

## EXPLANATORY STATEMENT

STATUTORY RULES 1989 NO 177

ISSUED BY THE AUTHORITY OF THE TREASURER

Foreign Acquisitions and Takeovers Act 1975  
Foreign Acquisitions and Takeovers Regulations  
Foreign Takeovers (Notices) Regulations (Amendment)

The Foreign Takeovers Amendment Act 1989 which amends the Foreign Takeovers Act 1975 is not due to come into operation until 1 August 1989. Section 4 of the Acts Interpretation Act 1901 enables the making of an instrument of a legislative or administrative character (including the making of regulations) under a power contained in the amending Act before that Act comes into operation.

Section 39 of the amended Act - to be called the Foreign Acquisitions and Takeovers Act 1975 (the Act) - provides for the Governor-General to make regulations prescribing all matter required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Sub-section 12A(8) provides for regulations to be made removing specified categories of urban land acquisitions from notification or examination under the Act.

Amendments to the Foreign Takeovers Act 1975 contained in the Foreign Takeovers Amendment Act 1989 have considerably increased the scope of the legislation particularly with respect to acquisitions of Australian urban real estate by foreign persons (including companies and trusts).

However, certain types of urban real estate acquisition were previously exempt from examination under the non-legislative policy requirements. The Foreign Acquisitions and Takeovers Regulations therefore exempt such acquisitions from the provisions of the Act. These include: acquisitions by such institutions as foreign controlled charities, life and general insurance companies and superannuation funds operating in Australia for the primary benefit of Australians; purchases of industrial or non-residential property (eg factories) where the acquisition is wholly incidental to the conduct of the existing or proposed business activities of the foreign person; annual program arrangements and 'off the plan' sales of residential units where these arrangements have previously been approved by the Treasurer; and purchases of property for use exclusively by foreign governments as a diplomatic mission or residence.

Certain types of acquisitions which are considered to be non-contentious are also to be exempted under the Regulations. These include purchases by approved migrants, persons entitled to permanent residence in Australia, Australian citizens resident abroad; acquisitions of non-residential commercial property valued at less than \$5 million; and foreign portfolio interests (ie interests of less than 15 per cent) in publicly listed Australian urban land corporations or public unit property trusts.

Section 27 of the Act states that notices submitted under sections 25, 26 or 26A are not valid unless they are in accordance with the prescribed form and otherwise comply with the directions set out in the form. The Foreign Takeovers (Notices) Regulations (Amendment) amends the existing prescribed Form 1 (to give notice under section 25) and Form 2 (to give notice under section 26) notices to take account of amendments contained in the Foreign Takeovers Amendment Act 1989. Broadly, this is to provide for notification in the prescribed form by a trustee of a trust estate which was not required under the previous legislation.

In addition, the recently inserted section 26A of the Act requires compulsory notification of acquisition of interests in Australian urban land. In consequence a new prescribed form, Form 3 is included in the amended regulations.