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| **EXPOSURE DRAFT** |

Inserts for

Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020:Technical amendments

| Commencement information | | |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 6 | 1 January 2021. | 1 January 2021 |

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Schedule 6—Technical amendments

Part 1—Interests acquired by entering agreements

Foreign Acquisitions and Takeovers Act 1975

1 Section 4 (note to the definition of *new dwelling*)

Omit “subsections 15(4) and (5)”, substitute “section 15”.

2 Subsection 15(1)

Omit “subsections (4) and (5)”, substitute “subsection (4)”.

3 Subsections 15(4) and (5)

Repeal the subsections (including the heading), substitute:

Agreements that are conditional on approval under this Act

(4) For the purposes of this Act (other than section 95 (acquisition of interests in established dwellings)), if:

(a) a person proposes to take an action to acquire or sell an interest in a security, asset, trust or Australian land; and

(b) the agreement, right or option to acquire or sell the interest requires the fulfilment of a condition relating to the operation of this Act;

the person takes the action to acquire or sell the interest, and (where relevant) enters the agreement, when that condition is fulfilled (even if other conditions remain unfulfilled at that time).

Note: As a result of this subsection, the person acquires or sells the interest when the condition relating to the operation of this Act is fulfilled.

4 Subsection 81(2) (note)

Omit “subsections 15(4) and (5) (provisions of agreements that are not currently binding)”, substitute “section 15 (interests acquired by entering agreements or acquiring options)”.

5 Subsection 81(2) (note 1)

Omit “Note 1”, substitute “Note”.

6 Subsection 81(2) (note 2)

Repeal the note.

7 Section 84 (note)

Repeal the note.

8 Section 85 (note 1)

Repeal the note.

9 Section 85 (note 2)

Omit “Note 2”, substitute “Note”.

10 Section 91 (note)

Repeal the note.

11 Section 92 (note 1)

Repeal the note.

12 Section 92 (note 2)

Omit “Note 2”, substitute “Note”.

13 Subsection 94(1) (note)

Repeal the note.

14 Application—interests acquired by entering agreements

The amendments made by this Part apply in relation to agreements entered into, and rights and options acquired, on or after 1 January 2021.

Part 2—Extension of decision period

Foreign Acquisitions and Takeovers Act 1975

15 Paragraph 77(5)(b)

After “this paragraph”, insert “or paragraph (c)”.

16 At the end of subsection 77(5)

Add:

; or (c) if, before the end of a decision period (including a decision period as extended under this paragraph or paragraph (b)), the Treasurer extends the period under section 77A—the period as so extended.

77A Treasurer may extend decision period by up to 90 days

(1) Before the end of a decision period, the Treasurer may, by notice in writing given to the person mentioned in subsection (2), extend (or further extend) the period. The Treasurer may do so more than once.

(2) The person to whom the notice is to be given is:

(a) if subsection 77(1) applies—the person from whom the Treasurer received the notice mentioned in that subsection; or

(b) in any other case—the person to whom the Treasurer gave a notice under subsection 37C(3) (about national security review of actions).

(3) The total number of days by which the Treasurer may extend a decision period by notices given under this section must not exceed 90 days.

(4) The notice:

(a) must include the reasons for the decision; and

(b) if subsection 77(1) applies—may be given to the person at an address (including an electronic address) specified in the notice relating to the action as the address for service of notices relating to the action.

(5) The rules of natural justice do not apply in connection with the making of a decision under subsection (1).

17 Application—extension of decision period

Section 77 of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by this Part, and section 77A of that Act, as inserted by this Part, apply in relation to notices received or given by the Treasurer on or after 1 January 2021.

Part 3—Time limit on making orders and decisions

Foreign Acquisitions and Takeovers Act 1975

18 Subparagraph 77(2)(c)(i)

After “made”, insert “, or purported to make,”.

19 Subparagraph 77(2)(c)(ii)

After “made”, insert “, or purported to make,”.

20 Subparagraph 77(3)(d)(i)

After “made”, insert “, or purported to make,”.

21 Subparagraph 77(3)(d)(ii)

After “made”, insert “, or purported to make,”.

22 Application—time limit on making orders and decisions

Section 77 of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by this Part, applies in relation to notices received by the Treasurer on or after 1 January 2021.

Part 4—Court orders

Foreign Acquisitions and Takeovers Act 1975

23 After paragraph 132(1)(a)

Insert:

(aa) if the contravention was holding an interest in more than one established dwelling at the same time, or acquiring an interest in an established dwelling (see section 95)—to preserve the interest; or

24 Application—court orders

Section 132 of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by this Part, applies in relation to contraventions occurring on or after 1 January 2021.

Part 5—Other amendments

Foreign Acquisitions and Takeovers Act 1975

25 Subsection 37(5)

Omit “paragraph (4)(a)”, substitute “subsection (4)”.

26 Paragraph 47(2)(a)

Repeal the paragraph, substitute:

(a) to acquire a direct interest in:

(i) an Australian entity that is an agribusiness; or

(ii) an Australian business that is an agribusiness;

27 Subsection 47(4)

Omit “paragraph (2)(a) or (b)”, substitute “subparagraph (2)(a)(i) or paragraph (b)”.

28 Section 50 (paragraph beginning “Two important tests”)

After “whether there has been a change in control.”, insert “The threshold test is also important in determining whether an action is a notifiable action.”.

29 Section 51

Omit “a significant”, substitute “an”.

30 Section 51 (table, heading to column 1)

Omit “**Significant action**”, substitute “**Kind of action**”.

31 Section 51 (after table item 2)

Insert:

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| 2A | Acquiring a substantial interest in an Australian entity | The higher of the following:  (a) the total asset value for the entity;  (b) the total issued securities value for the entity |

32 Subsection 53(1)

Repeal the subsection (not including the heading), substitute:

(1) If:

(a) an action relating to an entity, business or land is covered by an agreement; and

(b) the threshold test is met in relation to the action and the entity, business or land;

the ***threshold test is met*** for the action even if the test is not met for another action covered by the agreement (whether or not relating to the same entity, business or land).

33 Subsection 53(2)

Omit “threshold test is met”, substitute “***threshold test is met***”.

34 Section 114

Omit “or remitted”.