

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020

---

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2020

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Treasurer

---

EXPOSURE DRAFT



# EXPOSURE DRAFT

---

## Contents

<b>Part 1—Preliminary</b>	1
1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Schedules .....	1
5 Definitions .....	1
<b>Part 2—Fees relating to actions</b>	3
<b>Division 1—Fees covered by this Part</b>	3
6 Fees covered by this Part .....	3
<b>Division 2—Fees for giving notice of a notifiable action or notifiable national security action</b>	4
<b>Subdivision A—Fees covered by this Division</b>	4
7 Fees covered by this Division .....	4
<b>Subdivision B—Fees for giving notice of notifiable actions</b>	4
8 Fee for giving notice of a notifiable action .....	4
9 Finding the fee constant .....	4
10 Applying the fee constant to work out the amount of the fee.....	5
11 Components for working out the fee if the value of the consideration is more than the fee constant.....	5
<b>Subdivision C—Fees for giving notice of notifiable national security actions</b>	6
12 Notifiable national security actions.....	6
<b>Division 3—Fees for giving notice of a proposal to take an action that is neither a notifiable action nor a notifiable national security action</b>	7
13 Fees covered by this Division .....	7
14 Proposal to acquire certain interests in entities or businesses, or issuing securities in entities etc. ....	7
15 Proposal to enter or terminate certain agreements, or to alter constituent documents .....	7
16 Proposal to take a reviewable national security action.....	8
<b>Division 4—Fees for notices of national security reviews</b>	9
17 Fees covered by this Division .....	9
18 Notices of national security reviews .....	9
<b>Division 5—Fees for certain circumstances relating to certain significant actions and actions contrary to national security</b>	10
19 Simplified outline of this Division.....	10
20 Acquiring certain interests in entities or businesses, or issuing securities in entities etc. ....	10
21 Entering or terminating certain agreements, or altering constituent documents.....	10
22 Acquisitions of interests in Australian land .....	10
23 Notifiable national security actions.....	11
<b>Division 6—Fees for applying for a variation of a no objection notification</b>	12
24 Fees covered by this Division .....	12
25 Applying to vary a no objection notification.....	12
<b>Division 7—Exemption certificates</b>	13
<b>Subdivision A—Applications for exemption certificates</b>	13

# EXPOSURE DRAFT

---

26	Fees covered by this Subdivision.....	13
27	Certificates under section 57 of the Foreign Acquisitions Act (about new dwellings) .....	13
28	Residential land (near-new dwelling interests) certificates .....	13
29	Certificates under section 59 of the Foreign Acquisitions Act (about established dwellings) or residential land (other than established dwellings) certificates.....	13
30	Other kinds of exemption certificates .....	14
	<b>Subdivision B—Ongoing 6 monthly fees for exemption certificates</b>	15
31	Simplified outline of this Subdivision.....	15
32	Ongoing 6-monthly fees for developers given exemption certificates under section 57 (new dwellings) of the Foreign Acquisitions Act .....	15
33	Ongoing 6-monthly fees for developers given residential land (near-new dwelling interests) certificates.....	15
	<b>Subdivision C—Applications to vary exemption certificates</b>	16
34	Fees covered by this Subdivision.....	16
35	Variations of exemption certificates .....	16
	<b>Division 8—Fees for internal reorganisations</b>	17
36	Fees for internal reorganisations .....	17
	<b>Part 3—Vacancy fees</b>	18
37	Fees covered by this Part .....	18
38	Acquisition was a notifiable action notified under section 81 of the Foreign Acquisitions Act .....	18
39	Acquisition was covered by a new dwellings exemption certificate or a residential land (near-new dwelling interests) certificate.....	18
40	Acquisition was covered by another kind of exemption certificate.....	18
41	Acquisition for which an order is made under Division 2 of Part 3 of the Foreign Acquisitions Act or a no objection notification is given .....	19
	<b>Part 4—Lowering fees</b>	20
	<b>Division 1—The amount of a fee may be lowered under this Part</b>	20
42	The amount of a fee may be lowered under this Part .....	20
	<b>Division 2—Fees where more than one action taken</b>	21
	<b>Subdivision A—One agreement covers more than one action</b>	21
43	Scope .....	21
44	Fee to the extent that the actions are all of the same kind .....	21
45	Fee to the extent that the actions all relate to interests in Australian land, but not all to the same kind of Australian land.....	21
46	Dominant kind of Australian land.....	21
	<b>Subdivision B—Single action covered by 2 or more provisions</b>	22
47	Single action covered by 2 or more provisions of Part 2.....	22
	<b>Division 3—Exemption certificates</b>	23
48	Applications for residential land certificates covering a single proposed acquisition.....	23
49	Multiple applications made for entities, land and national security exemption certificates.....	23
	<b>Division 4—Other grounds for lowering fees</b>	25
50	Fee payable if the value of the consideration is less than \$75,000.....	25
51	Majority owners.....	25
52	Acquisition of leasehold interest after sale of freehold interest.....	26
53	Acquisition of securities in a land entity .....	26

---

# EXPOSURE DRAFT

---

54	Internal reorganisations by foreign government investors involving tenements .....	27
55	Jointly acquiring or holding interests in a security, asset, trust or Australian land .....	28
56	Actions taken by wholly-owned groups.....	28
57	Fee for variation of no objection notifications and certain exemption certificates.....	29
<b>Part 5—Indexation</b>		30
58	Specified fees and fee components are subject to indexation.....	30
59	Indexation factor .....	30
60	Index number .....	30
<b>Part 6—Application and transitional provisions</b>		31
61	Application of this instrument.....	31
<b>Schedule 1—Repeals</b>		32
	<i>Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015</i>	32



# EXPOSURE DRAFT

Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day the <i>Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020</i> commences.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

- (1) In this instrument:

*Act* means the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

*actual actions* has the meaning given by section 43.

*dominant kind of Australian land* has the meaning given by section 46.

*fee constant* has the meaning given by section 9.

*foreign business person* means a foreign person, except an individual not ordinarily resident in Australia, carrying on a business in Australia or elsewhere.

*indexation factor* has the meaning given by section 59.

*index number* has the meaning given by section 60.

*internal reorganisation* has the meaning given by subsection 36(2).

*quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

*relevant acquisition* has the meaning given by subsection 37(2).

*value*, of consideration, has the same meaning as in the Foreign Acquisitions Regulation, subject to the adjustment in subsection (3).

*wholly-owned group* has the same meaning as in the *Income Tax Assessment Act 1997*.

- (2) Subject to subsection (1), an expression used in this instrument that is defined in the Foreign Acquisitions Act or the Foreign Acquisitions Regulation has the same meaning in this instrument as it has in that Act or that Regulation.

Note: Examples of such expressions are as follows:

- (a) *consideration*, which is defined in the Foreign Acquisitions Regulation;
- (b) *land entity*, which is defined in the Foreign Acquisitions Regulation;
- (c) *mining, production or exploration entity*, which is defined in the Foreign Acquisitions Regulation;
- (d) *tenement*, which is defined in the Foreign Acquisitions Regulation.

- (3) The *value* of the consideration for the acquisition of an interest in Australian land is adjusted under this subsection if:

- (a) the interest is an interest as lessee or licensee in a lease or licence; and
- (b) the term of the lease or licence (including any extension or renewal) is reasonably likely, at the time the interest is acquired, to exceed 25 years.

The *value* of the consideration for the acquisition is adjusted to be the following:

$$\frac{25}{\text{Term of the lease or licence (including any extension or renewal)}} \times \text{Value of the consideration apart from the adjustment under this subsection}$$

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees covered by this Part **Division 1**

Section 6

---

## **Part 2—Fees relating to actions**

### **Division 1—Fees covered by this Part**

#### **6 Fees covered by this Part**

For the purposes of subsection 6(1) of the Act, this Part enables the working out of the amount of each fee:

- (a) imposed by section 5 of the Act; and
- (b) payable under Part 6 (fees in relation to actions) of the Foreign Acquisitions Act.

# EXPOSURE DRAFT

**Part 2** Fees relating to actions

**Division 2** Fees for giving notice of a notifiable action or notifiable national security action

Section 7

---

## **Division 2—Fees for giving notice of a notifiable action or notifiable national security action**

### **Subdivision A—Fees covered by this Division**

#### **7 Fees covered by this Division**

This Division applies for a fee payable in accordance with item 3 of the table in subsection 113(1) of the Foreign Acquisitions Act.

### **Subdivision B—Fees for giving notice of notifiable actions**

#### **8 Fee for giving notice of a notifiable action**

*General rule*

- (1) The amount of the fee for giving notice under section 81 of the Foreign Acquisitions Act of a notifiable action is worked out by:
  - (a) using section 9 of this instrument to find the fee constant for the action; and
  - (b) applying that fee constant under sections 10 and 11 of this instrument.

*Exception—fee for a foreign government investor starting an Australian business*

- (2) However, if the notifiable action:
  - (a) is by a foreign government investor; and
  - (b) is covered by paragraph 56(1)(b) of the Foreign Acquisitions Regulation (about a foreign government investor starting an Australian business);the amount of the fee is \$2,000.

#### **9 Finding the fee constant**

The *fee constant* for a notifiable action is as follows:

<b>Fee constant for a notifiable action</b>		
<b>Item</b>	<b>For this kind of notifiable action:</b>	<b>the fee constant is:</b>
1	acquiring an interest in residential land	\$1 million
2	acquiring an interest in agricultural land	\$2 million
3	(a) acquiring an interest in commercial land (whether the land is vacant or not); or (b) acquiring an interest in a mining or production tenement; or (c) an action covered by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities); or (d) an action covered by section 55 of the Foreign Acquisitions Regulation (about a foreign person acquiring an interest in an Australian media	\$50 million

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees for giving notice of a notifiable action or notifiable national security action **Division 2**

Section 10

---

**Fee constant for a notifiable action**

---

<b>Item</b>	<b>For this kind of notifiable action:</b>	<b>the fee constant is:</b>
	business); or	
	(e) an action by a foreign government investor and covered by paragraph 56(1)(a) of the Foreign Acquisitions Regulation (about a foreign government investor acquiring a direct interest in an Australian entity or Australian business); or	
	(f) an action by a foreign government investor and covered by paragraph 56(1)(c) of the Foreign Acquisitions Regulation (about a foreign government investor acquiring certain mining interests)	

---

## 10 Applying the fee constant to work out the amount of the fee

The amount of the fee for the action is worked out by applying the fee constant for the action as follows:

---

**Fees for giving notice of a notifiable action**

---

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If the value of the consideration for the action is:</b>	<b>the amount of the fee is:</b>
1	less than or equal to the fee constant	\$6,600
2	more than the fee constant, and is a multiple of the fee constant	equal to the lesser of the following: (a) the product of: (i) \$13,200; and (ii) the amount worked out under subsection 11(1); (b) \$500,000
3	more than the fee constant, and is not a multiple of the fee constant	equal to the lesser of the following: (a) the product of: (i) \$13,200; and (ii) the amount worked out under subsection 11(2); (b) \$500,000

---

## 11 Components for working out the fee if the value of the consideration is more than the fee constant

- (1) For the purposes of item 2 of the table in section 10, round down the result of the following formula to the nearest whole number:

$$\frac{\text{Value of the consideration for the action} - \$1}{\text{Fee constant}}$$

- (2) For the purposes of item 3 of the table in section 10, round down the result of the following formula to the nearest whole number:

# EXPOSURE DRAFT

## Part 2 Fees relating to actions

### Division 2 Fees for giving notice of a notifiable action or notifiable national security action

#### Section 12

Value of the consideration for the action

Fee constant

### Subdivision C—Fees for giving notice of notifiable national security actions

#### 12 Notifiable national security actions

The amount of the fee for giving notice under section 81 of the Foreign Acquisitions Act of a notifiable national security action covered by an item of the following table is equal to the fee that would be worked out under Subdivision B if the action were a notifiable action:

- (a) covered by that Subdivision; and
- (b) of the kind set out in column 2 of that table item.

<b>Fees for giving notice of a notifiable national security action</b>		
<b>Item</b>	<b>Column 1</b> <b>If the notifiable national security action is:</b>	<b>Column 2</b> <b>For the purposes of Subdivision B, treat the action as being:</b>
1	to acquire a direct interest in a national security business	an action covered by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities)
2	an acquisition of an interest in Australian land for which: (a) the land is agricultural land; and (b) the acquisition is covered by paragraph (b) of the definition of <i>notifiable national security action</i> in the Foreign Acquisitions Act	an action to acquire an interest in agricultural land
3	an acquisition of an interest in Australian land for which: (a) the land is commercial land (whether the land is vacant or not); and (b) the acquisition is covered by paragraph (b) of the definition of <i>notifiable national security action</i> in the Foreign Acquisitions Act	an action to acquire an interest in commercial land (whether the land is vacant or not)
4	an acquisition of an interest in Australian land for which: (a) the land is a mining or production tenement; and (b) the acquisition is covered by paragraph (b) of the definition of <i>notifiable national security action</i> in the Foreign Acquisitions Act	an action to acquire an interest in a mining or production tenement
5	to start a national security business	an action to which subsection 8(2) of this instrument applies

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees for giving notice of a proposal to take an action that is neither a notifiable action nor a notifiable  
national security action **Division 3**

Section 13

---

## **Division 3—Fees for giving notice of a proposal to take an action that is neither a notifiable action nor a notifiable national security action**

### **13 Fees covered by this Division**

This Division applies for a fee payable in accordance with item 4 of the table in subsection 113(1) of the Foreign Acquisitions Act.

### **14 Proposal to acquire certain interests in entities or businesses, or issuing securities in entities etc.**

The amount of the fee for giving notice to the Treasurer of a proposal to take a significant action that:

- (a) is covered by any of the following paragraphs of the Foreign Acquisitions Act:
  - (i) paragraph 40(2)(a) (about acquiring a direct interest in an Australian entity that is an agribusiness);
  - (ii) paragraph 40(2)(b) (about acquiring interests in securities in an entity);
  - (iii) paragraph 40(2)(c) (about issuing securities in an entity);
  - (iv) paragraph 41(2)(a) (about acquiring a direct interest in an Australian business that is an agribusiness);
  - (v) paragraph 41(2)(b) (about acquiring interests in assets of an Australian business); and
- (b) is neither a notifiable action nor a notifiable national security action; is equal to the fee that would be worked out under Division 2 of this Part if the action were an action covered by that Division and by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities).

### **15 Proposal to enter or terminate certain agreements, or to alter constituent documents**

The amount of the fee for giving notice to the Treasurer of a proposal to take a significant action that:

- (a) is covered by paragraph 40(2)(d) or (e) or 41(2)(c) of the Foreign Acquisitions Act; and
- (b) is neither a notifiable action nor a notifiable national security action; is \$13,200.

# EXPOSURE DRAFT

## Part 2 Fees relating to actions

### Division 3 Fees for giving notice of a proposal to take an action that is neither a notifiable action nor a notifiable national security action

#### Section 16

#### 16 Proposal to take a reviewable national security action

*Reviewable national security actions—interests in entities, businesses or land, issuing securities, or starting an Australian business*

- (1) The amount of the fee for giving notice to the Treasurer of a proposal to take a reviewable national security action covered by an item of the following table is equal to 25% of the fee that would be worked out under Division 2 if the action were an action:
- (a) covered by that Division; and
  - (b) of the kind set out in column 2 of that table item.

<b>Fees for giving notice of a proposal to take a reviewable national security action</b>		
<b>Item</b>	<b>Column 1 If the reviewable national security action is:</b>	<b>Column 2 For the purposes of Division 2, treat the action as being:</b>
1	(a) to acquire a direct interest in an entity or an Australian business; or (b) to issue securities in an entity	an action covered by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities)
2	to acquire an interest in Australian land that is agricultural land	an action to acquire an interest in agricultural land
3	to acquire an interest in Australian land that is commercial land (whether the land is vacant or not)	an action to acquire an interest in commercial land (whether the land is vacant or not)
4	to acquire an interest in Australian land that is a mining or production tenement	an action to acquire an interest in a mining or production tenement
5	to start an Australian business	an action to which subsection 8(2) of this instrument applies

*Reviewable national security actions—to enter or terminate certain agreements, or to alter constituent documents*

- (2) If the reviewable national security action is any of the following:
- (a) to enter or terminate a significant agreement with an Australian business;
  - (b) to enter an agreement relating to the affairs of an entity as mentioned in paragraph 40(2)(d) of the Foreign Acquisitions Act;
  - (c) to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) of that Act;
- the amount of the fee is equal to 25% of the fee that would be worked out under section 15 of this instrument if the action were an action covered by that section.

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees for notices of national security reviews **Division 4**

Section 17

---

## **Division 4—Fees for notices of national security reviews**

### **17 Fees covered by this Division**

This Division applies for a fee payable in accordance with item 4A of the table in subsection 113(1) of the Foreign Acquisitions Act.

### **18 Notices of national security reviews**

The amount of the fee for being given a notice under subsection 37C(3) of the Foreign Acquisitions Act of the review of an action is equal to the fee that would be worked out under Division 3 of this Part if the action were an action covered by that Division.

- Note: This means the amount of the fee is equal to that worked out under:
- (a) section 14 or 15 if the action is a significant action that is neither a notifiable action nor a notifiable national security action; or
  - (b) section 16 if the action is a reviewable national security action.

# EXPOSURE DRAFT

**Part 2** Fees relating to actions

**Division 5** Fees for certain circumstances relating to certain significant actions and actions contrary to national security

Section 19

---

## **Division 5—Fees for certain circumstances relating to certain significant actions and actions contrary to national security**

### **19 Simplified outline of this Division**

<p>This Division relates to fees payable in accordance with item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act.</p>
---

### **20 Acquiring certain interests in entities or businesses, or issuing securities in entities etc.**

The amount of the fee payable in accordance with item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act for an action covered by any of the following paragraphs of that Act:

- (a) paragraph 40(2)(a) (about acquiring a direct interest in an Australian entity that is an agribusiness);
- (b) paragraph 40(2)(b) (about acquiring interests in securities in an entity);
- (c) paragraph 40(2)(c) (about issuing securities in an entity);
- (d) paragraph 41(2)(a) (about acquiring a direct interest in an Australian business that is an agribusiness);
- (e) paragraph 41(2)(b) (about acquiring interests in assets of an Australian business);

is equal to the fee that would have been worked out under Division 2 of this Part if the action were an action covered by that Division and by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities).

### **21 Entering or terminating certain agreements, or altering constituent documents**

The amount of the fee payable in accordance with item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act for an action covered by paragraph 40(2)(d) or (e) or 41(2)(c) of that Act is the same as the fee that would have been worked out under section 15 of this instrument if the action were an action covered by that section.

### **22 Acquisitions of interests in Australian land**

If:

- (a) item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act applies for an action; and
- (b) the action is covered by section 43 of that Act;

the amount of the fee payable in accordance with that item for the action is the same as the fee that would have been worked out under Division 2 of this Part if the action were an action covered by that Division.

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees for certain circumstances relating to certain significant actions and actions contrary to national security **Division 5**

## Section 23

---

Example: The action is acquiring an interest in residential land. The fee is the same as the fee that would have been worked out under Division 2 of this Part for an acquisition of an interest in residential land.

### **23 Notifiable national security actions**

The amount of the fee payable in accordance with item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act for a notifiable national security action is equal to the fee that would have been worked out under section 12 of this instrument if the action were an action covered by that section.

# EXPOSURE DRAFT

**Part 2** Fees relating to actions

**Division 6** Fees for applying for a variation of a no objection notification

Section 24

---

## **Division 6—Fees for applying for a variation of a no objection notification**

### **24 Fees covered by this Division**

This Division applies for a fee payable in accordance with item 6 of the table in subsection 113(1) of the Foreign Acquisitions Act.

### **25 Applying to vary a no objection notification**

The amount of the fee for applying under subsection 76(6) of the Foreign Acquisitions Act for a variation of a no objection notification is as follows:

<b>Fees for applying for a variation of a no objection notification</b>		
<b>Item</b>	<b>For this kind of application:</b>	<b>the amount of the fee is:</b>
1	an application that seeks only variations of an immaterial or minor nature	\$2,000
2	an application that seeks variations of which one or more are not of an immaterial or minor nature	\$13,200

# EXPOSURE DRAFT

## **Division 7—Exemption certificates**

### **Subdivision A—Applications for exemption certificates**

#### **26 Fees covered by this Subdivision**

This Subdivision applies for a fee, relating to applying for an exemption certificate, that is payable:

- (a) in accordance with item 1 of the table in subsection 113(1) of the Foreign Acquisitions Act; and
- (b) when the application is made.

#### **27 Certificates under section 57 of the Foreign Acquisitions Act (about new dwellings)**

The amount of the fee, for an application for an exemption certificate under section 57 of the Foreign Acquisitions Act (about new dwellings), is \$27,100.

#### **28 Residential land (near-new dwelling interests) certificates**

- (1) The amount of the fee, for an application for a residential land (near-new dwelling interests) certificate, is \$27,100.
- (2) Despite subsection (1), a fee of nil is payable by a person for an application for a residential land (near-new dwelling interests) certificate if:
  - (a) the person has applied for, or been given, an exemption certificate under section 57 of the Foreign Acquisitions Act (the *section 57 certificate*); and
  - (b) the section 57 certificate and the residential land (near-new dwelling interests) certificate cover (or will cover) interests in relation to the same development.

Note: See subsection 57(2) for the fee payable for an application to vary a residential land (near-new dwelling interests) certificate.

#### **29 Certificates under section 59 of the Foreign Acquisitions Act (about established dwellings) or residential land (other than established dwellings) certificates**

For an application for:

- (a) an exemption certificate under section 59 of the Foreign Acquisitions Act (about established dwellings) for one or more actions; or
- (b) a residential land (other than established dwellings) certificate for one or more actions;

the amount of the fee is equal to the fee that would be worked out under Division 2 if those actions (the *exempted actions*) were replaced by a single action:

- (c) covered by that Division that was an acquisition of an interest in residential land; and

# EXPOSURE DRAFT

Part 2 Fees relating to actions  
Division 7 Exemption certificates

## Section 30

- (d) for which the value of the consideration was equal to the sum of the values of the consideration for the exempted actions.

### 30 Other kinds of exemption certificates

- (1) The amount of the fee, for an application for an exemption certificate covered by one or more items of the table in subsection (2), is equal to the sum of each fee notionally worked out as described in that subsection.
- (2) To the extent that the actions (the *exempted actions*) to be covered by the exemption certificate are covered by an item of the following table, work out what would be 75% of the fee under Division 2 if the exempted actions were replaced by a single action:
- (a) covered by that Division and of the kind set out in column 2 of that table item; and
- (b) for which the value of the consideration was equal to the sum of the values of the consideration for the exempted actions.

<b>Fees for applications for other kinds of exemption certificates</b>		
<b>Item</b>	<b>Column 1</b> <b>To the extent that the application is for:</b>	<b>Column 2</b> <b>For the purposes of Division 2, treat those actions as being replaced by a single action of this kind:</b>
1	an exemption certificate under section 58 of the Foreign Acquisitions Act for one or more acquisitions of interests in agricultural land	an acquisition of an interest in agricultural land
2	an exemption certificate under section 58 of the Foreign Acquisitions Act for one or more acquisitions of interests in commercial land (whether the land is vacant or not)	an acquisition of an interest in commercial land (whether the land is vacant or not)
3	an exemption certificate under section 58 of the Foreign Acquisitions Act for one or more acquisitions of interests in residential land	an acquisition of an interest in residential land
4	a businesses or entities certificate for one or more actions	an action covered by paragraph 47(2)(a) or (b) of the Foreign Acquisitions Act (about acquisitions of interests in certain entities)
5	(a) an exemption certificate under section 58 of the Foreign Acquisitions Act for one or more acquisitions of interests in mining or production tenements; or (b) a tenements and mining, production or exploration entities certificate for one or more actions	an acquisition of an interest in a mining or production tenement
6	a certificate under section 43BA of the Foreign Acquisitions Regulation for one or	a notifiable national security action of that kind

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Exemption certificates **Division 7**

Section 31

---

**Fees for applications for other kinds of exemption certificates**

---

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>To the extent that the application is for:</b>	<b>For the purposes of Division 2, treat those actions as being replaced by a single action of this kind:</b>
	more notifiable national security actions of a kind described in column 1 of an item of the table in subsection 12(1) of this instrument	
7	a certificate under section 43BB of the Foreign Acquisitions Regulation for one or more reviewable national security actions of a kind described in column 1 of an item of the table in subsection 16(1) of this instrument	the action described in column 2 of that item of the table in subsection 16(1) of this instrument

---

## **Subdivision B—Ongoing 6 monthly fees for exemption certificates**

### **31 Simplified outline of this Subdivision**

This Subdivision relates to fees payable in accordance with item 1 of the table in subsection 113(1) of the Foreign Acquisitions Act that are payable:

- (a) in relation to certain kinds of exemption certificates; and
- (b) at the end of 6 monthly periods.

### **32 Ongoing 6-monthly fees for developers given exemption certificates under section 57 (new dwellings) of the Foreign Acquisitions Act**

- (1) The amount of the fee, payable by a developer mentioned in subsection 113(2) of the Foreign Acquisitions Act at the end of a 6 month period covered by that subsection, is the total of the amounts that are payable under subsection (2) of this section for each new dwelling acquisition that occurs during the period.

Note: Subsections 113(3) and (4) of the Foreign Acquisitions Act define **6 month period** and **new dwelling acquisition**.

- (2) The amount that is payable for a new dwelling acquisition is the amount that, at the time of the acquisition, would have been payable for the acquisition under Division 2 if the acquisition were:
- (a) an action covered by that Division; and
  - (b) an acquisition of an interest in residential land.

### **33 Ongoing 6-monthly fees for developers given residential land (near-new dwelling interests) certificates**

- (1) The amount of the fee, payable by a developer mentioned in subsection 113(2A) of the Foreign Acquisitions Act at the end of a 6 month period covered by that subsection, is the total of the amounts that are payable under subsection (2) of this section for each near-new dwelling acquisition that occurs during the period.

# EXPOSURE DRAFT

## Part 2 Fees relating to actions

### Division 7 Exemption certificates

#### Section 34

---

Note: Subsections 113(3) and (4A) of the Foreign Acquisitions Act define **6 month period** and **near-new dwelling acquisition**.

- (2) The amount that is payable for a near-new dwelling acquisition is the amount that, at the time of the acquisition, would have been payable for the acquisition under Division 2 if the acquisition were:
- (a) an action covered by that Division; and
  - (b) an acquisition of an interest in residential land.

### Subdivision C—Applications to vary exemption certificates

#### 34 Fees covered by this Subdivision

This Subdivision applies for a fee payable in accordance with item 2 of the table in subsection 113(1) of the Foreign Acquisitions Act.

#### 35 Variations of exemption certificates

The amount of the fee for an application for a variation of an exemption certificate is as follows:

---

<b>Fees for variations of exemption certificates</b>		
<b>Item</b>	<b>For this kind of application:</b>	<b>the amount of the fee is:</b>
1	an application that seeks only variations of an immaterial or minor nature	\$2,000
2	an application that seeks variations of which one or more are not of an immaterial or minor nature	\$13,200

---

# EXPOSURE DRAFT

Fees relating to actions **Part 2**  
Fees for internal reorganisations **Division 8**

Section 36

---

## Division 8—Fees for internal reorganisations

### 36 Fees for internal reorganisations

- (1) Despite Divisions 2 to 7, if 2 or more fees are payable under subsection 113(1) of the Foreign Acquisitions Act for one or more actions that constitute an internal reorganisation, the fees for the actions are adjusted so that the total payable is \$13,200.
- (2) An *internal reorganisation* is an acquisition by an entity (the *first entity*) of:
  - (a) an interest in securities in another entity if:
    - (i) both entities are subsidiaries of the same holding entity; or
    - (ii) the other entity is a subsidiary of the first entity; or
  - (b) an interest in an asset or Australian land from another entity if:
    - (i) both entities are subsidiaries of the same holding entity; or
    - (ii) the other entity is the holding entity of the first entity; or
    - (iii) the other entity is a subsidiary of the first entity.

# EXPOSURE DRAFT

## Part 3 Vacancy fees

### Section 37

---

## Part 3—Vacancy fees

### 37 Fees covered by this Part

- (1) For the purposes of subsection 6(1) of the Act, this Part enables the working out of the amount of a vacancy fee payable by a person in relation to each dwelling on residential land in which the person has acquired an interest.
- (2) That acquisition of the interest in the residential land is the *relevant acquisition*.

### 38 Acquisition was a notifiable action notified under section 81 of the Foreign Acquisitions Act

If the relevant acquisition was a notifiable action notified by the person under section 81 of the Foreign Acquisitions Act, the amount of the vacancy fee is the same as:

- (a) the amount of the fee worked out under Division 2 of Part 2 of this instrument that was payable by the person for giving that notice; or
- (b) if the fee mentioned in paragraph (a) was waived—the amount of the fee under item 1 of the table in section 10 of this instrument.

Note: The amount under item 1 of the table in section 10 is subject to indexation.

### 39 Acquisition was covered by a new dwellings exemption certificate or a residential land (near-new dwelling interests) certificate

- (1) This section applies if the relevant acquisition was covered by:
  - (a) an exemption certificate under section 57 (new dwellings) of the Foreign Acquisitions Act; or
  - (b) a residential land (near-new dwelling interests) certificate.
- (2) The amount of the vacancy fee is the same as the amount of the fee that would have been worked out under Division 2 of Part 2 of this instrument if the person had given notice of the relevant acquisition under section 81 of the Foreign Acquisitions Act.

### 40 Acquisition was covered by another kind of exemption certificate

If the relevant acquisition was covered by an exemption certificate of a kind not mentioned in section 39, the amount of the vacancy fee is the same as:

- (a) the amount of the fee worked out under Division 7 of Part 2 that was payable by the person when applying for that certificate; or
- (b) if the fee mentioned in paragraph (a) was waived—the amount of the lowest fee worked out under that Division that can be payable by a person when applying for a certificate of that kind.

**41 Acquisition for which an order is made under Division 2 of Part 3 of the Foreign Acquisitions Act or a no objection notification is given**

If item 5 of the table in subsection 113(1) of the Foreign Acquisitions Act applies for the relevant acquisition, the amount of the vacancy fee is the same as:

- (a) the amount of the fee worked out under section 22 of this instrument that was payable by the person for the relevant acquisition; or
- (b) if the fee mentioned in paragraph (a) was waived—the amount of the fee under item 1 of the table in section 10 of this instrument.

Note: The amount under item 1 of the table in section 10 is subject to indexation.

# EXPOSURE DRAFT

**Part 4** Lowering fees

**Division 1** The amount of a fee may be lowered under this Part

Section 42

---

## **Part 4—Lowering fees**

**Division 1—The amount of a fee may be lowered under this Part**

**42 The amount of a fee may be lowered under this Part**

Despite the other Parts of this instrument, if:

- (a) the amount of a fee payable by a person is worked out under Part 2 or 3 (including as a result of applying Part 5); and
- (b) a section of this Part applies to the person for the fee;

the amount of the fee is the lower amount (including a nil amount) worked out under this Part.

## **Division 2—Fees where more than one action taken**

### **Subdivision A—One agreement covers more than one action**

#### **43 Scope**

This Subdivision applies if an agreement covers 2 or more actions (the *actual actions*) for which fees worked out under Part 2 (other than section 36) are payable.

Note: This Subdivision will not affect the fee for any actions covered by the agreement that constitute an internal reorganisation (see section 36).

#### **44 Fee to the extent that the actions are all of the same kind**

- (1) If, apart from this Division, the amounts of the fees for 2 or more of the actual actions would be worked out under the same provision of Part 2 (the *fee provision*), those fees are adjusted so that the total payable for those actual actions is the amount worked out under subsection (2).
- (2) Work out the amount of a fee under the fee provision as if the agreement provided for an acquisition for a consideration having a value equal to the sum of the values of the consideration for those actual actions.

Note: This section only affects the sum of the fees payable for those of the actual actions to which subsection (1) applies (and not the fee payable for any other actual action).

#### **45 Fee to the extent that the actions all relate to interests in Australian land, but not all to the same kind of Australian land**

- (1) If:
  - (a) 2 or more of the actual actions (the *land-based actions*) are acquisitions of interests in Australian land; and
  - (b) those interests are not all in the same kind of Australian land;the fees for the land-based actions are adjusted so that the total payable is the amount worked out under subsection (2).
- (2) Work out the amount of a fee under Division 2 of Part 2 as if:
  - (a) the agreement provided for an acquisition of an interest in the dominant kind of Australian land worked out under section 46; and
  - (b) the value of the consideration for that acquisition were an amount equal to the sum of the values of the consideration for the land-based actions.

Note: This section only affects the sum of the fees payable for the land-based actions (and not the fee payable for any other actual action).

#### **46 Dominant kind of Australian land**

- (1) For the purposes of paragraph 45(2)(a):
  - (a) group the land-based actions by reference to the kinds of Australian land that those actions acquire interests in; and

# EXPOSURE DRAFT

## Part 4 Lowering fees

### Division 2 Fees where more than one action taken

#### Section 47

---

(b) for each of those groups, find the sum of the values of the consideration for the actual actions in the group.

For the group with highest sum, the *dominant kind of Australian land* is the kind of Australian land that relates to that group.

- (2) However, if the highest sum from subsection (1) is shared by 2 or more of those groups, then from those groups the *dominant kind of Australian land* is the kind of Australian land relating to the group that would result in the highest amount under subsection 45(2).

### Subdivision B—Single action covered by 2 or more provisions

#### 47 Single action covered by 2 or more provisions of Part 2

- (1) If either or both of the following apply:
- (a) a single action by a person is covered by more than one of the following (because an action is an action of more than one kind):
    - (i) the definition of *an action that may pose a national security concern* in the Foreign Acquisitions Act;
    - (ii) the definition of *notifiable national security action* in that Act;
    - (iii) a reviewable national security action that the person notifies to the Treasurer;
    - (iv) paragraph 40(2)(a), (b), (c), (d) or (e) of that Act;
    - (v) paragraph 41(2)(a), (b) or (c) of that Act;
    - (vi) paragraph 43(a) of that Act;
    - (vii) a provision of regulations made for the purposes of section 44 of that Act;
  - (b) a single action relates to an interest in Australian land, and more than one provision of Part 2 applies to the action because the land is land of more than one kind;

the amount of the fee payable in relation to the single action is the highest amount that would otherwise apply under this instrument.

- (2) This section does not apply in relation to an action to which either of the following provisions apply:
- (a) section 36 (about fees for internal reorganisations);
  - (b) section 54 (about internal reorganisations by foreign government investors involving tenements).

## Division 3—Exemption certificates

### 48 Applications for residential land certificates covering a single proposed acquisition

- (1) This section applies if:
  - (a) a person applies for either of the following certificates (the *first certificate*):
    - (i) a residential land (other than established dwellings) certificate;
    - (ii) an exemption certificate under section 59 of the Foreign Acquisitions Act (about established dwellings); and
  - (b) in a case in which the person holds the first certificate as a result of the application—the certificate is still in force, and the person has not taken the action specified in the certificate; and
  - (c) the person applies for the other kind of certificate (the *second certificate*) mentioned in paragraph (a) at or after the time the person applied for the first certificate; and
  - (d) the applications for the first certificate and the second certificate cover just one proposal to acquire an interest in residential land; and
  - (e) the value of the consideration for the acquisition to which the application for the first certificate applies is the same, or higher, than the value of the consideration for the acquisition to which the application for the second certificate applies; and
  - (f) the person pays the fee payable for applying for the first certificate at or before the time of applying for the second certificate.
- (2) The fee payable for the application for the second certificate is:
  - (a) if the value of the consideration (the *first consideration value*) for the acquisition to which the application for the first certificate relates is the same, or higher, than the value of the consideration (the *second consideration value*) for the acquisition specified in the application for the second certificate—nil; or
  - (b) if the first consideration value is lower than the second consideration value—the amount of the difference (which could be nil) between the fees that would, apart from this section, be payable for the applications for the first certificate and the second certificate.

### 49 Multiple applications made for entities, land and national security exemption certificates

- (1) This section applies if:
  - (a) a person applies for any of the following certificates (the *first certificate*):
    - (i) an exemption certificate under section 58 of the Foreign Acquisitions Act, to the extent that it is for acquisitions of interests in commercial land (whether the land is vacant or not);
    - (ii) a businesses or entities certificate;
    - (iii) a tenements and mining, production or exploration entities certificate;

# EXPOSURE DRAFT

## Part 4 Lowering fees

### Division 3 Exemption certificates

#### Section 49

---

- (iv) a certificate under section 43BA of the Foreign Acquisitions Regulation (about actions that would otherwise be notifiable national security actions);
- (v) a certificate under section 43BB of the Foreign Acquisitions Regulation (about actions that would otherwise be reviewable national security actions); and
- (b) the person applies for one of the other kinds of certificate (the *later certificate*) at the time the application for the first certificate is made, or within 14 days afterwards; and
- (c) the person pays the fee payable for applying for the first certificate at or before the time of applying for the later certificate.

Note: This section can apply multiple times if paragraphs (b) and (c) apply to each of the applications for later certificates.

- (2) The fee payable for the application for each later certificate is nil.

# EXPOSURE DRAFT

## Division 4—Other grounds for lowering fees

### 50 Fee payable if the value of the consideration is less than \$75,000

(1) If the value of the consideration for an action is less than \$75,000, the amount of the fee worked out under this instrument in relation to the action is reduced to the following:

- (a) if the action is a reviewable national security action—\$500;
- (b) otherwise—\$2,000.

Note: A higher fee may apply if the action may be characterised in more than one way (see section 47).

(2) This section does not apply in relation to an action to which any of the following provisions apply:

- (a) section 18 (about fees for being giving a notice under subsection 37C(3) of the Foreign Acquisitions Act);
- (b) section 36 (about fees for internal reorganisations);
- (c) section 54 (about internal reorganisations by foreign government investors involving tenements).

### 51 Majority owners

(1) A fee of \$2,000 is payable in relation to an action if:

- (a) the action is one of the following:
  - (i) the acquisition by a foreign business person of an interest in residential land;
  - (ii) the acquisition by a foreign person of an interest in Australian land other than residential land;
  - (iii) the acquisition by a foreign person of an interest in securities in an entity;
  - (iv) the acquisition by a foreign person of an interest in assets of an Australian business;
  - (v) the acquisition by a foreign person of a legal or equitable interest in a tenement; and
- (b) the amount of the fee that would otherwise be payable is worked out under Part 2; and
- (c) before the acquisition, that person holds an interest of more than 50% in the land, entity, business or tenement.

Note: A higher fee may apply if the action may be characterised in more than one way (see section 47).

(2) This section does not apply in relation to an action to which either of the following provisions apply:

- (a) section 36 (about fees for internal reorganisations);
- (b) section 54 (about internal reorganisations by foreign government investors involving tenements).

# EXPOSURE DRAFT

## Part 4 Lowering fees

### Division 4 Other grounds for lowering fees

#### Section 52

---

#### 52 Acquisition of leasehold interest after sale of freehold interest

- (1) A fee of \$2,000 is payable in relation to an action by a foreign person if:
  - (a) the action is an acquisition of a leasehold interest, to which paragraph 12(1)(c) of the Foreign Acquisitions Act applies, in Australian land; and
  - (b) the amount of the fee that would otherwise be payable is worked out under Part 2 of this instrument; and
  - (c) the foreign person previously held a legal interest, to which paragraph 12(1)(a) of that Act applies, in the land that is subject to the lease; and
  - (d) the foreign person sold that legal interest to the lessor.

Note: A higher fee may apply if the action may be characterised in more than one way (see section 47).

- (2) This section does not apply in relation to an action to which either of the following provisions apply:
  - (a) section 36 (about fees for internal reorganisations);
  - (b) section 54 (about internal reorganisations by foreign government investors involving tenements).

#### 53 Acquisition of securities in a land entity

- (1) This section applies (subject to subsection (6)) if:
  - (a) a person acquires an interest in securities in a land entity (the **actual acquisition**); and
  - (b) one or more of the interests in land held by the entity are covered by more than one provision of Part 2; and
  - (c) the amount of the fee that would, apart from this section, be payable (the **default amount**):
    - (i) under section 47; and
    - (ii) because paragraph 47(b) applies;  
for giving a notice of a notifiable action under section 81 of the Foreign Acquisitions Act is higher than the amount of the fee worked out under this section.

##### *Fee payable based on dominant land holding*

- (2) Replace the default amount with the amount of the fee that would be worked out under Part 2 if the actual acquisition were:
  - (a) covered by Division 2 of Part 2; and
  - (b) an acquisition of an interest in the entity's dominant land holding.

##### *Working out an entity's dominant land holding*

- (3) To determine the entity's dominant land holding, make a reasonable assessment of the value of interests in each of the following kinds of land held by the entity:
  - (a) agricultural land that is used wholly and exclusively for a primary production business;

# EXPOSURE DRAFT

- (b) commercial land;
  - (c) residential land;
  - (d) mining or production tenements.
- (4) The entity's *dominant land holding* is:
- (a) except if the value, as assessed under subsection (3), is greatest for commercial land—the kind of land whose value, as assessed under that subsection, is the greatest; or
  - (b) if the value, as assessed under subsection (3), is greatest for commercial land—the kind of land whose value, as assessed under subsection (5), is greatest.
- (5) For the purposes of paragraph (4)(b), make a reasonable assessment of the value of interests held by the entity in:
- (a) commercial land that is vacant; and
  - (b) commercial land that is not vacant.

*Actions of more than one kind*

- (6) However, this section does not apply if:
- (a) a fee is payable under Subdivision A of Division 2 (actions of more than one kind); and
  - (b) that fee is higher than the fee worked out under this section.

## **54 Internal reorganisations by foreign government investors involving tenements**

- (1) A fee of \$13,200 is payable in relation to one or more actions if:
- (a) a foreign government investor (the *first entity*) acquires a legal or equitable interest in a tenement that is not an interest in Australian land from another entity; and
  - (b) any of the following applies:
    - (i) both entities are subsidiaries of the same holding entity;
    - (ii) the other entity is the holding entity of the first entity;
    - (iii) the other entity is a subsidiary of the first entity.
- (2) However, the fee payable by the foreign government investor is nil if:
- (a) another fee is payable, in relation to an internal reorganisation under section 36, by:
    - (i) the foreign government investor; or
    - (ii) an entity that is a member of the same wholly-owned group as the foreign government investor; and
  - (b) the acquisition mentioned in paragraph (1)(a) forms part of the same internal reorganisation (within the ordinary meaning of the term) as the internal reorganisation mentioned in paragraph (a) of this subsection.

Note: A separate fee may be payable in relation to any other action covered by the same agreement as the internal reorganisation (within the ordinary meaning of the term) that is not part of that internal reorganisation.

# EXPOSURE DRAFT

## Part 4 Lowering fees

### Division 4 Other grounds for lowering fees

#### Section 55

---

#### **55 Jointly acquiring or holding interests in a security, asset, trust or Australian land**

##### *Joint tenants*

- (1) If:
- (a) 2 or more persons acquire or hold, or are to acquire or hold, an interest in a security, asset, trust or Australian land as joint tenants; and
  - (b) at least 2 of those persons each become liable on the same day to pay a fee in relation to that interest; and
  - (c) the amount of each fee is the same and is worked out under the same section of this instrument; and
  - (d) one of those fees (the *first fee*) is wholly or partly paid on a later day; at the end of that later day, treat that section as replacing the amount of each of the remaining fees by an amount equal to so much of the first fee as remains unpaid at the end of that later day.

Note: The amount of the first fee that remains unpaid could be a nil amount.

##### *Tenants in common*

- (2) If:
- (a) a person acquires or holds, or is to acquire or hold, an interest in a security, asset, trust or Australian land as a tenant in common; and
  - (b) the person becomes liable to pay a fee in relation to that interest; and
  - (c) the amount of the fee is worked out under another section of this instrument;
- treat that section as replacing the amount of the fee by the proportion of that amount that corresponds to the person's share of the interest in the security, asset, trust or Australian land.

#### **56 Actions taken by wholly-owned groups**

- (1) The amount of a fee that is payable by an entity is nil if:
- (a) the fee is payable in relation to an acquisition by the entity of:
    - (i) a direct interest in an entity or Australian business that is an agribusiness; or
    - (ii) an interest in securities in an entity; or
    - (iii) an interest in assets of an Australian business; or
    - (iv) an interest in Australian land (except residential land) or a tenement; and
  - (b) one or more other entities that are members of the same wholly-owned group have acquired, or are to acquire, one or more other interests in the entity, business, securities, assets, land or tenement; and
  - (c) either:
    - (i) a single agreement deals with the acquisitions mentioned in paragraphs (a) and (b); or
    - (ii) a notice is given stating that the entities propose to acquire the interests; and

# EXPOSURE DRAFT

- (d) a fee is paid, by one of the other entities, in relation to that entity's acquisition of the interests mentioned in paragraph (b).
- (2) To avoid doubt, subsection (1) does not affect the value of consideration that is taken into account in working out the fee mentioned in paragraph (1)(d).

## **57 Fee for variation of no objection notifications and certain exemption certificates**

- (1) The fee payable for an application (the *variation application*) by a person to vary a no objection notification is the least of the following amounts:
  - (a) the amount of fee payable by the person for the variation application specified in section 25 (about fees for applying to vary no objection notifications);
  - (b) either:
    - (i) if the person was given the no objection notification after giving a notice of a proposal to take an action that is not a notifiable action—the amount of fee that was payable by the person in relation to the action specified in the notice; or
    - (ii) otherwise—the amount of fee that was payable by the person in relation to the action specified in the no objection notification;
  - (c) the amount of fee that would have been payable by the person for the notice or the notification mentioned in paragraph (b) in relation to the no objection notification as proposed to be varied.

Note 1: A no objection notification may be given in relation to a proposed action to be taken by a person either at the Treasurer's initiative, or following a notice given by the person (see sections 74 to 76 of the Foreign Acquisitions Act). Different fees may be payable if a no objection notification is given without such a notice, and for giving such a notice that results in a no objection notification (see Part 2 of this instrument).

Note 2: A person applies for a variation of a no objection notification under subsection 76(6) of the Foreign Acquisitions Act.

- (2) The fee payable for an application (the *variation application*) by a person to vary a residential land (near-new dwelling interests) certificate is nil if, at the time of the variation application:
  - (a) the person has applied for, or been given, an exemption certificate under section 57 of the Foreign Acquisitions Act (the *section 57 certificate*); and
  - (b) the section 57 certificate and the residential land (near-new dwelling interests) certificate, as it is to be varied, cover (or will cover) interests in relation to the same development.

Note: A person may apply for a variation of an exemption certificate under subsection 62(2) of the Foreign Acquisitions Act.

# EXPOSURE DRAFT

## Part 5 Indexation

### Section 58

---

## Part 5—Indexation

### 58 Specified fees and fee components are subject to indexation

- (1) This Part applies to:
  - (a) each amount of a fee specified in this instrument; and
  - (b) each amount specified in subparagraph (a)(i), and paragraph (b), of column 2 of an item of the table in section 10.

Note: This Part does not directly apply to the amount of a fee that is worked out, but not specified, in this instrument. This Part does not apply to a fee constant.

- (2) Each of these amounts is to be indexed on the first day of each financial year starting on or after 1 July 2021. An amount is indexed by multiplying it by its indexation factor.
- (3) An amount is not indexed if its indexation factor is 1 or less.
- (4) If after indexation an amount is not a multiple of \$100, round down the indexed amount to the nearest multiple of \$100.

### 59 Indexation factor

- (1) The *indexation factor* is:

$$\frac{\text{Sum of the index numbers for the quarters in the year ending on 31 March just before the start of the relevant financial year}}{\text{Sum of the index numbers for the quarters in the year ending on the previous 31 March}}$$

- (2) Work out the indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it would be rounded up to 1.103.

### 60 Index number

The *index number* for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

## **Part 6—Application and transitional provisions**

### **61 Application of this instrument**

- (1) This instrument applies in relation to fees that become payable on or after 1 January 2021.
- (2) Despite the repeal of the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* by this instrument, that Regulation continues to apply in relation to fees that become payable before 1 January 2021.

# EXPOSURE DRAFT

Schedule 1 Repeals

---

## Schedule 1—Repeals

### *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015*

#### **1 The whole of the instrument**

Repeal the instrument.

# EXPOSURE DRAFT

Application and transitional provisions **Part 6**

Section 61

---

**EXPOSURE DRAFT**