

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 104

Issued by the authority of the Assistant Treasurer

Foreign Acquisitions and Takeovers Act 1975

Foreign Acquisitions and Takeovers Amendment Regulations 2010 (No. 2)

Section 39 of the *Foreign Acquisitions and Takeovers Act 1975* (the Act) provides that the Governor-General may make regulations prescribing matters 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.

The Act provides the legislative underpinning for the Australian Government's (the Government's) foreign investment screening regime to ensure that foreign investment in Australia is not contrary to the national interest. It provides that the Treasurer may prohibit certain acquisitions that he decides would be contrary to the national interest (sections 18, 19, 20, 21 and 21A refer). Section 26A makes it compulsory for a foreign person to notify the Treasurer of a proposal to acquire or increase an 'interest' in Australian urban land unless the acquisition is exempt under the regulations. Subsection 12A(8) specifies that the regulations may provide that the Act does not apply to certain 'interests' in Australian urban land.

An 'interest' in Australian urban land includes buying real estate, obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements. Regardless of value, foreign persons generally need to notify the Government to take an interest in residential real estate, vacant land or to buy shares or units in Australian urban land corporations or trust estates.

The *Foreign Acquisitions and Takeovers Regulations 1989* (the Principal Regulations) generally establish classes of exemptions. Paragraph 3(w) of the Principal Regulations exempts certain temporary residents from the need to notify the Government before buying the following residential real estate:

- single blocks of vacant land;
- new dwellings; and/or
- an established/second hand dwelling to be used as principal place of residence.

Under regulation 2 of the Principal Regulations, a temporary resident is defined as a person who resides in Australia and:

- holds a temporary visa which permits the person to stay in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or

- has submitted an application for permanent residency and holds a bridging visa which permits the person to stay in Australia until that application has been finalised.

The Regulations amend the Principal Regulations to remove this general exemption and require all temporary residents to notify the Government for any proposed residential real estate acquisition. The Regulations ensure that the Government can monitor investment in Australian real estate by temporary residents to ensure that they do not place undue pressure on established house prices.

The Regulations remove the temporary resident exemption in paragraph 3(w). This ensures that temporary residents need to notify the Treasurer before buying residential real estate in Australia.

Upon receipt of a notice, the Treasurer may allow the proposal to proceed, or he may object to the proposal if he considers it to be contrary to the national interest, or he may impose conditions to ensure that the proposal may proceed in a form that would not be contrary to the national interest.

The Regulations also make a minor technical correction to the punctuation in sub-subparagraph 3(v)(iv)(B) to accommodate the removal of paragraph 3(w).

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.