



Australian Government

Australian Government response to the
Senate Economics Legislation Committee report Foreign
Acquisitions and Takeovers Legislation Amendment Bill
2015 and related Bills [Provisions]

August 2018

Response to the Committee's Recommendations

The Senate Economics Legislation Committee report 'Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related bills' had a number of recommendations. Most of these recommendations were dealt with in the debate and by passing the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related bills. The key pages of Hansard which address most of the recommendations are page 8601 (2015) and page 13540 (2015).

The following recommendations still require a response.

Dissenting Recommendation 5

That the Government amend the *Foreign Acquisitions and Takeovers Fees Imposition Bill 2015* to establish a more consistent, simpler and streamlined approach to fees.

The Australian Government **notes** this recommendation.

One of the key elements of the Government's reform package was the introduction of application fees to improve service delivery and ensure that Australian taxpayers no longer have to fund the cost of administering the system.

Since the reforms were implemented, the Government has been seeking ongoing feedback from stakeholders on how the reforms are working in practice. The introduction of fees was a significant change, and feedback highlighted the complexities for end-users in estimating the correct fee for commercial transactions.

These issues were recently addressed through a suite of legislative and regulatory amendments to streamline and simplify the operation of the foreign investment framework including the fee regime (*Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining and Other Measures) Bill 2017*). The changes were announced in the 2017-18 Budget and took effect from 1 July 2017. The changes were informed by a four week public consultation and stakeholder engagement process in March 2017 and further consultation following the 2017-18 Budget.

Xenophon Recommendation 1

That Australia's Foreign Investment Policy and the associated regulations be amended to change the threshold test for purchases of agricultural land of \$15 million to \$5 million.

The Australian Government **does not support** this recommendation.

Lowering the threshold to \$5 million would put Australia in breach of our free trade agreement commitments.

The \$15 million screening threshold for agricultural land is cumulative. Once a foreign investor owns \$15 million of agricultural land, all subsequent purchases will be scrutinised regardless of the value. Bringing lower value properties into the FIRB net in the way

suggested would involve scrutiny of smaller size properties that are not of particular interest which would unnecessarily increase compliance costs for investors and generate further administration costs for government.

All direct interests and land acquisitions by foreign government investors (regardless of origin) continue to be screened from \$0.

Xenophon Recommendation 2

That the criteria used in New Zealand's Overseas Investment Act 2005 be broadly adopted to ensure greater levels of accountability and transparency.

The Australian Government **does not support** this recommendation.

The foreign investment framework seeks to strike an appropriate balance between maintaining community confidence in foreign investment, protecting the national interest and ensuring that Australia remains an attractive destination for foreign investment by providing certainty for investors.

Consistent with this objective, the Government reviews foreign investment proposals on a case-by-case basis to ensure they are not contrary to the national interest. The case-by-case approach is a fundamental part of the foreign investment framework because the national interest can change over time.

In practice, the Government typically considers a range of factors when assessing foreign investment proposals (including national security, competition, taxation, impact on the economy and the community and the character of the investor). These are outlined in the Policy.

Xenophon Recommendation 3

That there be an urgent review by an independent body (such as the Productivity Commission) to examine the advantages foreign firms may have in investing in Australian agricultural land and any relative disadvantages local investors may have. Furthermore, the ability of superannuation funds to invest in agribusiness needs to be examined.

The Australian Government **notes** this recommendation.

Through the foreign investment screening process, the Australian Government is ensuring that the sale of Australian agricultural land and agribusinesses is consistent with the national interest. In particular, the Government seeks to ensure that Australian investors are afforded the opportunity to participate in the sales process for agricultural land and agribusinesses.

Whether superannuation funds invest in long term capital assets, including Australian agricultural assets, is a matter for the fund's trustees, who have a fiduciary duty to make investment decisions in the best interests of all members of the fund. Trustees have to

formulate and give effect to an investment strategy that considers, among other things, the risk and return, diversification and liquidity of investments.

The Government will monitor developments in this area to ensure Australian investors, including superannuation funds, continue to be able to invest in Australian agriculture should they choose to do so.