



Australian Government

Australian Government response to the
Senate Economics References Committee report:
Foreign Investment Review Framework

February 2017

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Response to Recommendations

Recommendation 1

The committee recommends that Treasury publish guidance about the foreign investment review assessment process including information on the steps and features of the process.

- Agree. Treasury will review the Foreign Investment Review Board's website and publish additional information about the assessment and screening process for foreign investment proposals.

Recommendation 2

The committee recommends that the Treasury publish the Treasurer's rationale behind both positive and negative decisions regarding foreign investment, in order to inform the public and to instil public and investor confidence in the review process.

- Noted. The Government will continue its practice of considering issuing a press release when making a decision on a significant foreign investment proposal that is in the public domain. However, the Government does not comment on matters of national security.
- The Foreign Investment Review Board and Treasury will continue to engage with foreign investors, their representatives and Australian businesses to provide information on the operation of the foreign investment framework.
- Maintaining confidentiality is fundamental to the operation of the foreign investment framework as information provided by applicants is one of the key sources of information used to assess the national interest. Publishing the rationale behind the Treasurer's decision on every foreign investment proposal could cause harm for both foreign investors and Australian businesses and discourage future disclosure of information. This would hinder the Government's ability to assess the national interest.
- The *Foreign Acquisitions and Takeovers Act 1975* limits the disclosure of identifying information obtained by Treasury in administering that Act, except in certain limited circumstances such as where the information is already in the public domain. The Commissioner of Taxation undertakes certain functions under the Act under a delegation from the Treasurer. When he does so, the information the Commissioner obtains is protected by the taxpayer confidentiality provisions in taxation law. These rules also generally operate to prohibit the disclosure of identifying information to the public.

Recommendation 3

The committee recommends that the Australian Government establish a publicly available Agricultural Land Register for all foreign-owned agricultural land to increase public confidence in Australia's foreign investment review framework and its effectiveness in safeguarding Australia's long term economic and security interests.

- Partly agree. The Government has recognised community concern around foreign ownership of Australia's agricultural land. On 1 July 2015 the *Register of Foreign Ownership of Agricultural Land* (Agricultural Land Register) was established and is administered by the Australian Taxation Office.
- On 7 September 2016 the Government released the first report on the Agricultural Land Register. The report included aggregated data collected through the Agricultural Land Register on the number of properties that are foreign owned, by land size, by state and territory, and by land use as at 30 June 2016.

- The rules for the protection of taxpayer information in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* apply to information in the Agricultural Land Register. These rules, together with the Register publication and reporting requirements in the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*, strictly limit the disclosure of any information that might identify any investor. This means that the Commissioner of Taxation, the Treasurer and the Minister for Agriculture are generally prohibited from disclosing identifying information from the Register to the public.

Response to Senator Xenophon's Recommendations

Recommendation 1

That Australia adopt a national interest test modelled on New Zealand laws that set out national interest criteria, including the economic effects of foreign versus local investment for a particular project, and a robust consideration of defence and national security issues for strategically sensitive assets including ports, water and electricity utilities.

- Noted. The current national interest test is broad and the Treasurer can and does take into account a range of factors when considering whether a proposal may be contrary to the national interest. The factors considered as part of the national interest test are not legislated and doing so would limit the flexibility of the framework.
- On 23 January 2017, the Government announced a new strategy to identify and manage national security risks in critical infrastructure.
- A new Critical Infrastructure Centre has been established within the Attorney-General's Department to work collaboratively with states, territories and industry, providing coordinated national security advice to government and assistance to industry on threats and risk management strategies. The Government will also consult with states, territories and industry on measures to support the Critical Infrastructure Centre, with a view to gaining a clearer picture of infrastructure ownership in Australia and ensuring appropriate actions are taken to protect our most critical assets.
- The Government's reforms will improve certainty for businesses and investors, by providing clarity about national security review processes for critical infrastructure, including through the foreign investment framework.

Recommendation 2

The Foreign Acquisitions and Takeovers Act 1975 should be amended to require any credible locally based bid for an asset to be taken into account before approving any foreign based bid.

- Noted. The national interest test is broad and the Treasurer can and does take into account a range of factors when considering whether a proposal is not contrary to the national interest. This includes considering the entire sale process. The factors considered as part of the national interest test are not legislated and doing so would limit the flexibility of the framework. The Government does not think the *Foreign Acquisitions and Takeovers Act 1975* needs to be amended to require formal consideration of the bidding environment.