



Australian Government
Foreign Investment Review Board

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Senate Standing Committee on Economics
PO Box 6100
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**INQUIRY INTO THE PROVISIONS OF THE FOREIGN ACQUISITIONS AND
TAKEOVERS LEGISLATION AMENDMENT BILL 2015 AND RELATED BILLS**

Thank you for the opportunity to make a submission to the Inquiry into the provisions of the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related Bills.

The role of the Foreign Investment Review Board is to advise the Treasurer and the Government on Australia's foreign investment policy and its administration. On behalf of the members of the Board, I am writing to indicate the Board's strong support of the Bills.

The Board recognises that foreign investment is integral to Australia's economy and takes seriously the need to ensure that foreign investment proposals are consistent with Australia's national interest. The Board reviews foreign investment proposals against the national interest on a case-by-case basis and seeks to strike an appropriate balance between maintaining community confidence in foreign investment, protecting the national interest and ensuring that Australia remains an attractive destination for foreign investment by providing certainty for investors.

While the framework has generally worked well since it was introduced, heightened community sensitivity over certain types of foreign investment (in particular agriculture and residential real estate), and shifts in global investment patterns are increasing community focus on the framework. These concerns have the potential to undermine confidence that foreign investment is in the national interest.

The Board supports the package of reforms, which are designed to strengthen the integrity of the framework. A stronger level of compliance and enforcement as well as changes to the framework should improve the integrity and community acceptance of the system.

It is important to note that the package of Bills does not change the well-established national interest assessment process undertaken by the Foreign Investment Review Board. Foreign investment proposals that fall within the scope of the legislation will continue to be assessed on a case-by-case basis to ensure that they are not contrary to the national interest. The Board works with investors to ensure that national interest concerns are addressed, but in the rare circumstances where this is not possible, the Treasurer has the power to prohibit the investment.

Further, what constitutes the national interest will not be prescribed in the new legislation (it will remain a decision for the Treasurer consistent with the current Act). This flexible approach is preferred to hard and fast rules. The case-by-case approach is a fundamental part of the foreign investment framework. It maximises investment flows, while protecting Australia's interests.

The reforms should help ensure that investors comply with the rules and that the rules are properly enforced. Compliant investors will benefit from greater certainty and reduced complexity. The legislation underpinning the framework will be clearer, providing greater certainty for the Board in applying the rules and for investors in following the rules.

One of the key improvements is the incorporation of all types of foreign investment applications into the legislative framework. Australia's foreign investment framework currently includes some non-legislative prior approval requirements that are set out in Australia's Foreign Investment Policy (Policy-only requirements). The reforms ensure that these Policy-only requirements (such as those relating to foreign government investors) are incorporated into the legislative framework to increase legal certainty for investors, legal advisers and the Government.

Compliance costs and complexity will be reduced by removing routine cases from the system and more closely aligning key concepts and definitions with other corporate legislation such as the *Corporations Act 2001*. For example, the substantial interest threshold will be raised from 15 to 20 per cent to align with Australia's takeover rules. This means investors acquiring a stake of less than 20 per cent will no longer need foreign investment approval.

Foreign investors will also benefit from better service delivery. In addition to the funding that has been provided to the Australian Taxation Office to increase compliance and enforcement activities, additional funding has also been provided to Treasury so that the Foreign Investment Review Board can increase engagement with clients and intermediaries and improve service levels.

This additional funding and the removal of routine cases from the system should also enable greater focus and scrutiny on the more significant cases which will further strengthen the integrity of the foreign investment framework.

The *Foreign Acquisitions and Takeovers Act 1975* has not been significantly updated in around forty years. The package of foreign investment legislation before the Parliament provides an important opportunity to strengthen the integrity of Australia's foreign investment framework to keep up with the changing business landscape and community expectations, whilst also ensuring that we remain an attractive destination for much-needed foreign investment.

Once again, thank you for the opportunity to make a submission. I trust this submission will assist with the Committee's Inquiry.

Yours faithfully

Brian Wilson
Chairman