



REIA SUBMISSION ON FOREIGN INVESTMENT REFORM (PROTECTING AUSTRALIA'S NATIONAL SECURITY) BILL 2020

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REIA RESPONSE TO FOREIGN INVESTMENT REFORM (PROTECTING AUSTRALIA'S NATIONAL SECURITY) BILL 2020

The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia.

REIA's members are the State and Territory Real Estate Institutes, through which around 75% of real estate agencies are collectively represented. REIA represents an integral element of the small business sector. 99% of real estate agencies are small businesses and 11% of all small businesses in Australia are involved in real estate. Only 0.6% of businesses employ 50 or more persons.

The Census records the Rental, Hiring and Real Estate Services Industry employment as sitting at around 120,000 which includes business brokers, property managers, principals, real estate agents and representatives. Property contributes \$300 billion annually in economic activity.

REIA is committed to providing research and well-informed advice to the Federal Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market.

Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 exposure draft

The REIA welcomes the consultative approach taken by Treasury in relation to the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* (the Bill). The REIA notes the intent of the legislation to address:

- National security risks,
- Strengthen compliance and enforcement powers; and
- Streamline investment in non-sensitive businesses.

Introduction

The REIA thanks Treasury for the opportunity to provide a response to the Bill.

Foreign investment and the residential property sector have an important role to play for Australia's long term economic growth and the national housing supply.

Given the national security focus of the Bill, REIA has four key recommendations in relation to the Bill's approach to streamlining compliance and regulation where it intersects with the residential property sector.

REIA's considerations focus on a level playing field for the residential property sector in Australia's foreign investment framework, including a recommended consultation period for fee changes.

National security test

The focus of the Bill is to establish a new national security test and address increasing national security concerns. REIA understands many other nations have reviewed their frameworks for screening and the way in which these frameworks are applied.

REIA understands the need for Australia to keep pace with emerging risks and global developments and that it is in this context the Government announced its intention to strengthen our Foreign Investment Framework in June 2020.

Foreign investment, the Australian economy and housing supply

Foreign investment is vital to the strength of the Australian economy. As a nation, Australia depends on international capital to finance the pool of investment that underpins Australia's economic growth. Over the past 25 years, the gap between Australia's domestic savings and its investment needs has been between 4 and 5% of GDP.

International capital has made up the difference. Filling the gap between what Australia saves and invests has allowed Australia to have higher rates of economic growth than would otherwise be possible.

The impact of foreign investment in real estate on Australia's economic growth and housing supply is not well understood by many. It has traditionally generated a number of myths particularly in a rising market.

Foreign investment in real estate increases the amount of capital available for investment in the construction of new dwellings and buildings increasing the demand for, and supply of, housing stock.

With the total value of residential building work done in the June quarter 2020 dropping to its lowest level since 2014, we need to ensure that any changes to foreign investment policy and its administration regarding residential property does not exacerbate the decline in building activity and compound the contraction in Australia's GDP.

With foreign investment in residential real estate increasing supply beyond what domestically generated demand would do, it is an important factor in maintaining business confidence and giving developers the security to embark on new projects.

This investment contributes significantly to the economy, creating employment and additional economic activity in the construction industry and related upstream and downstream sectors, providing impetus for the development of related social infrastructure.

Recommendations

REIA provides the following recommendations in relation to the Bill's approach to streamlining compliance and investment:

- REIA supports the proposal to expand the infringement notices regime to cover all types of foreign investments.
- REIA supports the proposal to introduce a new Tier 3 infringement which applies to residential real estate where the market value is more than \$5 million.
- REIA supports the proposal to increase penalties applicable to residential real estate provided they are treated no differently to other forms of investment.
- REIA strongly suggests that if fee increases beyond CPI changes are to be set by regulation that a mechanism be introduced that provides for stakeholder input.

Improving compliance and additional enforcement tools

The proposed changes contain measures to ensure that the Treasurer and the Commissioner of Taxation have appropriate powers to administer the *Foreign Acquisitions and Takeovers Act 1975* (FATA). This includes enhancements to the Treasurer's power to give directions to investors to prevent or address breaches of conditions

Currently, the FATA allows for less serious breaches of the foreign investment rules to be punishable by way of an infringement notice, but only for residential real estate investments. The proposal is to amend the FATA to expand the infringement notices regime to cover all types of foreign investments.

The REIA believes that residential real estate investments should be treated no differently to other forms of investment in terms of infringements.

REIA supports the proposal to expand the infringement notices regime to cover all types of foreign investments.

It is also proposed to introduce a new Tier 3 infringement where there is a breach discovered through active compliance or information provided by a member of the public. In the case of residential real estate a Tier 3 infringement notice may be issued where the market value is more than \$5 million.

REIA supports the proposal to introduce a new Tier 3 infringement which applies to residential real estate where the market value is more than \$5 million.

Penalties

It is proposed that civil and criminal penalties be increased to ensure an appropriate deterrent and that the infringement notice regime is extended to cover all types of breaches; and be calculated as a proportion of the benefit gained.

For residential real estate, it is proposed that the maximum financial penalty be increased by a factor of 2.5 to be the greater of 25% of the consideration for the residential land acquisition or 25% of the market value of the interest in the relevant residential land. Currently the rate is 10%.

REIA notes that this is a large increase and as such will be a greater deterrent than the current rate.

REIA strongly suggests that, as is the case with infringements, residential real estate investments should be treated no differently to other forms of investment.

REIA supports the proposal to increase penalties applicable to residential real estate provided they are treated no differently to other forms of investment.

A fairer and simpler framework for foreign investment fees

Foreign investor activity in residential real estate has declined the last four years – from over 40,000 applications in 2015/16 to 7,500 in 2018/19. This is due to a range of factors outside of the scope of this Bill.

It is however during this period that these fees were introduced. Anecdotal information from agents operating in this area is that the cumulative impact of Commonwealth and State government fees has decreased the demand from foreign investors. This overall negates the benefit of foreign investment by reducing the supply response.

The proposal is to include “refinements” to the fees applicable for foreign investors to ensure that fees are fairer, simpler and to introduce new fees efficiently. The fee amounts are, however, to be set by regulation. Being after the proposed legislation is passed, this would not allow for stakeholder comment nor the usual Parliamentary scrutiny.

REIA believes that market conditions as well as stakeholder input should be taken into consideration in increasing fees beyond normal CPI changes.

Whilst the REIA understands the rationale for setting fees by regulation, there needs to be a clear mechanism for stakeholder consultation before any changes to the fee schedule.

REIA strongly suggests that if fee increases beyond CPI changes are to be set by regulation that a mechanism be introduced that provides for stakeholder input.