



25 September, 2015

Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**Inquiry into the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015  
and related bills**

The Electronic Conveyancing Group (ECG) thanks you for the invitation from the Senate Economics Legislation Committee to respond to the proposed amendments to the *Foreign Acquisitions and Takeovers Act 1975* and the modernization of the foreign investment regime.

The attached submission reiterates the ECG's position, which was submitted to treasury in March this year in response to a request from Treasury who were gathering industry opinion.

The ECG would consider an invitation to meet with the committee to discuss our position.

Yours sincerely

**Murray McCutcheon AM**  
Chairman

**Secretariat:**  
**Rosemary Cotton**  
National Secretary

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[Economics.Sen@aph.gov.au](mailto:Economics.Sen@aph.gov.au)

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The collaborative voice of  
Australian Bankers' Association, Australian Institute of Conveyancers, Law Council of Australia

## INTRODUCTION

The Electronic Conveyancing Group (ECG) is a collaborative between the Australian Bankers Association, Australian Institute of Conveyancers and the Law Council of Australia. It was formed with the vision of becoming a collaborative voice of the primary user groups of the National Electronic Conveyancing Platform operated by PEXA<sup>1</sup>. The primary users are the banks, licensed conveyancers and legal practitioners.

The ECG aims to be the principal driver of both the legal and practical issues associated with the introduction of electronic conveyancing and the other legal and practical issues affecting the primary uses of the National Electronic Conveyancing platform and the existing paper based conveyancing and land title registration systems.

The ECG is concerned to evaluate and ensure that the changes associated with the Foreign Investment reforms do not create any unnecessary inefficiencies within the conveyancing and land title registration systems or have unwarranted impacts on the members of each constituent body and ultimately the public.

This submission is generally limited to issues around land occupied as a residential dwelling or dwellings. Expressions such as "foreigner" are used in a general sense and do not refer to the technical meanings in legislation.

The scope of this submission is limited to *direct* freehold land transactions.

The ECG representatives have sighted a draft submission by the Law Council of Australia's Business Law Section and the Australian Bankers Association. The ECG supports and endorses the comments made in those submissions subject to any specific comments in this submission.

## PRINCIPAL ISSUES

1. The ECG does not accept the assumption that, in the absence of empirical evidence, there is a material compliance problem. The ECG accepts that gathering data on foreign investment is a sensible idea, but setting up a complex and expensive compliance regime without first identifying the problem and the extent of it, is not a cost effective methodology and will inevitably result in unintended detrimental consequences. It should be a relatively simple matter for an appropriate agency to randomly sample a representative number of recent residential land transactions and past foreign approvals to identify if there is systemic non-compliance and the extent of it.
2. The ECG has not seen any evidence or statement from government in the last 12 months or so that justifies an expensive compliance regime.
3. An appropriate methodology is to systematically identify and quantify the non-compliance and ensure that any solution is cost effective and proportionate to the non-compliance especially if the cost of the enforcement is not undertaken by government but passed onto innocent third parties. In this case the proposed compliance costs appear to be designed to be passed onto third parties. This will have the perverse effect of making land property more expensive for first home buyers and other parties selling and purchasing land when ECG understands that the objective of the provisions is to make homes more affordable.

4. The ECG accepts that there may be parts of the community who perceive that there is a compliance problem although this perception is not generally shared or supported, in its view, by the members of its constituent bodies. The ECG suspects that the perception is being driven by unsuccessful auction bidders despairing at the affordability of dwelling prices and assuming that the successful bidder may be purchasing illegally. The underlying problem is the current real high price of dwellings in the larger capital cities.
5. The ECG is opposed to any suggestion of making third parties liable for the acts or omissions of the principal parties other than for the current penalties for aiding and abetting the commission of an offence. There will be a substantial transaction cost to all Australians to the extent that lawyers, conveyancers and financiers are burdened by additional risk and compliance obligations.
6. The independence of lawyers (and licensed/registered conveyancers who are involved in carrying out a similar but more limited function) is as important to a free society as the independence of the judiciary. Lawyers, conveyancers and financiers should not be required to act as compliance officers for the Government or to have a judicial or administrative role. It is a fundamental conflict of roles.
7. There will be an increased red tape risk and compliance cost to all land transactions if the parties representatives need to establish that Australian nationals and residents are entitled to purchase land as well as the status of those who may not be Australian nationals or residents. The cost will increase if the other parties to the transaction and their respective representatives also need to establish the status of Australians and foreigners alike (and that each party is also compliant with the conditions of a FIRB approval).
8. The ECG believes that attempting to use the State land registries as foreign investment data bases will be practically impossible. The protection and integrity of the current land registries in each state should not be compromised or put under any additional risk by the extension of a data collection system for other agencies purposes. However, ECG does not object in principle to the creation of a non-public data base within government for the purposes of administering, monitoring and ensuring compliance with foreign investment in real estate and acquiring land registry and state revenue office data for verification audits.
9. The proposed introduction of application fees, and in particular their amount, will create a substantial barrier to property ownership by foreign residents and will deter compliance. It will also impose a cost on business especially for off-the-plan bulk approvals and for companies bringing specialist staff to the country.
10. The ECG suggests that consideration be given to providing that the fees proposed for foreign residents are linked to and payable on successful settlement of the purchase.
11. There appears to be ample opportunities to make other improvements in the performance and efficiency in the foreign investment approvals system. For example, granting approvals to purchase a residence rather than a particular one (even if the approval may restrict the residence to a particular type, geographic area or price range).

12. Insufficient attention appears to have been devoted to identifying the persons who are to be subject to the regime and whether it is directed to foreign nationals, foreign residents as defined, foreign residents for tax purposes and whether or not some of those categories of persons may be Australian nationals or Australian residents for tax purposes.
13. There are other areas of the legislation and policy that appear ripe for review but time and scope do not allow further consideration at this time.

## **SUMMARY OF PRINCIPAL ISSUES**

1. The primary cause for concern by some members of the community will not be alleviated by imposing additional red tape compliance and risk costs that will impact on all Australians.
2. Additional red tape should not be imposed until a non-compliance problem has been identified and quantified and a cost benefit analysis undertaken on the additional compliance cost to ensure that the compliance costs on the vast majority are not grossly disproportionate to the enforcement on a small minority.
3. Imposing liability on third parties over and above existing aiding and abetting offences is opposed.
4. There is no evidence to support additional civil penalties at this time.

The proposed fees should be approval, not application, based.

## **SUBMISSION**

The ECG recommends that prior to the proposed changes to the current system that the following occurs:

1. An investigation and collection of evidence to support the need to make the proposed changes to the existing system.
2. Dependant on the findings of that investigation, a further consultation process on an exposure draft of any other amendments to legislation.

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<sup>i</sup> Property Exchange Australia Ltd