condition; or
 - 28 (c) varying an existing condition; or
 - 29 (d) varying the information specified under section 76;
- 30 if the Treasurer is satisfied that the variation is reasonably
31 necessary for purposes relating to eliminating or reducing the
32 national security risk.

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73M Notice imposing conditions

Imposing conditions

- (1) If a person was not given a no objection notification in relation to an action, the Treasurer may:
- (a) decide that the Commonwealth has no objection to the action if one or more conditions were imposed that the Treasurer is satisfied would be reasonably necessary for purposes relating to eliminating or reducing the national security risk; and
 - (b) notify the person, in writing (the ***notice imposing conditions***), of the conditions.
- (2) The notice imposing conditions:
- (a) must be given before the end of 10 days after the decision is made; and
 - (b) if a notice relating to the action was given—may be given to the person at an address (including an electronic address) specified in that notice as the address for service of notices relating to the action.
- (3) Section 76 applies to a notice imposing conditions mentioned in subsection (2) as if a reference to a no objection notification in section 76 were a reference to the notice imposing conditions.

Variation and revocation of conditions

- (4) Subject to subsection (6), the Treasurer may vary a notice imposing conditions given to a person by:
- (a) revoking a condition; or
 - (b) imposing a new condition; or
 - (c) varying an existing condition; or
 - (d) varying the information specified under section 76, as applied and modified by subsection (3);
- if the Treasurer is satisfied that the variation is not contrary to national security.
- (5) The variation may be made on the Treasurer's own initiative.
- (6) The Treasurer may, for the purposes of subsection (4), vary a notice imposing conditions given to a person by imposing a new condition or varying an existing condition only if:
- (a) the person consents to the new condition or the variation; or

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- 1 (b) the Treasurer is satisfied that the new condition or variation
2 does not disadvantage the person.

3 **73N Varying or revoking conditions of notice imposing conditions**

4 If a person was given a notice imposing conditions under
5 section 73M, the Treasurer may decide to vary the notice imposing
6 conditions by:

- 7 (a) revoking a condition; or
8 (b) imposing a new condition; or
9 (c) varying an existing condition; or
10 (d) varying the information specified under section 76;
11 if the Treasurer is satisfied that the variation is reasonably
12 necessary for purposes relating to eliminating or reducing the
13 national security risk.

14 **Subdivision D—Review of decisions**

15 **73P AAT review of decisions**

- 16 (1) An application may be made to the Administrative Appeals
17 Tribunal for review of a decision of the Treasurer under this
18 Division that a national security risk exists in relation to an action.
- 19 (2) At any time after the completion of a review by the Administrative
20 Appeals Tribunal of a decision of a kind mentioned in
21 subsection (1), an application may be made for a review of the
22 findings of the Tribunal on the ground that the applicant has fresh
23 evidence of material significance that was not available at the time
24 of the previous review.

25 **73Q Restriction on Treasurer’s powers after review**

26 If the Administrative Appeals Tribunal has made findings upon a
27 review of a decision, the Treasurer must not exercise the
28 Treasurer’s powers under this Act in respect of the action
29 concerned that is not in accordance with those findings except on
30 the basis:

- 31 (a) of matters or material changes occurring after the review; or
32 (b) of which evidence was not available at the time of the
33 review.

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1 **Subdivision E—Miscellaneous**

2 **73R Exercise of powers under this Division**

3 In exercising a power under this Division, the Treasurer:

4 (a) may have regard to any matter; and

5 (b) is not required to have regard to a particular matter, unless
6 otherwise required by this Division.

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1 **Division 4—Other powers of Treasurer**

2 **40 Subdivision B of Division 2 of Part 3 (heading)**

3 Repeal the heading.

4 **41 Paragraph 74(1)(a)**

5 After “significant action”, insert “(other than a significant action
6 covered by paragraph (1A)(b)”.

7 **42 Paragraph 74(1)(b)**

8 Repeal the paragraph, substitute:

9 (b) all of the following apply:

- 10 (i) the Treasurer is satisfied that a significant action has
11 been taken;
- 12 (ii) the Treasurer was not given a notice relating to the
13 action before the action was taken;
- 14 (iii) the action is not covered by paragraph (1A)(b); or

15 **43 After subparagraph 74(1)(c)(ii)**

16 Insert:

17 (iia) the action is not covered by paragraph (1A)(b);

18 **44 After subsection 74(1)**

19 Insert:

20 (1A) This section also applies if the following kinds of actions are
21 proposed to be taken or have been taken:

- 22 (a) a notifiable national security action that is not a significant
23 action;
- 24 (b) an action that may pose a national security concern;
- 25 (c) a reviewable national security action that is notified to the
26 Treasurer.

27 Note: See also sections 70 (limitation on making disposal orders), 76
28 (content of no objection notification) and 77 (time limit on making
29 orders and decisions) and Parts 5 (offences and civil penalties) and 6
30 (fees).

31 **45 Subparagraph 74(2)(a)(ii)**

32 Omit “and”.

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46 At the end of paragraph 74(2)(a)

Add:

- (iii) for subsection (1A) and in relation to an action proposed to be taken—a condition that the Treasurer is satisfied is necessary to ensure the action, if taken, will not be contrary to national security;
- (iv) for subsection (1A) and in relation to an action that has been taken—a condition that the Treasurer is satisfied is necessary to ensure the action is not contrary to national security; and

47 Subsection 74(4)

Repeal the subsection, substitute:

Variation and revocation of conditions

(4) Subject to subsection (6), the Treasurer may:

- (a) in relation to an action of a kind mentioned in subsection (1)—vary a no objection notification given to a person in one or more ways mentioned in subsection (4A) if the Treasurer is satisfied that the variation is not contrary to the national interest; and
- (b) in relation to an action of a kind mentioned in subsection (1A)—vary a no objection notification given to a person in one or more ways mentioned in subsection (4A) if the Treasurer is satisfied that the variation is not contrary to national security.

(4A) For the purposes of subsection (4), the Treasurer may vary a no objection notification in one or more of the following ways:

- (a) revoking a condition;
- (b) imposing a new condition;
- (c) varying an existing condition;
- (d) varying the information specified under section 76.

48 At the end of subsection 74(8)

Add:

Note: See also Division 3 of this Part.

49 After subsection 75(1)

Insert:

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1 (1A) This section also applies if:

- 2 (a) the Treasurer receives a notice that a person proposes to take
3 a notifiable national security action; or
4 (b) a person proposes to take:
5 (i) an action that may pose a national security concern; or
6 (ii) a reviewable national security action that the person
7 notifies to the Treasurer.

8 Note: See also sections 76 (content of no objection notification) and 77 (time
9 limit on making orders and decisions) and Parts 5 (offences and civil
10 penalties) and 6 (fees).

11 **50 Subsection 76(1)**

12 Repeal the subsection, substitute:

13 (1) A no objection notification given to a person under section 74 or
14 75 must:

15 (a) specify the following:

- 16 (i) the one or more actions to which the notification relates;
17 (ii) the one or more foreign persons to which the
18 notification relates; and

19 (b) include the following:

- 20 (i) a requirement that the actions to which the notification
21 relates, if taken, must be taken before the end of a
22 specified period after the day the notification is given;
23 (ii) a statement to the effect that the Treasurer may, in
24 certain circumstances review the actions to which the
25 notification relates under Division 3 and exercise
26 powers under that Division.

27 **51 Paragraph 76(4)(b)**

28 After “contrary to”, insert “national security or”.

29 **52 Subsection 76(8)**

30 Repeal the subsection, substitute:

31 (8) The Treasurer may vary a no objection notification if:

- 32 (a) in the case of a no objection notification given in relation to
33 an action of a kind mentioned in subsection 74(1) or 75(1)—
34 the Treasurer is satisfied that the variation is not contrary to
35 the national interest; and

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(b) in the case of a no objection notification given in relation to an action of a kind mentioned in subsection 74(1A) or 75(1A)—the Treasurer is satisfied that the variation is not contrary to national security.

53 Division 3 of Part 3 (heading)

Repeal the heading, substitute:

Division 5—Provisions relating to powers of Treasurer

54 Subsection 77(1)

Repeal the subsection, substitute:

Application of this section

- (1) This section applies if the Treasurer receives a notice from a person stating that any of the following actions are proposed to be taken:
- (a) a significant action (including a significant action that is a notifiable action);
 - (b) a notifiable national security action;
 - (c) a reviewable national security action.

Note 1: If a fee is payable by a person under section 113, the notice is taken not to have been given until the fee has been paid, waived or remitted (see section 114).

Note 2: For withdrawal of notices, see section 136.

- (1A) This section also applies in relation to an action that may pose a national security concern.

55 Paragraph 77(5)(a)

Repeal the paragraph, substitute:

- (a) either:
- (i) if a notice is given to a person in relation to an action that may pose a national security concern—the period of 30 days after the day the Treasurer gives the notice to the person under subsection 37C(3); or
 - (ii) in any other case—the period of 30 days after the day the Treasurer receives a notice from a person stating that an action of a kind mentioned in subsection (1) is proposed to be taken; or

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56 Paragraph 79(1)(b)

After “contrary to”, insert “national security or”.

57 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Notices required for notifiable actions and notifiable national security actions, and may be given of other actions

58 Section 80

Repeal the section, substitute:

80 Simplified outline of this Part

A foreign person who proposes to take a notifiable action or notifiable national security action must give a notice to the Treasurer before taking the action.

A foreign person must not take an action during a certain period (unless the person is given a no objection notification) if:

- (a) the foreign person chooses to notify the Treasurer of the action despite not being required to do so; or
- (b) the foreign person is given a notice by the Treasurer under subsection 37C(3) (actions that may pose a national security concern).

Generally, the period is 40 days from receiving the notice, or up to 90 days from the registration of an interim order. The person may be prevented from taking the action by an order under Part 3.

59 Section 81 (at the end of the heading)

Add “and notifiable national security actions”.

60 Subsection 81(1)

After “notifiable action”, insert “or notifiable national security action”.

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61 Subsection 81(2)

After “notifiable action”, insert “or notifiable national security action”.

62 Section 82 (heading)

Omit “significant”.

63 Subsection 82(1)

Repeal the subsection, substitute:

(1) This section applies in relation to:

(a) a foreign person who gives a notice to the Treasurer stating that any of the following actions are proposed to be taken:

(i) a significant action (including a significant action that is a notifiable action);

(ii) a notifiable national security action;

(iii) a reviewable national security action; or

(b) a foreign person who proposes to take an action in respect of which the Treasurer has given a notice under subsection 37C(3).

Note: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

64 Paragraph 83(a)

After “notifiable action”, insert “or notifiable national security action”.

65 Paragraph 83(b)

Repeal the paragraph, substitute:

(b) before the end of the period set out in subsection 82(2), takes an action which the person had notified to the Treasurer; or
--

66 Paragraph 84(c)

After “notifiable action”, insert “or notifiable national security action”.

67 Section 85 (heading)

Omit “significant”.

68 Section 85

Before “A person”, insert “(1)”.

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69 Paragraph 85(b)

Repeal the paragraph, substitute:

- (b) the person gives a notice to the Treasurer stating that a significant action (including a significant action that is a notifiable action), a notifiable national security action or a reviewable national security action is proposed to be taken; and

70 At the end of section 85 (after the penalty)

Add:

(2) A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the Treasurer gives the person a notice under subsection 37C(3) in relation to an action; and
- (c) at the time the Treasurer gave the notice to the person, the action had not been taken; and
- (d) the person takes the action; and
- (e) the action is taken before the day mentioned in section 82; and
- (f) if a change in control is required for the action to be a significant action—there is a change in control as a result of the action.

Note: A notice might be given under section 81 or because a foreign person chooses to give a notice despite not being required to do so.

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

71 After section 85

Insert:

85A Taking action while prohibited by this Act

A person commits an offence if:

- (a) the person is a foreign person; and
- (b) the person takes an action; and
- (c) the action is taken when prohibited by paragraph 73A(3)(b).

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

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72 Subparagraph 87(a)(i)

Repeal the subparagraph, substitute:

- (i) the person is given a no objection notification under section 74 or 75; or

73 Subdivision A of Division 3 of Part 5 (heading)

Omit “significant”.

74 Section 90

Repeal the section, substitute:

90 Application

This Subdivision does not apply in relation to:

- (a) a significant action relating to an interest in residential land;
or
(b) a notifiable action or a notifiable national security action relating to an interest in residential land; or
(c) a reviewable national security action relating to an interest in residential land.

75 Section 91

After “notifiable action”, insert “or notifiable national security action”.

76 Section 92 (heading)

Omit “significant”.

77 Section 92

Omit “a significant action”, substitute “an action”.

78 Paragraph 92(a)

Repeal the paragraph, substitute:

- (a) either:
(i) the person gives a notice to the Treasurer stating that the action is proposed to be taken; or
(ii) the action is an action that may pose a national security concern; and

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79 After section 92

Insert:

92A Taking action while prohibited by this Act

A foreign person must not take an action when prohibited by paragraph 73A(3)(b).

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.

80 Subsection 93(1)

Omit “section 74 (no objection notification imposing conditions)”, substitute “section 74 or 75”.

81 Subsection 94(1)

After “notifiable action”, insert “or notifiable national security action”.

82 Subsection 94(2)

Repeal the subsection, substitute:

(2) If:

- (a) a foreign person gives a notice to the Treasurer stating that any of the following actions are proposed to be taken:
 - (i) a significant action (including a significant action that is a notifiable action) that is a residential land acquisition;
 - (ii) a notifiable national security action that is a residential land acquisition;
 - (iii) a reviewable national security action that is a residential land acquisition; or
- (b) both:
 - (i) a foreign person proposes to take an action that is a residential land acquisition; and
 - (ii) the Treasurer has given a notice under subsection 37C(3) in relation to the action;

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1 the foreign person must not take the action before the day
2 mentioned in section 82.

3 **83 Subsections 96(1) and 97(1)**

4 Omit “section 74 (no objection notification imposing conditions)”,
5 substitute “section 74 or 75”.

6 **84 Paragraph 116(a)**

7 After “notifiable actions”, insert “, notifiable national security actions”.

8 **85 Paragraph 117(1)(a)**

9 Omit “or notifiable action”, substitute “, notifiable action or notifiable
10 national security action”.

11 **86 After paragraph 117(1)(a)**

12 Insert:

- 13 (aa) any action taken by the person that is a reviewable
14 national security action notified to the Treasurer to the
15 extent that the records are relevant to an order or
16 decision under Part 3;

17 **87 Subparagraphs 117(1)(d)(i) and (ii)**

18 Omit “or notifiable action”, substitute “, notifiable action or notifiable
19 national security action”.

20 **88 At the end of paragraph 117(1)(d)**

21 Add:

- 22 ; or (iii) was a reviewable national security action notified to the
23 Treasurer; or
24 (iv) was an action in respect of which the Treasurer gave a
25 notice under subsection 37C(3).

26 **89 Paragraph 133(3)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) in the case of an action that may pose a national security
29 concern or a notifiable national security action—a period
30 (which may be less than 14 days) within which the
31 information must be given or the documents produced; and

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1 (aa) in any other case—a period (of at least 14 days) within which
2 the information must be given or the documents produced;
3 and

4 **90 Subsection 133(3)**

5 After “paragraph (a)”, insert “or (aa)”.

6 **91 Paragraph 135(3)(b)**

7 After “notifiable actions”, insert “and notifiable national security
8 actions”.

Part 2—Application provisions

92 Application—national security review of actions

Section 37C of the *Foreign Acquisitions and Takeovers Act 1975*, as inserted by item 10 of this Schedule applies in relation to an action that is taken, or proposed to be taken, on or after 1 January 2021.

93 Application—prohibition orders

The amendments of sections 67 and 70 of the *Foreign Acquisitions and Takeovers Act 1975* made by this Schedule apply in relation to an action proposed to be taken on or after 1 January 2021, unless the action is a significant action that is notified to the Treasurer before 1 January 2021.

94 Application—disposal orders

The amendments of sections 69 and 70 of the *Foreign Acquisitions and Takeovers Act 1975* made by this Schedule apply in relation to an action taken on or after 1 January 2021, unless the action is a significant action that is notified to the Treasurer before 1 January 2021.

95 Application—variation and revocation of orders

The amendments of section 71 of the *Foreign Acquisitions and Takeovers Act 1975* made by this Schedule apply in relation to orders made on or after 1 January 2021.

96 Application—last resort power

Division 3 of Part 3 of the *Foreign Acquisitions and Takeovers Act 1975*, as inserted by item 39 of this Schedule, applies in relation to:

- (a) a no objection notification given on or after 1 January 2021, unless it is given in respect of a significant action that is notified to the Treasurer before, or taken before, 1 January 2021; or
- (b) an exemption certificate given, or taken to have been given, on or after 1 January 2021; or
- (c) an action in respect of which an order or decision under Division 2 was not made by the Treasurer before the end of the decision period referred to in section 77, unless the action is a significant action that is notified to the Treasurer before 1 January 2021.

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97 Application—no objection notifications

No objection notifications

- (1) The amendments of sections 74 and 75 of the *Foreign Acquisitions and Takeovers Act 1975* made by this Schedule (other than item 47) apply in relation to an action taken, or proposed to be taken, on or after 1 January 2021.

Variation of no objection notifications

- (2) The amendment of section 74 of the *Foreign Acquisitions and Takeovers Act 1975* made by item 47 of this Schedule applies in relation to a no objection notification given on or after 1 January 2021, unless it is given in respect of a significant action that is notified to the Treasurer before 1 January 2021.
- (3) Subsection 76(8)(a) of the *Foreign Acquisitions and Takeovers Act 1975*, as inserted by item 52 of this Schedule, applies in relation to a no objection notification given on or after 1 January 2021, unless it is given in respect of a significant action that is notified to the Treasurer before 1 January 2021.
- (4) Subsection 76(8)(b) of the *Foreign Acquisitions and Takeovers Act 1975*, as inserted by item 52 of this Schedule, applies in relation to a no objection notification given on or after 1 January 2021.

Content of no objection notifications

- (5) The amendment of subsection 76(1) of the *Foreign Acquisitions and Takeovers Act 1975* made by item 50 of this Schedule applies in relation to a no objection notification given on or after 1 January 2021, unless it is given in respect of a significant action that is notified to the Treasurer before 1 January 2021.

98 Application—time limits etc. and information requested by the Treasurer

The amendments of sections 77, 82 and 133 of the *Foreign Acquisitions and Takeovers Act 1975* made by this Schedule apply in relation to:

- (a) notices given to the Treasurer on or after 1 January 2021 (other than notices given in respect of notifiable actions that are not significant actions); or
- (b) notices given by the Treasurer under subsection 37C(3) of that Act on or after 1 January 2021.

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1 **99 Application—record-keeping**

2 The amendments of sections 117 of the *Foreign Acquisitions and*
3 *Takeovers Act 1975* made by this Schedule apply in relation to actions
4 taken on or after 1 January 2021.

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1 **Part 3—Other amendments**
2

3 *Administrative Appeals Tribunal Act 1975*

4 **100 At the end of subsection 17B(2)**

5 Add:

6 ; (c) the powers of review in respect of applications referred to in
7 section 73P of the *Foreign Acquisitions and Takeovers Act*
8 *1975*.

9 **101 After section 69C**

10 Insert:

11 **69D Modifications of Act for reviews of decisions made under the**
12 *Foreign Acquisitions and Takeovers Act 1975*

13 The regulations may modify the provisions of this Act to:

- 14 (a) enable the Security Division of the Tribunal to review
15 decisions of the Treasurer under section 73P of the *Foreign*
16 *Acquisitions and Takeovers Act 1975*; and
17 (b) provide for any matter related to the review of such decisions
18 by the Security Division of the Tribunal.