

# EXPOSURE DRAFT

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

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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 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.

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1 **7 Section 84 (note)**

2 Repeal the note.

3 **8 Section 85 (note 1)**

4 Repeal the note.

5 **9 Section 85 (note 2)**

6 Omit “Note 2”, substitute “Note”.

7 **10 Section 91 (note)**

8 Repeal the note.

9 **11 Section 92 (note 1)**

10 Repeal the note.

11 **12 Section 92 (note 2)**

12 Omit “Note 2”, substitute “Note”.

13 **13 Subsection 94(1) (note)**

14 Repeal the note.

15 **14 Application—interests acquired by entering agreements**

16 The amendments made by this Part apply in relation to agreements  
17 entered into, and rights and options acquired, on or after 1 January  
18 2021.

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## 1 Part 2—Extension of decision period

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

#### 3 **15 Paragraph 77(5)(b)**

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

#### 5 **16 At the end of subsection 77(5)**

6 Add:

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

#### 11 **77A Treasurer may extend decision period by up to 90 days**

- 12 (1) Before the end of a decision period, the Treasurer may, by notice in  
13 writing given to the person mentioned in subsection (2), extend (or  
14 further extend) the period. The Treasurer may do so more than  
15 once.
- 16 (2) The person to whom the notice is to be given is:
- 17 (a) if subsection 77(1) applies—the person from whom the  
18 Treasurer received the notice mentioned in that subsection; or  
19 (b) in any other case—the person to whom the Treasurer gave a  
20 notice under subsection 37C(3) (about national security  
21 review of actions).
- 22 (3) The total number of days by which the Treasurer may extend a  
23 decision period by notices given under this section must not exceed  
24 90 days.
- 25 (4) The notice:
- 26 (a) must include the reasons for the decision; and  
27 (b) if subsection 77(1) applies—may be given to the person at an  
28 address (including an electronic address) specified in the  
29 notice relating to the action as the address for service of  
30 notices relating to the action.
- 31 (5) The rules of natural justice do not apply in connection with the  
32 making of a decision under subsection (1).

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1 **17 Application—extension of decision period**

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

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1 **Part 3—Time limit on making orders and decisions**

2 *Foreign Acquisitions and Takeovers Act 1975*

3 **18 Subparagraph 77(2)(c)(i)**

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

5 **19 Subparagraph 77(2)(c)(ii)**

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

7 **20 Subparagraph 77(3)(d)(i)**

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

9 **21 Subparagraph 77(3)(d)(ii)**

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

11 **22 Application—time limit on making orders and decisions**

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

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1 **Part 4—Court orders**

2 *Foreign Acquisitions and Takeovers Act 1975*

3 **23 After paragraph 132(1)(a)**

4 Insert:

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

9 **24 Application—court orders**

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

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1 **Part 5—Other amendments**

2 *Foreign Acquisitions and Takeovers Act 1975*

3 **25 Subsection 37(5)**

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

5 **26 Paragraph 47(2)(a)**

6 Repeal the paragraph, substitute:

7 (a) to acquire a direct interest in:

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

9 (ii) an Australian business that is an agribusiness;

10 **27 Subsection 47(4)**

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

13 **28 Section 50 (paragraph beginning “Two important tests”)**

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

17 **29 Section 51**

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

19 **30 Section 51 (table, heading to column 1)**

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

21 **31 Section 51 (after table item 2)**

22 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
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1 **32 Subsection 53(1)**

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

3 (1) If:

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

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

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

11 **33 Subsection 53(2)**

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

13 **34 Section 114**

14 Omit “or remitted”.