

# Chapter 1

## Introduction

1.1 On 20 August 2015, pursuant to the Selection of Bills Committee's report, the Senate referred the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related bills (contingent upon their introduction in the House of Representatives) to the Economics Legislation Committee for inquiry and report by 12 October 2015.<sup>1</sup>

1.2 Accordingly, the provisions of the following bills were referred to the committee following their introduction into the House of Representatives on 20 August 2015:

- Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 (Foreign Acquisitions Bill);
- Foreign Acquisitions and Takeovers Fees Imposition Bill 2015 (Fees Imposition Bill); and
- Register of Foreign Ownership of Agricultural Land Bill 2015 (Register Bill).

1.3 The main reason for supporting the referral of this package of bills to a parliamentary committee was because the bills propose 'major changes to Australia's foreign investment regime which warrants parliamentary scrutiny'.<sup>2</sup>

### Conduct of the inquiry

1.4 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions by 18 September 2015. The committee received 12 submissions, which are listed at Appendix 1. Given the short timeframe for this inquiry, the committee resolved it would draw on submissions to prepare this report.

1.5 The committee would like to acknowledge and convey its appreciation to those organisations that provided a submission to this inquiry.

### Background to the bills

1.6 In March 2014, the Hon. Joe Hockey MP referred concerns about foreign investment in residential real estate to the House of Representatives Standing Committee on Economics for inquiry. A number of changes proposed by the bills have their origins in the Standing Committee's report into foreign investment in residential real estate, which was tabled in November 2014.

1.7 The government's consideration of changes to the rules governing the sale of agricultural land and agribusiness to foreign entities started in earnest in June 2011

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1 Selection of Bills Committee, *Report No 10 of 2015*, 20 August 2015, [p. 3]; *Journals of the Senate*, 2013–15, no. 110 (20 August 2015), p. 3007.

2 Appendix 3, Selection of Bills Committee, *Report No 10 of 2015*, 20 August 2015.

when in opposition. At that time, the then leader of the Opposition announced the establishment of a Coalition Working Group to investigate options to strengthen these rules. In August 2012, following the findings of this group, the then shadow Treasurer released a discussion paper that identified matters for public discussion.<sup>3</sup> They included: a national register of foreign ownership of agricultural land or agricultural businesses in Australia; a threshold for the acquisition of Agricultural land and for agricultural businesses; a national interest test; and, the composition of the Foreign Investment Review Board.

1.8 On 11 February 2015, the government announced changes to the screening threshold for agricultural land and the implementation of a foreign ownership register for agricultural land, established and maintained by the Australian Taxation Office (ATO).<sup>4</sup>

1.9 On 25 February 2015, the government announced proposed changes to the foreign investment framework for residential real estate as well as proposed application fees for all foreign investment applications.<sup>5</sup> The proposed changes to the foreign investment framework were discussed in an options paper released by Treasury, titled 'Strengthening Australia's Foreign Investment Framework'.<sup>6</sup> The government sought feedback from interested stakeholders on the proposed changes and received 192 submissions (including 58 confidential submissions).

1.10 Based on the results of this consultation process, the government, on 2 May 2015, outlined the proposed reforms to the foreign investment framework. They included: an expanded penalty regime; transfer of approval of real estate functions to the ATO (from Treasury); and, the imposition of application fees for all foreign investment applications.<sup>7</sup> The government also announced further consultation on options to modernise the foreign investment framework to reduce the cost of red

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3 The Coalition Party, *Foreign Investment in Australian Agricultural Land and Agribusiness*, August 2012, [http://shared.liberal.org.au/Share/Foreign\\_investment\\_discussion\\_paper.pdf](http://shared.liberal.org.au/Share/Foreign_investment_discussion_paper.pdf) (accessed 31 August 2015).

4 The Hon. Tony Abbott, MP, Prime Minister of Australia, the Hon. Joe Hockey, MP, Treasurer, and the Hon. Barnaby Joyce, MP, Minister for Agriculture, 'Government tightens rules on foreign purchases of agricultural land', Media release, 11 February 2015.

5 The Hon. Tony Abbott, MP, Prime Minister of Australia, and the Hon. Joe Hockey, MP, Treasurer, 'Government to strengthen Australia's foreign investment framework', Media release, 25 February 2015.

6 Department of the Treasury, *Strengthening Australia's Foreign Investment Framework*, Options Paper, February 2015, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Strengthening-Australias-foreign-investment-framework> (accessed 31 August 2015).

7 The Hon. Tony Abbott, MP, Prime Minister of Australia, and the Hon. Joe Hockey, MP, Treasurer, 'Government strengthens the foreign investment framework', Media release, 2 May 2015.

tape.<sup>8</sup> On 15 May 2015, Treasury released a second options paper, titled 'Modernising Australia's Foreign Investment Framework', which discussed additional options to update and streamline existing provisions of the *Foreign Acquisitions and Takeovers Act 1975* (the Foreign Acquisitions Act). This options paper received 22 submissions, including 15 confidential submissions.<sup>9</sup>

1.11 On 6 July 2015, the government released exposure drafts of the Foreign Acquisitions Bill and the Register Bill and called for input from stakeholders. The government did not release an exposure draft of the Fees Imposition Bill because it is a standard tax imposition bill. Consultation occurred between 6 July 2015 and 17 July 2015, with 21 submissions received (including 4 confidential submissions).<sup>10</sup>

1.12 An exposure draft of the Foreign Acquisitions and Takeovers Regulations 2015 was also released as part of this consultation; the government has indicated that it intends to make the regulations later in 2015 following additional consultation.<sup>11</sup>

1.13 This consultation process was reflected in Treasury's Regulation Impact Statement (RIS), which was released in September 2015.<sup>12</sup> The government released its official response to the House of Representatives Standing Committee's report into foreign investment in residential real estate in August 2015.<sup>13</sup>

## Overview of the bills

1.14 Australia's foreign investment review framework consists of the Foreign Acquisitions Act, the *Foreign Acquisitions and Takeovers Regulations 1989* (the Foreign Acquisitions Regulations) and other associated regulations, and Australia's Foreign Investment Policy (which is a Ministerial statement providing an overview of, and sometimes expanding on, the Foreign Acquisitions Act).

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8 The Hon. Tony Abbott, MP, Prime Minister of Australia, and the Hon. Joe Hockey, MP, Treasurer, 'Government strengthens the foreign investment framework', Media release, 2 May 2015.

9 Department of the Treasury, *Modernising Australia's Foreign Investment Framework*, Options Paper, May 2015, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Modernising-Australias-foreign-investment-framework> (accessed 31 August 2015).

10 Department of the Treasury, *Implementing Foreign Investment Reforms*, Exposure Draft, July 2015, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Implementing-Foreign-Investment-Reforms> (accessed 31 August 2015).

11 Department of the Treasury, *Regulation Impact Statement: Foreign Investment Proposals*, p. 39, 14 September 2015, <https://ris.govspace.gov.au/files/2015/09/Foreign-investment-reforms-RIS-web-accessible.pdf> (accessed 15 September 2015).

12 Department of the Treasury, *Regulation Impact Statement: Foreign Investment Proposals*, 14 September 2015, <https://ris.govspace.gov.au/files/2015/09/Foreign-investment-reforms-RIS-web-accessible.pdf> (accessed 15 September 2015).

13 Department of the Treasury, *Australian Government response to the House of Representatives Standing Committee on Economics report: Foreign Investment in Residential Real Estate*, August 2015, pp 2-3.

1.15 The bills aim to give effect to the government's intention to 'strengthen the integrity of Australia's foreign investment framework, ensuring Australia maintains a welcoming environment for foreign investment that is not contrary to Australia's national interest'.<sup>14</sup>

### ***Foreign Acquisitions Bill***

1.16 The Foreign Acquisitions Act currently imposes a number of obligations on foreign persons who are planning to invest in certain interests, including notifying the Treasurer of their proposed investment. The Treasurer is ultimately responsible for considering whether a particular investment is contrary to the national interest on a case-by-case basis. The Foreign Acquisitions Act takes a flexible approach to this test and does not prescribe what constitutes the national interest.<sup>15</sup> In most cases, the Treasurer is satisfied the proposal is not contrary to the national interest and does not object to the proposal. If the Treasurer considers that the proposal is contrary to the national interest, the Treasurer may make an order prohibiting the proposed transaction or, if the transaction has already taken place, to direct the person to dispose of their interest (known as a disposal order).

1.17 The Foreign Acquisitions Bill will repeal all substantive provisions of the Foreign Acquisitions Act, and replace them with new and modernised provisions. The Foreign Acquisitions Bill, however, retains the key features of Australia's foreign investment framework and does not change the national interest assessment process. The Foreign Investment Review Board submitted that the changes are 'designed to strengthen the integrity of the framework'.<sup>16</sup>

1.18 The Foreign Acquisitions Bill leaves the definition of 'foreign persons' who are required to apply for foreign investment approval largely unchanged. Under the Foreign Acquisitions Act, foreign persons are currently defined as a natural person not ordinarily resident in Australia, or a corporation or trust estate where a foreign person holds a controlling or substantial interest.<sup>17</sup> Under the Foreign Acquisitions Bill, the definition of foreign persons in the Act would be expanded to include foreign governments, who are currently required to fulfil some obligations in the Act through Australia's Foreign Investment Policy.<sup>18</sup>

### ***'Significant actions'***

1.19 The Foreign Acquisitions Bill enables the Treasurer to make a broad range of orders in relation to a 'significant action' that a foreign person is proposing to take or has already taken. Broadly, a significant action is an action to acquire interests in

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14 Explanatory Memorandum, p. 7.

15 Foreign Investment Review Board, *Submission 5*, p. 1.

16 *Submission 5*, p. 1.

17 Foreign Acquisitions Act, section 5.

18 Foreign Acquisitions Bill, item 3, proposed section 4 of Schedule 1. Australia's Foreign Investment Policy currently applies some of the requirements under the Foreign Acquisitions Act to foreign governments.

securities, assets or Australian land, or otherwise taken in relation to corporations and unit trusts.<sup>19</sup> An action is only a significant action if it meets any applicable interest and monetary thresholds, including a change in control for actions relating to entities and businesses.<sup>20</sup>

1.20 One change from the existing provisions is that the substantial interest threshold for an entity or trust has been increased to 20 per cent (from 15 per cent), which means foreign persons acquiring a stake of less than 20 per cent will no longer need foreign investment approval.<sup>21</sup> While the Foreign Acquisitions Bill establishes a framework for threshold tests, the value for some of the threshold tests (for example, for agricultural land) is to be prescribed in regulations.<sup>22</sup>

1.21 If the Treasurer is notified a foreign person is proposing to take a significant action, the Treasurer may decide that:

- there is no objection to the action and give the person a no objection notification not imposing conditions;
- there is no objection to the action provided the person complies with one or more conditions and give the person a no objection notification imposing conditions; or
- taking the action would be contrary to the national interest and make an order prohibiting the proposed significant action.<sup>23</sup> If the significant action has already been taken and the Treasurer is satisfied it is contrary to the national interest, the Treasury may make a disposal order that is directed at unwinding the action.<sup>24</sup>

#### *'Notifiable actions'*

1.22 A foreign person is only obliged to inform the Treasurer that they are proposing to take a significant action if the action is also a 'notifiable action'. Only some significant actions are notifiable actions. A foreign person who proposes to enter an agreement to make a notifiable action must notify the Treasurer before entering into the agreement. In broad terms, a notifiable action is a proposed action to:

- acquire a direct interest in an Australian entity or Australian business that is an agribusiness;
- acquire a substantial interest in an Australian entity; or
- acquire an interest in Australian land.<sup>25</sup>

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19 Foreign Acquisitions Bill, item 4, proposed sections 40 to 43 of Schedule 1.

20 Foreign Acquisitions Bill, item 4, proposed sections 51 to 55 of Schedule 1.

21 Foreign Acquisitions Bill, item 3, proposed section 4 of Schedule 1.

22 See Foreign Acquisitions Bill, item 4, proposed section 52 of Schedule 1.

23 Foreign Acquisitions Bill, item 4, proposed Part 3 of Schedule 1.

24 Foreign Acquisitions Bill, item 4, proposed section 69 of Schedule 1.

25 Foreign Acquisitions Bill, item 4, proposed section 47 of Schedule 1.

1.23 Generally, the action is only notifiable if the entity, business or land also meets the threshold test, with a different threshold applying in relation to agribusinesses. Unlike for a significant action,<sup>26</sup> there does not need to be a change in control for actions relating to entities and businesses to be notifiable actions.

1.24 Currently, a foreign person is required to notify the Treasurer of a proposal to acquire or increase an interest in Australian urban land,<sup>27</sup> unless an exemption applies.<sup>28</sup> Under the Foreign Acquisitions Bill, the requirements that currently apply to Australian urban land would apply to all land in Australia (including agricultural land) unless below the threshold, exempt, or specific rules apply.<sup>29</sup>

1.25 If the Treasurer is given a notice that a significant action is proposed to be taken, the Treasurer must make a decision within a certain period (generally within 30 days of receiving the notice, or within an additional period of up to 90 days from the publication of an interim order).<sup>30</sup> If a notice has been given stating that a significant action is proposed to be taken, the action must not be taken before the end of a specified period (which is usually 40 days) unless the foreign person is given a no objection notification.<sup>31</sup>

1.26 In addition, the Foreign Acquisitions Bill provides for the issuing of an exemption certificate, which is a certificate given by the Treasurer that specifies an interest, or an interest of a kind, is not a significant action or notifiable action.<sup>32</sup> Examples of exemption certificates include certificates for foreign persons buying established dwellings (which allow foreign persons to bid at multiple auctions without having to pay an application fee for each auction) and certificates allowing developers to sell new dwellings in a development to foreign persons.

### *Penalties*

1.27 Currently, only divestment orders and criminal penalties apply to breaches of the Foreign Acquisitions Act. The maximum penalty that can be imposed for an offence under the Foreign Acquisitions Act committed by an individual is a fine of 500 penalty units (currently \$90,000), imprisonment for two years, or both.<sup>33</sup> Under the Foreign Acquisitions Bill, the maximum penalty for an individual who commits any of the most serious offenses is imprisonment for three years, a fine equivalent to

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26 Foreign Acquisitions Bill, item 4, proposed subsection 41(5) of Schedule 1.

27 Australian urban land is defined as land situated in Australia that is not Australian rural land: see Foreign Acquisitions Act, section 5.

28 Foreign Acquisitions Act, subsection 21A.

29 Australian land means agricultural land, commercial land, residential land or a mining or production tenement: see Foreign Acquisitions Bill, item 3, proposed section 4 of Schedule 1.

30 Foreign Acquisitions Bill, item 4, proposed sections 68 and 77 of Schedule 1.

31 Foreign Acquisitions Bill, item 4, proposed section 82 of Schedule 1.

32 Explanatory Memorandum, paragraph 3.10.

33 For example, see Foreign Acquisitions Act, subsection 25(1C).

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750 penalty units (currently \$135,000), or both.<sup>34</sup> If a body corporate commits any of these offences the maximum penalty is 3,750 penalty units (compared with 2,500 penalty units under the current provisions).<sup>35</sup>

1.28 In addition to divestment orders and criminal penalties, the Foreign Acquisitions Bill would also make it possible for civil penalty orders to be made and infringement notices to be issued. A person may commit an offence or contravene a civil penalty provision if:

- the person fails to notify the Treasurer before taking a notifiable action;
- the person takes an action that has been notified, before the end of the applicable time limit;
- the person contravenes an order made by the Treasurer which prohibits a proposed significant action, an interim order or a disposal order;
- the person contravenes a condition in a no objection notification imposing conditions or an exemption certificate; or
- the property developer fails to advertise the sale of new dwellings in Australia.<sup>36</sup>

1.29 There would be additional civil penalties for breaches of the obligations imposed by the Foreign Acquisitions Bill in relation to residential land.<sup>37</sup> Some of these penalties would be calculated by reference to the market value of, or consideration for, the acquisition of the interest in the residential land or the capital gain from disposing of the interest.

1.30 Liability for breaches of the civil penalty provisions would extend to officers of corporations, and criminal offences may also apply as well to certain persons, including officers of corporations, under Part 2.4 of the *Criminal Code Act 1995*.<sup>38</sup> In addition, each civil penalty provision would be enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, which also provides for infringement officers to issue infringement notices.

#### *Application fees*

1.31 Currently, no fees or charges are payable when making an application or giving a notice under the Foreign Acquisitions Act. The Foreign Acquisitions Bill would impose fees for:

- applying for an exemption certificate or a variation of an exemption certificate;

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34 For example, see Foreign Acquisitions Bill, item 4, proposed section 86 of Schedule 1.

35 Explanatory Memorandum, p. 74.

36 Foreign Acquisitions Bill, item 4, Part 5, Division 2 of Schedule 1.

37 Foreign Acquisitions Bill, item 4, Part 5, Division 3 of Schedule 1.

38 Foreign Acquisitions Bill, item 4, proposed sections 102 and 103 of Schedule 1.

- giving a notice of a notifiable action;
- giving a notice relation to an action that is not a notifiable action;
- applying for a variation of a no objection notification; and
- situations where the Treasurer makes a decision or order relating to a significant action and a person has not notified the Treasurer of the action.<sup>39</sup>

1.32 Where a fee is payable, a person is not taken to have given notice or made the application until the fee has been paid or the fee has been waived.<sup>40</sup> The Treasurer has the power to waive or remit the fee if the Treasurer is satisfied that it is not contrary to the national interest to do so.<sup>41</sup> In effect, the Treasurer is not required to take any action before the fee is paid.

1.33 The amounts of the fees are set out in the Fees Imposition Bill (discussed below).

#### *Other provisions*

1.34 Under the Foreign Acquisitions Bill, the Treasurer may delegate all of the Treasurer's powers or functions to the Secretary of the Treasury, the Commissioner of Taxation or a public servant employed by Treasury or the ATO.<sup>42</sup> In addition to enabling the Treasurer to require a person to give information or produce documents (as occurs under the Foreign Acquisitions Act), the Foreign Acquisitions Bill would enable officers from the ATO to exercise broad ranging investigatory powers.<sup>43</sup>

1.35 The Explanatory Memorandum states that it is anticipated that the Treasurer will delegate the powers and functions relating to residential land to the Commissioner of Taxation.<sup>44</sup> The government has stated that the functions related to residential land would be transferred to the ATO (from Treasury) to improve compliance and enforcement through 'sophisticated data-matching systems and specialised staff with compliance expertise'.<sup>45</sup>

1.36 Part 7 of Schedule 1 of the Foreign Acquisitions Bill imposes record keeping obligations as well provisions about the confidentiality of information.

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39 Foreign Acquisitions Bill, item 4, proposed section 113 of Schedule 1.

40 Foreign Acquisitions Bill, item 4, proposed section 114 of Schedule 1.

41 Foreign Acquisitions Bill, item 4, proposed section 115 of Schedule 1.

42 Foreign Acquisitions Bill, item 4, proposed section 137 of Schedule 1.

43 Foreign Acquisitions Bill, item 4, proposed section 138 of Schedule 1.

44 Explanatory Memorandum, paragraph 7.21.

45 The Hon. Tony Abbott, MP, Prime Minister of Australia, and the Hon. Joe Hockey, MP, Treasurer, 'Government strengthens the foreign investment framework', Media release, 2 May 2015.



- 1.37 In addition, the Foreign Acquisitions Bill would make amendments through:
- Schedule 2, which contains amendments to the Foreign Acquisitions Act which are contingent on the commencement of the *Acts and Instruments (Framework Reform) Act 2015*;
  - Schedule 3, which provides application and transitional provisions for Schedules 1 and 2 and the Fees Imposition Bill; and
  - Schedule 4, which includes consequential amendments to the confidentiality provisions in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1997*.

### ***Fees Imposition Bill***

1.38 The Fees Imposition Bill sets out the rates of the fees that would apply, with the rates of the fees subject to annual indexation from 1 July 2016. The fees range from \$5,000 to \$100,000, depending on the type of application or action.<sup>46</sup> The imposition of the fees is a tax under section 55 of the Australian Constitution.<sup>47</sup>

1.39 In addition, the Fees Imposition Bill provides tie breaker rules for situations where multiple fees could apply.<sup>48</sup>

1.40 The Fees Imposition Bill includes a regulation making power allowing for regulations to prescribe specified circumstances where a lower fee applies, or to prescribe a method of ascertaining the lower amount.<sup>49</sup>

### ***Register Bill***

1.41 The Register Bill would establish a register (established and maintained by the ATO) from 1 July 2015 of foreign persons with interests in Australian agricultural land. Agricultural land means land in Australia that is used, or that could reasonably be used, for a primary production business.<sup>50</sup> There are two types of interests, or changes to interests, in agricultural land that a foreign person must report:

- freehold interests; and
- rights to occupy agricultural land under a lease (including a sublease) or licence where the term of the lease or licence (including any extension or renewal) is reasonably likely to exceed five years.<sup>51</sup>

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46 Fees Imposition Bill, clauses 6, 7 and 8.

47 Fees Imposition Bill, clause 5.

48 Fees Imposition Bill, clause 9.

49 Fees Imposition Bill, clauses 11 and 13.

50 Register Bill, clause 4.

51 Register Bill, clause 19.

1.42 The register would be composed of two parts:

- the basic part, which would contain all information reported to the Commissioner of Taxation by persons with foreign holdings of agricultural land on or after 1 July 2015 (or information otherwise obtained by the Commissioner); and
- the statistical part, which contains statistics derived from the basic part of the register. The ATO is required to publish the statistical part of the register on a website and provide an annual report on the operation of the Act, including the statistical part of the register, to the Minister for presentation to the Parliament.<sup>52</sup>

1.43 There are two reporting requirements under the Register Bill:

- foreign persons who hold interests in agricultural land at 1 July 2015 are required to report those interests to the ATO on or after the commencement of the Register Bill;<sup>53</sup> and
- foreign persons (and persons who have since ceased to be foreign persons) who acquire interests in agricultural land, or who experience changes to holdings of interests in agricultural land, are required to report those interests or changes which occur after 1 July 2015 to the ATO, generally within 30 days.<sup>54</sup> Similarly, agricultural landholders and leaseholders whose foreign person status changes are also required to report those interests or changes which occur 1 July 2015 to the ATO, generally within 30 days.<sup>55</sup> However, foreign persons are able to notify the ATO prior to the commencement of the Register Bill and they will generally be taken to have complied with the requirements under the Register Bill.<sup>56</sup>

1.44 The Commissioner of Taxation has the general administration of the Register Bill, which makes it a taxation law under the *Taxation Administration Act 1953* (the Taxation Administration Act).<sup>57</sup> As such, the various provisions of the Taxation Administration Act apply including the uniform penalty regime, access and information gathering powers, confidentiality of taxpayer information and the power of the Commissioner to determine the content of the approved forms used to notify the ATO about interests in agricultural land.<sup>58</sup>

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52 Register Bill, clauses 14, 15, 16, 17 and 34.

53 Register Bill, clause 19.

54 Register Bill, clause 20.

55 Register Bill, clause 20.

56 Explanatory Memorandum, p. 161.

57 Register Bill, clause 32.

58 Explanatory Memorandum, p. 161.

### ***Commencement***

1.45 The majority of the changes in the Foreign Acquisitions Bill (in Schedules 1, 3 and 4) are scheduled to commence on 1 December 2015.<sup>59</sup> Schedule 2 of the Foreign Acquisitions Bill commences immediately after the commencement of Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015*.<sup>60</sup>

1.46 The Register Bill commences at the same time as the Foreign Acquisitions Bill.<sup>61</sup> Under the Fees Imposition Bill, fees apply from the later of the date after Royal Assent or 1 December 2015; however, no fees will apply if the Foreign Acquisition Bill does not receive Royal Assent.<sup>62</sup>

### ***Financial impact***

1.47 It is expected that the package of bills will result in a \$667.2 million increase to consolidated revenue over four years, with \$735.0 million raised from the introduction of fees for foreign investment applications.<sup>63</sup> The 2015–16 Budget included additional funding for the Treasury (\$19.7 million over four years), the ATO (\$47.5 million over four years) and the Department of Agriculture (\$0.6 million over four years) to support additional work associated with the reforms.<sup>64</sup>

### ***Issues raised by scrutiny committees***

1.48 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) raised a number of concerns in relation to the Foreign Acquisitions Bill. The Scrutiny of Bills committee asked the Treasurer for advice on the rationale for the delegation of legislative power in regards to regulation-making powers that permits regulations to be made that provide:

- for a number of exceptions to the operations of the Foreign Acquisitions Bill;<sup>65</sup>
- that a specified action is a 'significant action' for the purposes of the Foreign Acquisitions Bill;<sup>66</sup> and
- that a specified action is a 'notifiable action' for the purposes of the Foreign Acquisitions Bill.<sup>67</sup>

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59 Foreign Imposition Bill, clause 2.

60 Foreign Imposition Bill, clause 2.

61 Register Bill, clause 2.

62 Fees Imposition Bill, clause 2.

63 Explanatory Memorandum, p. 8.

64 Explanatory Memorandum, p. 8.

65 Foreign Acquisitions Bill, item 3, proposed section 37 of Schedule 1.

66 Foreign Acquisitions Bill, item 4, proposed section 44 of Schedule 1.

67 Foreign Acquisitions Bill, item 4, proposed section 48 of Schedule 1. See Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 9 of 2015*, 9 September 2015, pp. 6–8.

1.49 As at 14 October 2015, the Scrutiny of Bills committee had not yet tabled a report outlining the Treasurer's response. In addition, the Scrutiny of Bills committee also drew Senators' attention to a number of other provisions which raised issues around:

- the availability of merits and judicial review;
- trespass on personal rights or liberties—strict liability offence;
- trespass on personal rights or liberties—onus of proof;
- the delegation of legislative power; and
- trespass on personal rights or liberties—absolute liability.<sup>68</sup>

1.50 The Scrutiny of Bills committee had no comments in relation to the Fees Imposition Bill and the Register Bill.<sup>69</sup> The Parliamentary Joint Committee on Human Rights considered that the package of bills did not require additional comment as the bills contain justifiable limitations on human rights.<sup>70</sup>

### **Scope and structure of this report**

1.51 This report comprises two chapters. The following chapter considers the issues raised by key stakeholders in submissions. The committee's overall conclusion can be found at the end of the next chapter.

1.52 As the committee has been asked to examine the provisions of the bills, this report does not examine issues that are beyond the scope of the primary legislation except to note some concerns raised about drafts regulations which will accompany the package of bills.

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68 See Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 9 of 2015*, 9 September 2015, pp. 5–14.

69 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 9 of 2015*, 9 September 2015, pp. 15 and 19.

70 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Twenty-seventh report of the 44<sup>th</sup> Parliament*, 8 September 2015, pp. 1–2.