



Unions NSW Submission

Inquiry into the Foreign Investment Review Framework

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Introduction

1. Unions NSW welcomes the opportunity to make a submission to the Senate Economics References Committee inquiry into the Foreign Investment Review Framework.
2. Unions NSW is the peak body for trade unions and union members in NSW and has been fighting for the rights of working people in Australia since 1871. It has over 65 affiliated unions and Trades and Labour Councils representing approximately 600,000 workers across the state. Affiliated unions cover the spectrum of the workforce with members in both the public and private sectors.
3. Unions NSW is not opposed to foreign investment as it provides opportunities for the creation of new jobs and revenue that benefit the Australian economy and community.
4. Unions NSW believes Australia's approach to foreign investment in business, services, and land must include thorough oversight to ensure the economic and social interests of workers, their communities, and the broader national interest are improved as a result of any investment.
5. Unions NSW believes some recent decisions in foreign investment such as The Northern Territory government's 99-year lease of the Darwin port facilities to the Landbridge Corporation and the Royal Dutch Shell takeover of BG Group, a holder of coal-seam gas operations in Queensland, demonstrate a pattern that is cause for concern.
6. This is why Unions NSW believes all foreign investment should be judged on the degree to which they support particular national goals. These goals include the provision of employment opportunities, the meeting of taxation obligations, and compliance with the national and security interests of Australia.

Current Framework

7. Responsibility for assessing proposals and making decisions rests with the Federal Treasurer who is advised by the Foreign Investment Review Board. Unions NSW agrees this is good practice and submits the process could be augmented. Specifically, a more robust test is necessary which includes requirements for the Minister to focus specifically on associated initiatives which provide local job creation and training opportunities. This approach is consistent with all of the stated goals of the foreign investment framework.
8. Unions NSW supports the current \$252 million threshold which requires foreign entities to acquire approval from the Australian Government before they are able to invest in Australia. Unions NSW notes the thresholds requiring Government approval are higher for countries that have signed a FTA with Australia. This figure, \$1,904 million, although much higher, should continue to operate.
9. Unions NSW submits significant investment from FTA countries should be examined on a case-by-case basis in order to ensure Australia's national interests are met. Unions NSW supports the expansion of the 'sensitive industries' category to include all essential services which is not currently the case.
10. The Act empowers the Treasurer to prohibit investment which is not in the national interest. However, the Act does not clearly define our national interest and a great deal is left to the discretion of the Treasurer.

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11. Unions NSW submits the breadth of executive discretion on this subject should be narrowed through legislative and/or regulatory means to require greater transparency in the application of the National Interest Test.

Foreign Ownership of Public Assets Case Study: TransGrid

12. Unions NSW believes utilities, particularly basic services and those with security implications, should remain in Australian hands. This position satisfies two key points - ensuring local employment and protecting Australia's national security.
13. The NSW Government is in the process of finalising the long-term lease of the state's electricity network, TransGrid. The investors are a consortium of Australian and foreign companies and the foreign investors include a Canadian pension fund, investment authorities from Abu Dhabi and Kuwait, and Spark Infrastructure, an ASX listed company with interests in China. The investors were cleared by the Foreign Investment Review Board however concerns remain about whether this meets Australia's national interest.

National Security Interests

14. The long-term lease of TransGrid to foreign investors raised very specific national security questions. The lease of TransGrid will include the electricity and fibre optic cable networks in NSW and ACT which includes cables which service defence and intelligence bases. This has raised significant security concerns surrounding the access to secure information by foreign entities, many of which are wholly owned by foreign states.
15. The Foreign Investment Review Framework needs to be strengthened to ensure clearer guidelines exist for the protection of Australia's national interest, particularly in respect to job creation, tax obligations and national security. Unions NSW believes a greater level of transparency is required with this process to ensure the general public can be assured all aspects of the national interest are being protected.

Tax Avoidance

16. A key investor in TransGrid, Spark Infrastructure, is currently being pursued by the ATO for \$700 million over a range of allegations including over-claiming rates for electricity customers in Victoria¹. It has also been reported Spark Infrastructure used a highly leveraged financing method which significantly minimises their tax obligations in regard to profits from their part ownership of TransGrid².
17. At present, under the Foreign Investment Review Framework, there is no requirement for foreign investors to have a proven record of meeting tax obligations. Whilst none of the organisations seeking to invest in the TransGrid transaction have corporate structures ostensibly designed to avoid tax obligations in Australia it is important to consider the impact of foreign investment on Australia's corporate tax base given recent global tax minimisation trends.

¹ West, M. 'Tax Strategies may distort power sales', *Sydney Morning Herald*, 23 March 2015.

² West, M. 'NSW Power sale profits could end up in Cayman Islands', *Sydney Morning Herald*, 29 November 2015

Jobs

18. Foreign investment can create additional employment opportunities within Australia. Unions NSW would like to see job creation and training a key requirement for foreign investors to meet when seeking approval from the Foreign Investment Review Board.
19. In the case of the lease of TransGrid the investment by large foreign firms may lead to the offshoring of jobs, particularly 'back office' functions such as administration, human resource management, and marketing. The NSW electricity network employs over 10,000 workers, a number of whom are in regional and rural areas. Any attempts by investors to have the business consolidate the number of employees will impact directly on these workers and their local economies.
20. The FIRB should require large foreign investors to commit to continued operation of the business within Australia and to guarantee jobs, particularly in regional and rural communities, will not be offshored.