



Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) 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 14 December 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Treasurer

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1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) 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 3 to the <i>Treasury Laws Amendment (Housing Tax Integrity) Act 2017</i> commences.	15 December 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Note: This table relates only to the provisions of this instrument as originally made.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 Act 1975*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Regulation 2015

1 Section 5

Insert:

businesses or entities certificate has the meaning given by section 42.

residential land (near-new dwelling interests) certificate has the meaning given by section 43A.

residential land (other than established dwellings) certificate has the meaning given by section 43B.

tenements and mining, production or exploration entities certificate has the meaning given by section 43.

2 Section 26 (after the paragraph relating to Division 4)

Insert:

Division 4A exempts foreign persons from being liable to pay a vacancy fee in certain circumstances.
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3 After Division 4 of Part 3

Insert:

Division 4A—Exemptions relating to vacancy fees

43C Application of this Division

This Division applies in relation to the following provisions:

- (a) subsection 115C(1) of the Act (liability for vacancy fees);
- (b) any other provision of the Act (except sections 115D and 115G) to the extent that it relates to that subsection.

The provisions of the Act that this Division applies to are the *excluded provisions*.

43D Exemption—residentially occupied

- (1) Subject to subsection (4), if a foreign person acquires an interest in residential land on which a dwelling is situated, the excluded provisions do not apply to the foreign person in relation to a vacancy year in the circumstances covered by subsection (2).
- (2) The circumstances covered by this subsection are that, during the vacancy year, the dwelling was residentially occupied for fewer than 183 days for either or both of the following reasons:
 - (a) the dwelling was incapable of being occupied as a residence;

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- (b) a person (who may or may not be the foreign person) ordinarily occupying the dwelling as a residence was absent from the dwelling to receive medical care, or residential care (within the meaning of the *Aged Care Act 1997*), that is supported by evidence.
- (3) Without limiting paragraph (2)(a), a dwelling is incapable of being occupied as a residence if:
- (a) the dwelling is damaged, unsafe or is otherwise unsuitable to be occupied as a residence; or
 - (b) the dwelling is undergoing substantial repairs or renovations; or
 - (c) occupation of the dwelling as a residence is prohibited, or made impracticable, by an order of a court or tribunal or a law of the Commonwealth, a State or a Territory.
- (4) The excluded provisions apply to the foreign person in relation to a vacancy year if the foreign person is taken to be liable to pay a vacancy fee for that year under section 115C of the Act as a result of subsection 115D(3) of the Act.
- Note: Subsection 115D(3) of the Act provides that a foreign person is liable to pay a vacancy fee, regardless of the number of days in a vacancy year the foreign person's dwelling was residentially occupied, if the Commissioner of Taxation is satisfied the person has not given a vacancy fee return to the Commissioner as required under section 115D of the Act.

4 In the appropriate position in Part 7

Insert:

70 Application of the *Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) Regulations 2017*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Vacancy Fees and Other Measures) Regulations 2017* apply in relation to an acquisition of residential land by a foreign person if subsection 115C(1) of the Act would otherwise apply in relation to the acquisition.