



Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 27 June 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Treasurer

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
Schedule 1—Amendments		2
<i>Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015</i>		<i>2</i>

1 Name

This instrument is the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Regulations 2017*.

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	At the same time as Schedule 1 to the <i>Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining and Other Measures) Act 2017</i> commences. However, the provisions do not commence at all if that Schedule does not commence.	24 June 2017

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015

1 Section 4

Insert:

dominant land holding has the same meaning as in section 11 of this instrument.

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

2 Before section 6

Insert:

5A Fees for businesses or entities certificates

For the purposes of paragraph (b) of item 4 of the table in subsection 6(1) of the Act, a fee of \$35,000 is payable for an application for a businesses or entities certificate.

Note 1: A businesses or entities certificate is an exemption certificate under section 42 of the Foreign Acquisitions Regulation.

Note 2: This fee may be indexed under section 12 of the Act.

Note 3: This fee is nil in some circumstances (see section 8B).

3 Section 6 (heading)

Repeal the heading, substitute:

6 Fees for tenements and mining, production or exploration entities certificates

4 Subsection 6(1)

Repeal the subsection, substitute:

(1) For the purposes of paragraph (b) of item 4 of the table in subsection 6(1) of the Act, a fee of \$35,000 is payable for an application for a tenements and mining, production or exploration entities certificate.

Note 1: A tenements and mining, production or exploration entities certificate is an exemption certificate under section 43 of the Foreign Acquisitions Regulation.

Note 2: This fee may be indexed under section 12 of the Act.

5 Subsection 6(2)

Omit “an application (the *section 43 application*) for an exemption certificate under section 43 of the Foreign Acquisitions Regulation”, substitute “an application (the *tenements and mining application*) for a tenements and mining, production or exploration entities certificate”.

6 Paragraph 6(2)(b)

Omit “the section 43 application”, substitute “the tenements and mining application”.

7 After section 6

Insert:

6A Fees for residential land (near-new dwelling interests) certificates

- (1) For the purposes of paragraph (b) of item 4 of the table in subsection 6(1) of the Act, a fee of \$25,700 is payable for an application for a residential land (near-new dwelling interests) certificate.

Note: A residential land (near-new dwelling interests) certificate is an exemption certificate under section 43A of the Foreign Acquisitions Regulation.

- (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 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 18(2) for the fee payable for an application to vary a residential land (near-new dwelling interests) certificate.

6B Fees for residential land (other than established dwellings) certificates

- (1) For the purposes of paragraph (a) of item 4 of the table in subsection 6(1) of the Act, the amount of fee payable for an application for a residential land (other than established dwellings) certificate is:
- (a) if the application specifies that the consideration for the acquisition will be \$1 million or less—\$5,500; and
 - (b) if the application specifies that the consideration for the acquisition will be more than \$1 million, and \$10 million or less—the amount worked out under subsection (2); and
 - (c) if the application specifies that the consideration for the acquisition will be more than \$10 million—the amount worked out under subsection (3).

Note 1: A residential land (other than established dwellings) certificate is an exemption certificate under section 43B of the Foreign Acquisitions Regulation.

Note 2: This fee may be indexed under section 12 of the Act.

Note 3: The fee payable for an application for this exemption certificate is nil in some circumstances (see section 8A).

Fees for applications for certificates—consideration more than \$1 million, and \$10 million or less

- (2) For the purposes of paragraph (1)(b), the amount of the fee is worked out as follows:

Method statement

Step 1. Apply the following formula:

	<u>Amount of consideration specified in the application</u> 1,000,000 Round the resulting amount down to the nearest whole number, if necessary. Step 2. Multiply the step 1 amount by \$10,000. Step 3. Multiply the step 2 amount by 1.015. Round the resulting amount down to the nearest multiple of \$100, if necessary. Step 4. Add to the step 3 amount the amount that is 10% of the step 3 amount. Round the resulting amount down to the nearest multiple of \$100, if necessary. Step 5. The step 4 amount is the amount of the fee.
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Note: Indexation under section 12 of the Act does not apply to the amounts specified in steps 1 to 4 of the method statement, as those amounts are not fees.

Fees for applications for certificates—consideration more than \$10 million

- (3) For the purposes of paragraph (1)(c), the amount of the fee is worked out as follows:

	<i>Method statement</i> Step 1. Apply the following formula: <u>Amount of consideration specified in the application</u> 1,000,000 Round the resulting amount down to the nearest whole number, if necessary. Step 2. Multiply the step 1 amount by \$10,000. Step 3. Multiply the step 2 amount by 1.030. Round the resulting amount down to the nearest multiple of \$100, if necessary. Step 4. The step 3 amount is the amount of the fee.
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Note: Indexation under section 12 of the Act does not apply to the amounts specified in steps 1 to 3 of the method statement, as those amounts are not fees.

8 Section 7

Omit “Division 1”, substitute “Division 2”.

9 Section 7 (cell at table item 1, column headed “the amount of the fee is ...”)

Repeal the cell, substitute:

- (a) if the consideration for the acquisition is \$10 million or less—\$2,000; and
- (b) if the consideration is more than \$10 million and \$1 billion or less—\$25,300; and
- (c) if the consideration is more than \$1 billion—\$101,500.

10 Section 7 (table item 2)

Omit “\$10 000”, substitute “\$10,100”.

11 At the end of section 7

Add:

Note: These fees may be indexed under section 12 of the Act. However, indexation does not apply to amounts of consideration specified in the table, as these amounts are not fees.

12 After section 8

Insert:

8A Applications for residential land certificates covering a single proposed acquisition

- (1) This section applies if:
 - (a) a person makes (or has made) an application 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 (which applies to 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 makes an application for the other kind of certificate (the *second certificate*) mentioned in paragraph (a), whether at the same time, or after, the application for the first certificate was made; 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 consideration for the acquisition to which the application for the first certificate applies is the same, or higher, than the consideration for the acquisition to which the application for the second certificate applies; and
 - (f) at the time of the application for the second certificate:
 - (i) the person pays the fee that is payable (apart from this section) for the application for the first certificate; or

- (ii) the person has already paid the fee that is payable (apart from this section) for the application for the first certificate.

Note: A residential land (other than established dwellings) certificate is an exemption certificate under section 43B of the Foreign Acquisitions Regulation.

- (2) The fee payable for the application for the second certificate is:
 - (a) if the amount of the consideration (the **first consideration amount**) for the acquisition to which the application for the first certificate relates is the same, or higher, than the amount of the consideration (the **second consideration amount**) for the acquisition specified in the application for the second certificate—nil; or
 - (b) if the first consideration amount is lower than the second consideration amount—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.

8B Applications made for businesses and entities certificates

- (1) This section applies if:
 - (a) a person makes (or has made) an application for either of the following certificates (the **first certificate**):
 - (i) a businesses or entities certificate;
 - (ii) an exemption certificate under section 58 of the Foreign Acquisitions Act (which applies to interests in Australian land); and
 - (b) the person makes an application for the other kind of certificate (the **second certificate**) at the time the application for the first certificate is made, or within 14 days afterwards; and
 - (c) at the time of the application for the second certificate:
 - (i) the person pays the fee that is payable (apart from this section) for the application for the first certificate; or
 - (ii) the person has already paid the fee that is payable (apart from this section) for the application for the first certificate.

Note: A businesses or entities certificate is an exemption certificate under section 42 of the Foreign Acquisitions Regulation.

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

13 Section 9

Repeal the section, substitute:

9 Fee would otherwise be more than 25% of consideration

Acquisition of interests in exploration tenements, mining or production tenements or mining, production or exploration entities

- (1) A fee of \$2,000 is payable in relation to an action if:
 - (a) the action is an acquisition of one of the following:
 - (i) a legal or equitable interest in a tenement;
 - (ii) an interest in a mining, production or exploration entity; and
 - (b) the amount of the fee that would otherwise be payable is specified in one of the following provisions:

- (i) item 5 of the table in subsection 7(1) of the Act;
- (ii) item 3 of the table in subsection 8(1) of the Act;
- (iii) paragraph (b) or (c) of item 2 of the table in section 7 of this instrument; and
- (c) the amount of the fee that would otherwise be payable under that provision is more than 25% of the consideration for the acquisition.

Note 1: This fee may be indexed under section 12 of the Act.

Note 2: A higher fee may apply if the action may be characterised in more than one way (see subsection 9(2) of the Act).

Acquisition of interests in residential land

- (2) A fee of \$1,000 is payable in relation to an action if:
 - (a) the action is the acquisition of an interest in residential land; and
 - (b) the amount of the fee that would otherwise be payable is specified in one of the following provisions:
 - (i) item 3 of the table in subsection 7(1) of the Act;
 - (ii) item 3 of the table in subsection 8(1) of the Act; and
 - (c) the amount of the fee that would otherwise be payable under that provision is more than 25% of the consideration for the acquisition.

Note: This fee may be indexed under section 12 of the Act.

- (3) This section does not apply in relation to an action to which either of the following provisions apply:
 - (a) section 10 of the Act (fees for internal reorganisations);
 - (b) section 12 of this instrument (internal reorganisations by foreign government investors involving tenements).

14 Section 10

Repeal the section, substitute:

10 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 specified in one of the following provisions:
 - (i) section 7 or 8 of the Act;
 - (ii) item 1 of the table in subsection 7(1) of this instrument;

(iii) paragraph (b) or (c) of item 2 of the table in section 7 of this instrument; and

(c) before the acquisition, the foreign person or foreign business person (as the case may be) holds an interest of more than 50% in the land, entity, business or tenement.

Note 1: This fee may be indexed under section 12 of the Act.

Note 2: A higher fee may apply if the action may be characterised in more than one way (see subsection 9(2) of the Act).

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

- (a) section 10 of the Act (fees for internal reorganisations);
- (b) section 12 of this instrument (internal reorganisations by foreign government investors involving tenements).

15 After section 10

Insert:

10A 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 in Australian land to which paragraph 12(1)(c) of the Foreign Acquisitions Act applies; and
 - (b) the amount of the fee that would otherwise be payable is specified in one of the following provisions:
 - (i) section 7 or 8 of the Act;
 - (ii) item 1 of the table in subsection 7(1) of this instrument;
 - (iii) paragraphs (b) and (c) of item 2 of the table in section 7 of this instrument; and
 - (c) the foreign person previously held the freehold interest in the land that is subject to the lease; and
 - (d) the foreign person sold that freehold interest to the lessor.

Note 1: This fee may be indexed under section 12 of the Act.

Note 2: A higher fee may apply if the action may be characterised in more than one way (see subsection 9(2) of the Act).

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

- (a) section 10 of the Act (fees for internal reorganisations);
- (b) section 12 of this instrument (internal reorganisations by foreign government investors involving tenements).

16 Subsection 12(1)

Omit “\$10 000”, substitute “\$10,100”.

17 At the end of Division 3

Add:

15 Acquisition of 2 or more interests in residential land by foreign business person

- (1) This section applies despite subsection 9(1) of the Act.
- (2) If a foreign business person acquires 2 or more interests in residential land under one agreement, the amount of the fee payable for the acquisition of those interests is the amount worked out under subsection (3).
- (3) Work out the amount of the fee that would, apart from this section, be payable for each acquisition of interest in residential land under the agreement. The highest of those amounts is the amount of fee payable.
- (4) If the agreement covers one or more actions (the *other actions*) other than an action to acquire an interest in residential land, the amount of the fee payable for all actions covered by the agreement is the higher of the following amounts:
 - (a) the amount worked out under subsection (3);
 - (b) the highest of the amounts of fee payable for the other actions.

Note: For the fee that applies to an action that can be characterised in more than one way, see subsection 9(2) of the Act.

- (5) This section does not apply in relation to an action to which either of the following provisions apply:
 - (a) section 10 of the Act (fees for internal reorganisations);
 - (b) section 12 of this instrument (internal reorganisations by foreign government investors involving tenements).

16 Acquisition of interest in securities by foreign business person in Australian land entities

- (1) The amount of a fee that is payable by a foreign business person is \$25,300 if:
 - (a) the foreign business person acquires an interest in securities in:
 - (i) an Australian land corporation with a dominant land holding in residential land; or
 - (ii) an Australian land trust with a dominant land holding in residential land; and
 - (b) the consideration for the acquisition is \$1 billion or less; and
 - (c) a higher amount of fee would, apart from this subsection, be payable under item 3 of the table in subsection 7(1) of the Act.

Note: These fees may be indexed under section 12 of the Act. However, indexation does not apply to amounts of consideration specified in the table, as these amounts are not fees.

- (2) The amount of a fee that is payable by a foreign business person is \$101,500 if:
 - (a) the foreign business person acquires an interest in securities in:
 - (i) an Australian land corporation with a dominant land holding in residential land; or
 - (ii) an Australian land trust with a dominant land holding in residential land; and
 - (b) the consideration for the acquisition is more than \$1 billion; and
 - (c) a higher amount of fee would, apart from this subsection, be payable under item 3 of the table in subsection 7(1) of the Act.

Note: These fees may be indexed under section 12 of the Act. However, indexation does not apply to amounts of consideration specified in the table, as these amounts are not fees.

- (3) If one agreement covers one or more of the actions mentioned in subsections (1) and (2), and one or more other actions (the **other actions**), the amount of the fee payable for all actions covered by the agreement is the higher of the following amounts:
 - (a) the amount specified in subsection (1) or (2);
 - (b) the highest of the amounts of fee payable for the other actions.
- (4) Subsection (3) has effect despite subsection 9(1) of the Act.
- (5) However, if a foreign business person acquires securities in an Australian land trust with a dominant land holding in residential land, and the trustee of the trust is a corporation, the amount of fee payable for the action by the foreign business person for acquiring an interest in securities in the corporation is nil.
- (6) This section does not apply in relation to an action to which section 10 of this Act (fees for internal reorganisations) applies.

17 Acquisitions of non-vacant commercial land by foreign government investors

- (1) The amount of the fee that is payable by a foreign government investor is \$2,000 if:
 - (a) the foreign government investor acquires an interest in commercial land that is not vacant; and
 - (b) the consideration for the acquisition is \$55 million or less.
- (2) For the purposes of subsection 9(2) of the Act, if the action described in paragraph (1)(a) of this section can also be characterised as an action by the foreign government investor to acquire a direct interest in an Australian business (the **second action**), the amount of the fee payable for the second action is nil.

Note: For the fee that applies to an action that can be characterised in more than one way, see subsection 9(2) of the Act.

- (3) This section does not apply if the foreign government investor acquires an interest in commercial land that is not vacant by acquiring:
 - (a) an interest in securities in an Australian land corporation or Australian land trust; or
 - (b) if the trustee of an Australian land trust is a corporation—an interest in a share in that corporation.
- (4) This section does not apply in relation to an action to which section 10 of this Act (fees for internal reorganisations) applies.

18 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 subsection 8(2) of the Act;
 - (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 sections 7 and 8 of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*).

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 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.

18 After Part 2

Insert:

Part 3—Application provisions

19 Amendments made by the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Regulations 2017*

- (1) The amendments of this instrument made by Schedule 1 to the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Regulations 2017* apply in relation to a fee payable for an action that is taken, or application that is made, on or after the commencement of that Schedule.
- (2) This section is repealed at the end of 30 June 2018.