

**Submission on the Australian Government's Consultation Paper**  
**2017 Legislative Package for Australia's future Foreign Investment Framework.**

by

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Thank you for circulating a Consultation Paper on the issues under consideration. My comments are directed to the section headed "Low Sensitivity Business Investment" (Para 62-83) and specifically the suggestion that, de facto, Australia relax scrutiny over some investments in Australia by foreign governments.

From a national interest perspective, and to protect Australia's sovereignty, all investments by foreign governments or their entities should, as now, be subject to prior screening. In other words, the current approach, described in para 69 and para 77, should continue to apply. If fees and regulatory burden have become an issue then the processes for levying such fees should be addressed, but not by watering down the requirement that foreign governments be required to seek prior FIRB approval for investments in Australia.

Rarely are any government's investment motivations purely commercial, and Australia has to retain the right to assess, case by case, ahead of the investment occurring, the motives, implications and national interest consequences for us of each such investment. In particular state capitalism is a different creature from profit oriented free enterprise capitalism: we need to maintain awareness of that and retain the ability to respond accordingly if necessary.

Once Australia derogates from the existing blanket provision it becomes very difficult to have second thoughts and reinstate meaningful scrutiny. This is especially so in the environment created by the recent trade agreements where issues are seen as interconnected, and any change as affecting "bilateral relations", even when that step is not precluded by an agreement text.

The Consultation Paper is ambiguous as to what is meant by "\$100 million per transaction". The need to retain scrutiny applies to numerous conceivable circumstances including many where the intent is to purchase a direct interest in assets of an Australian business of even one tenth of this amount.

To take one example, start-up enterprises in Australia will have low early capitalisation, usually well below \$100m. This cohort will include companies commercialising Australian developed, almost certainly taxpayer funded or subsidised, R&D. Many countries, but China in particular, put great store in capturing new technology and research for their own development. In China, overseas companies are often required to share information about their proprietary technology as a pre-condition to obtaining permission to invest. Also indicative of this preoccupation is the allocation of \$US150 billion to allow China to purchase cutting-edge semiconductor technology abroad through takeovers.

From Australia's perspective it is highly desirable that our home grown technology be best harnessed in the interest the agile, innovative, economy the government rightly wants Australia to

become. Foreign investment, including by foreign governments, may indeed contribute to this objective of ours. But giving carte blanche to foreign governments to buy into such innovative enterprises, very probably to secure rights to their technology, and only be obliged to inform the Australian government after the event, would be unwise in the extreme and against our national interests. This is but one example.

The existing arrangements applying to foreign government investment should be retained.

Finally, I'd note all Australians are "stakeholders" in these important issues.

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29 March 2017