

Submission to the Treasury Consultation “Strengthening Australia’s Foreign Investment Framework”

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I welcome the opportunity to comment on the proposals for improvement of foreign investment administration. While they represent some incremental progress, there remains a commitment to unlimited foreign investment, with no indication that the new measures will limit its extent. At best, it will prevent some of the worst cases and cover the costs of reviewing proposals.

The government’s approach to foreign investment is ideological, based on beliefs that are unsubstantiated. The discussion paper asserts:

“Foreign investment provides additional capital for economic growth, creates employment opportunities, improves consumer choice and promotes healthy competition, while increasing Australia’s competitiveness in global markets.”

I argue that,

1. by inflating the value of all land, foreign investment drains local capital that would be available for productive investment, by diverting it into unproductive land purchase or inflated rents.
2. While some Australians are certainly employed by foreign investors, it is more likely that the total employment available to Australians is diminished by foreign investment. The inflated land values increase input costs generally, and the inflow of money inflates the value of the Australian dollar, both reducing competitiveness of Australian businesses. Businesses taken over by foreign entities tend to be ‘rationalised’ with the loss of many jobs deemed to duplicate functions of overseas-based staff.
3. Imported goods have always given consumers wide choice. Foreign takeovers have led to a narrowing of choice, with many local products taken off the market in favour of those produced wherever the profit margin is greatest.
4. The elimination of many small businesses, either by amalgamation into large foreign-owned entities, or by the loss of custom to local manufacturers who were bought out, is not healthy competition, it is competition to the death of Australian enterprise.
5. By inflating the Australian dollar and Australian land values, Australia becomes less competitive in global markets. The once renowned innovativeness of Australian enterprise is being lost in the homogenised, simplified industrial sector that remains of the multinational-dominated landscape. The presence of large multinationals dominating most niches makes entry of new small enterprise very difficult. This is not a competitive environment.
6. By increasing the size of domestic mortgages and the total amount of residential mortgage debt being serviced by Australians, foreign investment is contributing to choking of consumer demand in our economy, constraining economic growth.

Foreign investment is investment for the benefit of the foreign entity. The proportion of cases where there is a synergistic benefit to the Australian public interest is probably small. The case-by-case testing of benefit currently lacks sufficient criteria to evaluate public interest accurately.

There is never a shortage of domestic capital for the purchase of productive assets at a price commensurate with their income-generating potential. To allow foreign buyers to offer a price above what the domestic market can justify undermines the capacity of Australians to purchase land and businesses at a viable price. It is good for the seller, and the seller may spend the money in the local economy, but this is equivalent to printing money in its inflationary effect (simply adding dollars to the pocket of selected individuals, without any goods or services exchanged for them). However, compared with quantitative easing, it places the money in the hands of relatively privileged people, exacerbating inequality, whereas government could choose to place the money to increase spending-power of the underprivileged. I am not advocating quantitative easing, I am merely arguing that foreign investment in land is not true economic growth.

Where foreign buyers may see a structural advantage in purchasing Australian businesses, it is usually through vertical integration with their overseas activities. Vertical integration always carries the risk of transfer-pricing, diminishing the tax yield of production in Australia.

The sale of land to foreign entities has an inflationary effect without contributing any productive capacity to Australia. This is true of both residential and agricultural property.

Where it is argued that foreign investors will inject needed capital to build up an agricultural enterprise, the inability of Australians to do this indicates a market failure which governments in the past would address through industry support. If the expansion of a new agricultural enterprise requires facilitated investment in R&D, processing and marketing, this is what strategic government support should do and did in the past. The ideological perspective that governments should not meddle with industry development has so far failed to provide a track record of success, to compare with past hands-on strategies. At the same time, the government sees fit to meddle with market pricing of land, by stacking demand in favour of vendors, to the great detriment of prospective Australian buyers.

Foreign Investment in Rural Property

I welcome the introduction of a national foreign ownership register for agricultural land. It may be a first step toward limiting the pace and extent of foreign ownership, which is at the heart of public concern but is so far not given any attention in the framework.

I also welcome the lower threshold of \$15 million in cumulative value of rural land, triggering a requirement for prior approval. However, whether this stems the ongoing alienation of Australia's agriculture or merely a bureaucratic hurdle depends entirely on the criteria set for approval or rejection. It is also still too high to prevent the unfettered transformation of Australian agriculture from predominantly farmer-owned to corporate owned. Almost all farmer-owned properties will go under the radar. They will be aggregated into corporate holdings, never again likely to be available for farmers to buy in. Some argue this is for the good of productivity. It is also likely to further shrink the economies of rural towns. The social implications of this transformation have not been adequately aired.

It should be recognised that land bought by a foreign investor is generally less likely to come back on the market and be available to local producers, than land bought by a neighbour or prospective farmer. Particularly foreign government entities may have very long-term and agenda with criteria quite different to local evaluations of commercial value. They may also

have very different effective cost of money. These features make the competition between prospective local buyers and foreign buyers very unequal.

The threshold of over \$1 billion for non-government investors from those countries with which we have trade agreements is a treasonous abrogation of sovereignty. The current government's failure to demand reciprocal rights on many concessions in bilateral agreements is lamentable.

Foreign Investment in Residential Real Estate

Foreign purchasers of Australian real estate has been justified by the argument that they increase the supply of housing for Australian residents. This is a myth. It is the occupiers of housing who create the demand, not the owners. Without tenants, there would not be property investors. Without foreign investors, there would be lower prices, resulting in more tenants stepping forward to purchase housing. If developers are finding difficulty getting sufficient purchasers to buy off the plans, it is because they are not willing to allow the market to set the price. For government to acquiesce to provide foreign buyers for them is to take sides in market manipulation, against the interests of their constituents.

There is a large amount of latent demand by Australians wishing to purchase housing, who have been priced out by housing inflation. Foreign investors are one source of this inflation. The others are population growth, driven by immigration quotas which are extremely high by the standards of other countries, and the perverse tax policies which advantage property investors over owner-occupiers – including the capital gains tax discount, tax deductibility of interest and depreciation, and negative gearing facility. Without these policy-driven inflators of property values, housing would be expected to rise in value somewhere between the CPI and median wage growth, and the CPI would be lower (due to the effect of land values on input costs) meaning that more of each year's productivity growth would translate into real wealth.

It is a perversity of accounting that rising land values are not regarded purely as inflation. They clearly reduce the lifetime purchasing capacity of young Australians compared with their parents' generation. The knock-on effect on input costs for business undermines international competitiveness of Australian industry. Housing inflation has been used by Prime Ministers to tell Australians that they have never been wealthier. This is an insulting and out-of-touch misinterpretation of an intergenerational theft.

Australia's land endowment has not changed one iota. Each citizen's enjoyment of it is diminished by population growth and foreign ownership. While improvements to land may increase its real value, these have not outpaced inflation. It follows that the increase in real price represents a transfer of wealth from the users of land (residents and farmers) to the traders of land (developers and speculators, including foreign investors). This is a highly regressive transfer, contributing significantly to rising inequality of wealth in Australia.

The government's regulation of foreign investment in housing has been a farce. As a recent [article](#) argued,

“The way to dodge FIRB used to be to walk down the main street yelling “I’m going to buy an Australian property illegally”. But in recent weeks since the regime change in FIRB’s directive, it has become a little more complex using trust structures.”

The truth is that the government has preferred to turn a blind eye to who is in this country and what they are doing. The lack of an inventory of land ownership, capable of identifying the numbers and areas involved in any category of foreign, corporate, trust or individual ownership, is testament to wilful blindness. Effective regulation and evidence-based policy adjustment cannot be achieved without such an inventory.

Regarding Consultation question 1:

Thus I welcome the intention to engage the Australian Taxation Office in data-matching to detect instances of potential non-compliance with the foreign investment rules. The effectiveness of this endeavour is yet to be demonstrated.

Regarding Consultation question 2a:

It is essential that the compliance system has access to all relevant data, regardless of the jurisdiction in which it is collected.

The lack of consistency between areas of government data collection should be systemically addressed. An identity card system would facilitate streamlining of data matching. While the smart-card idea was politically tainted when it was proposed many years ago, it is time to revisit the concept of a (dumb) card, especially as more and more people have difficulty proving their identity for a range of purposes, for instance if they are in shared accommodation and lack a drivers' license. The card would hold no personal information other than biometrics needed to confirm whether the carrier is the person to whom the card belongs. It would be issued to all residents, and to all visitors on entry. Its reference number would replace medicare number, tax file number, pension or concession card number and visa number with a single identifier. This would not mean that personal information would be more widely accessible – any officer using the card to identify a person would only have access to the same databases they currently do, they would simply identify the relevant entry in that database more easily. However, those authorities needing to cross-reference data, such as migration movements with land title transactions, or visa types with employment and salary records, would be readily able to do so.

Regarding Consultation question 2b:

The compliance should be funded from application fees.

Regarding Consultation question 2a:

Since I do not think that foreign investment even in new housing developments is in Australia's national interest, streamlining such applications is not a priority.

Regarding Consultation question 3:

Likelihood of being caught is more important than size of penalty. Given the very large financial gains associated with many property investments, I would suggest adding visa cancellation and inability to re-enter the country for a significant period (2 years?), and a 'poor character' record that prevents successful application for permanent residency. These measures are much more likely to be deterrent.

Regarding Consultation question 5:

I regard the proposed fees as appropriate and should be applied without exception. Regarding multiple applications, where an application is required in order to bid at auction, the approval may apply to any single property meeting the criteria, hence multiple applications and withdrawals would not be necessary.

Regarding Consultation question 6:

Penalties should certainly be applied for failure to market to Australians. Specific criteria should be specified to define an adequate level of marketing, to ensure that these properties are actually visible to Australians in the property market.

Regarding Consultation question 2b:

The definition of agribusiness should include not only first-stage processing (including dairy, canneries and preparation of frozen, candied, juiced, dried or otherwise preserved products) but also upstream rural supply businesses and research and consulting services.

For example, AgResearch, a successful local company, was fairly recently sold to a foreign company, with the result that most local jobs and services were shed. Whether the negative outcomes of this purchase would have been anticipated by the FIRB is questionable, but it should have come under scrutiny.

Regarding Consultation question 10:

The current definition of urban and rural land is absurdly perverse.

It is absurd to define any area of land, no matter how remote to urban services, as 'urban' if it has not been used for primary production. Are our deserts legally urban land? The presumption here is that freehold titles or leases have only been granted with the intention that the land be used for primary production, but this is not captured in the definition, which ignores that land which was never suitable (but could conceivably become suitable for a new primary enterprise, such as renewable energy, and thus desirable to a foreign investor).

Legislation should be pursued which defines urban land as land currently zoned by a local authority as available for housing or commercial development. Rural or agricultural land should be defined as all land that is not urban land.

Regarding Consultation question 11:

The proposed definition of 'residential land' is weak as 'to be used' is a speculative term that is not time-bound. It should refer only to land that is currently zoned by a local authority as available to be used for housing. Residential land would therefore be a subset of urban land. Any wider definition would allow speculative purchase of peri-urban land that has not yet been zoned for development.

Regarding Consultation question 12:

If 'residential land' is a subset of 'urban land', that leaves 'other urban land' as that zoned for industry, and that currently in public ownership. If 'agricultural land' is a subset of 'rural land', being all land that is not zoned urban by a local authority, then 'other rural land' becomes anything outside urban boundaries that is not used for agricultural production. I'm not sure that it makes a lot of sense to lump these two 'others' together in one category.

I would support screening from dollar zero for all foreign investments. I therefore support it applying to 'other' land that is either rural or urban.

No category of land should be exempt from foreign investment approval.

Regarding Consultation question 13:

- a) The Register should record all details of the identity of the seller and purchaser, but it would not be necessary to disclose addresses on a public site. Published information should include the property location, area, date of sale, purchase price, name, country of citizenship and residency visa status (if any) of the purchaser, and what other land holdings the purchaser has, if any.
- b) It is important that land already in foreign ownership is eventually included in the register. The processes of capturing new and prior sales can proceed simultaneously.
- c) Without proof of Australian citizenship or permanent residency, the purchaser should be deemed foreign.

Concluding remarks

While some measures currently proposed are welcome, the government has failed to articulate a view on the extent of foreign ownership which might be considered an unacceptable impediment to Australians' access to land, or how any limit might be placed on foreign ownership.

It may appear hyperbolic to anticipate a time when most Australians are tenants of foreign landlords and employees of foreign businesses. Yet the foreign investment framework appears to offer no structural impediment to an otherwise inevitable and rapid realisation of such a dystopia.

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