



**Submission to the Foreign Investment & Trade Policy Division
Markets Group -The Treasury - March 2015**

Strengthening Australia's Foreign Investment Framework

To:

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INTRODUCTION

The Electronic Conveyancing Group (ECG) is a collaborative between the Australian Bankers Association, Australian Institute of Conveyancers and the Law Council of Australia. It was formed with the vision of becoming a collaborative voice of the primary user groups of the National Electronic Conveyancing Platform operated by PEXAⁱ. The primary users are the banks, licensed conveyancers and legal practitioners.



The ECG aims to be the principal driver of both the legal and practical issues associated with the introduction of electronic conveyancing. It will deal with both PEXA and ARNECCⁱⁱ directly



OVERVIEW

The ECG has chosen to broaden its mandate, on this occasion, to review and submit a response to the Treasury on the options paper dated February 2015 on **Strengthening Australia's Foreign Investment Framework**. The ECG met with Mr David Earl and Mr Derek Coleman of the Foreign Investment and Trade Policy Division of The Treasury on March 17th, 2015 to discuss the options paper.



The ECG has chosen not to follow the consultation questions presented but has intended to highlight the global issues and support their constituent bodies more detailed submissions. The ECG's primary focus is to protect the interests of their constituent bodies to ensure there is no additional compliance burden or risk placed upon their respective members or consumers. This submission is generally limited to issues around land occupied as a residential dwelling or dwellings. Expressions such as "foreigner" are used in a general sense and do not refer to the technical meanings in legislation.

The ECG representatives have sighted a draft submission by the Law Council of Australia's Business Law Section and the Australian Bankers Association. The ECG supports and endorses the comments made in those submissions subject to any specific comments in this submission.

PRINCIPAL ISSUES

1. The ECG is not able to accept all assumptions in the options paper that, in the absence of empirical evidence, there is a compliance problem. The ECG accepts that gathering data on foreign investment is a sensible idea, but setting up a complex and expensive compliance regime without first identifying the problem and the extent of it, is not a cost effective methodology and will inevitably result in unintended detrimental consequences. It should be a relatively simple matter for an appropriate agency to randomly sample a representative number of recent residential land transactions and past foreign approvals to identify if there is systemic non-compliance and the extent of it.

2. The ECG accepts that there may be parts of the community who perceive that there is a compliance problem although this perception is not supported, in its view, generally shared by the members of its constituent bodies. The ECG suspects that the perception is being driven by unsuccessful auction bidders despairing at the affordability of dwelling prices and assuming that the successful bidder may be purchasing illegally. The underlying problem is the current real high price of dwellings in the larger capital cities.
3. The ECG is opposed to any suggestion of making third parties liable for the acts or omissions of the principal parties that is over and above the current penalties for aiding and abetting the commission of an offence. There will be a substantial transaction cost to all Australians to the extent that Lawyers conveyancers and financiers are burdened by additional risk and compliance obligations.
4. The independence of lawyers (and registered conveyancers who are involved in carrying out a similar but more limited function) is as important to a free society as the independence of the judiciary. Lawyers, conveyancers and financiers should not be required to act as compliance officers for the Government or to have a judicial or administrative role. It is a fundamental conflict of roles.
5. There will be a increased red tape risk and compliance cost to all land transactions if the parties representatives need to establish that Australian nationals and residents are entitled to purchase land as well as the status of those who may not be Australian nationals or residents . The cost will increase if the other parties to the transaction and their respective representatives also need to establish the status of Australians and foreigners alike (and that each party is also compliant with the conditions of a FIRB approval).
6. The ECG believes that attempting to use the State land registries as foreign investment data bases will be practically impossible. The protection and integrity of the current land registries in each state should not be compromised or put under any additional risk by the extension of a data collection system for other agencies purposes. However, ECG does not object in principle to the creation of a non-public data base within government for the purposes of administering, monitoring and ensuring compliance with foreign investment in real estate and acquiring land registry and state revenue office data for verification audits.
7. The proposed introduction of application fees and in particular their amount will create a substantial barrier to foreign property ownership and will deter compliance. It will also impose a cost on business especially for off-the-plan bulk approvals and for companies bringing specialist staff to the country.
8. There appears to be ample opportunities to make improvements in the performance and efficiency in the foreign investment approvals system. For example, granting approvals to purchase a residence rather than a particular one (even if the approval may restrict the residence to a particular type, geographic area or price range). There are other areas of the legislation and policy that appear ripe for review but time and scope do not allow further consideration at this time.

SUMMARY OF PRINCIPAL ISSUES

1. The primary cause for concern by some members of the community will not be alleviated by imposing additional red tape compliance and risk costs that will impact on all Australians.
2. Imposing liability on third parties over and above existing aiding and abetting offences is opposed.
3. There is no evidence to support additional civil penalties at this time.
4. The proposed fees should be approval, not application, based.

EXPECTATION

The ECG recommends and would expect that prior to the proposed changes to the current system that the following occurs:

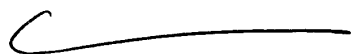
1. An investigation and collection of evidence to support the need to make the proposed changes to the existing system.
2. Dependant on the findings of that investigation, an exposure draft of the legislation is subject to a further consultation process.

DISCLAIMER

This submission does not respond to every consultation question in the aforementioned Options Paper and as such any non-response to a question is not to be interpreted as acquiescence to any particular statement made in any question in the Options Paper.

CONTACT INFORMATION

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