

Executive Summary

At a time of heightened public interest in foreign investment, it is critical that the Australian regulatory system provides certainty, predictability, transparency and confidence. It is important that the Australian public, and potential foreign investors, have confidence in Australia's system for administering foreign investment applications.

The committee notes that one of the specified roles of the Foreign Investment Review Board (FIRB) is to 'foster an awareness and understanding, both in Australia and abroad, of the policy and the FATA' (*Foreign Acquisitions and Takeovers Act 1975*). The committee believes that public debate about foreign investment should be facilitated by the availability of information and therefore in Chapter 2 recommends that FIRB do more to inform the community of how Australia's foreign investment regime operates and how Australia benefits from foreign investment.

Recommendation 1

The committee recommends that FIRB develop a more effective communication strategy to improve public understanding of the risks and benefits of foreign investment to Australia. This strategy should also provide additional information about how foreign investment decisions are made and provide information about the emergence of sovereign wealth funds and state-owned entities internationally.

Confidence in the foreign investment review process could also be strengthened through a higher degree of parliamentary scrutiny. The committee acknowledges that FIRB publishes an annual report for tabling in Parliament, which provides information on the administration of foreign investment policy, the approval process, and statistics for applications and decisions for the period. The committee notes that the last FIRB report was tabled in parliament 14 months after the years to which it refers.

Recommendation 2

The committee recommends that the Minister require FIRB to be more assiduous in producing a timely annual report.

Historically, one of the reasons Australia has relied upon foreign investment is because it has had shallow domestic capital markets, relative to the large size of its natural resources. This continues to be the case particularly when it comes to capital intensive sectors such as the mining industry. The committee considers that it is critical that Australia continue to be seen as a country that welcomes foreign investment and that it remains an attractive and competitive place to invest. The committee believes that foreign investment is critical to the development of Australia's industries and infrastructure and has significant benefits for the Australian community at large.

The committee also believes that the best way for Australia to manage the new capital flows that have stemmed from the emergence of sovereign wealth funds and state-owned entities is through developing robust domestic legislation. In Chapter 3 of the report the committee recommends that the government look at tightening *Foreign*

Acquisitions and Takeovers Act 1975 (FATA) legislation to deal with complex acquisitions where takeovers of smaller strategic assets may be masked by an application which, in total, does not represent more than 15 per cent, and therefore does not trigger review.

Recommendation 3

The committee recommends that the government tighten the FATA legislation to deal with complex acquisitions where takeovers of smaller strategic assets may be masked by an application which, in total, does not represent more than 15 per cent, and therefore does not trigger review. The committee would like FIRB to give adequate consideration to the interaction between the various components of an acquisition.

The committee believes that the current regulatory framework for assessing foreign investment proposals, whether they are made by private commercial interests, sovereign wealth funds or state-owned entities, is sufficient. The committee considers that the combined powers of the *Foreign Acquisitions and Takeovers Act 1975*, *Foreign Acquisitions and Takeovers Regulations 1989*, *Trade Practices Act 1974* and laws related to transfer pricing and environmental and worker protection, are sufficient to provide for the robust assessment of foreign investment applications and satisfactory regulation of the conduct of foreign investors. The committee is also of the belief that, having considered all the evidence, the system of case-by-case assessment, based on the national interest, has also served Australia well.

The committee considers that the chief virtue of the national interest test is its flexibility. Its unwritten or undefined character—the fact that it is a negative test—enables it to adapt more easily to changing circumstance. A prescriptive test with specific criteria would not allow this degree of flexibility. The committee also believes that the national interest test should continue to focus on the commercial use of an asset and not upon its ownership.