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Committee Secretary
Senate Economics References Committee
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

ENQUIRY INTO FOREIGN INVESTMENT REVIEW FRAMEWORK

I refer to your advice as to your Committee seeking written submissions in respect of the abovementioned inquiry.

There are several areas where I express concern and I summarise these as follows:-

1. Federal -v- States rights.

It appears to have been assumed by the Australian Government that there is a head of power which enables it to legislate in regard to foreign persons purchasing real estate in Australia. I submit that any power held by the Australian Government to legislate may conflict with that of a State Government.

The laws regulating ownership of real estate remain firmly within the State jurisdiction for legislation. The State Government controls all titling issues for land within its borders. For instance, it determines the method of holding ownership of real estate in various forms and passes laws as to succession to titles and ownership of titles by minors, adults or other persons.

I query whether or not it may be open for a State Government to pass contradictory legislation allowing a foreign party to acquire title, in any format to land within the State. If it is the case that the State has such jurisdiction then is it not the case that the Australian Government is excluded from legislating as to the ownership of freehold land or crown leasehold land within the area of any particular State Government?

2. The economics of the current policy produce a situation which is not in the best interests of Australia by:-

Restricting resale to another non-resident owner:

- a) Not permitting a foreign owner of constructed residential real estate, who has acquired the ownership under the current approval framework, from being entitled to re-sell the property on the foreign market i.e. to another foreign owner.

I explain that a foreign person may purchase residential real estate being specifically developed for the foreign owner (off the plan or as a residential house constructed on land purchased with commencement of construction within 24 months of the purchase) and economically that means money flows into the country for that development. However, it impinges on the economics of Australia when the party owning that piece of real estate then can only re-sell the property as second hand residential property to an Australian resident or a party with some other form of exemption or approval.

I submit that economically this is harmful for Australia and the rules should be expanded to allow for any foreign owner of a residential property to be enabled to sell that property to another foreign owner. This certainly would not be harmful to the Australian economy nor to the interests of Australian residents as the property has already been developed for the purposes of an investment by a foreign person.

Treating tourism apartment accommodation as "residences":

- b) The treatment of all property capable of housing persons domestically i.e. apartment style accommodation, as though it is primarily property that would be occupied by a resident of Australia, rather than treating specialised tourist use apartments as commercial property available for use by the tourism industry as temporary accommodation, debilitates the ability of the tourism industry to attract investment into its infrastructure of serviced apartments.

For instance, on the Gold Coast some 60,000 plus rooms are made available to the tourism industry as serviced apartments run through on-site letting agents who operate the apartments as accommodation for tourists. The market for the purchase of such infrastructure is restricted only to Australian investors due to the failure of the rules of FIRB to allow ownership of such properties by foreign investors other than "off the plan purchases".

This failure mainly occurs due to the wording of the rules which do not recognise the reality of the legalities, particularly in Queensland, where the property is not leased out to an operator. The rules should be altered to take into account ownership arrangements where the foreign owner places the apartment with an on-site manager with on-site management under a Real Estate Agent's Licence to be let out as short term accommodation within the tourism industry. Currently the rules only appear to accommodate investments where the property is leased back on a long term basis to some type of accommodation operator.

3. There ought to be fairness and transparency in any legislation by the Australian Government. Such fairness should extend to the proper treatment of fees paid for applications so that they are a properly calculated fee relevant to the cost of the Government Department dealing with the application and not a form of taxation/revenue raising activity.

The imposition of the application fees by the Australian Government relevant to the acquisition of residential real estate in Australia by foreign persons, commencing at \$5,000.00 per application and increasing according to the value of the property, is not

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a reflection of the actual cost to the Australian Government of dealing with the application. It is a form of taxation or revenue raising penalty, imposed under a disguise of an application fee.

It appears to be an error and incongruous to publish a list of acquisitions which shall be automatically approved, without the need for investigation by the government, and then to impose a charge for applying the automatic exemption. The system should allow self-determination and only require an application where the facts need to be considered and a decision then made based on the criteria or directions open to the government.

There are many reasons to raise the above items, as a submission to you, to ensure Australia's national interests is being adequately considered. Whilst in some ways these items may appear to be relatively minor, they have a major deterrent collectively, particularly for the investment of foreign capital into residential real estate as part of the tourism infrastructure for Australia via strata titled apartments utilised in our recognised tourism regions. I am happy to provide further information if so required.

Yours faithfully,
SHORT PUNCH & GREATORIX