



Australian Government

Strengthening Australia's Foreign Investment Framework

Options Paper
February 2015

The yellow highlighting are notes in relation to the consultation paper itself as preparation the submission responses (blue). As such in each section they provide some additional contextual information for remarks.

The blue highlighted comments in relation to the consultation questions are my responses as invited.

Green means strong support for the consultation paper commentary comment.

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CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

Interested parties are invited to lodge written submissions on the issues raised in this paper.

Submissions will be made available on the Treasury website unless you clearly indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details for the submission, including an email address and contact telephone number where available. While submissions may be lodged electronically or by post, electronic lodgement is strongly preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

Closing date for submissions: Friday 20 March 2015

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1. INTRODUCTION

1. The Government welcomes foreign investment because it plays an important and beneficial role in the Australian economy.
 - É Foreign investment provides additional capital for economic growth, creates employment opportunities, improves consumer choice and promotes healthy competition, while increasing Australia's competitiveness in global markets.
 - É Foreign investment can help deliver improved competitiveness and productivity by introducing new technology, providing much needed infrastructure, allowing access to global supply chains and markets, and enhancing Australia's skills base.
2. The Government, like previous governments, supports a case-by-case approach to the consideration of foreign investment proposals to ensure that they are not contrary to the national interest. This case-by-case approach, underpinned by Australia's Foreign Investment Policy and associated legislation, is designed to maximise investment inflows while serving to protect Australia's national interest.
 - É Additional information regarding Australia's foreign investment framework is provided in Section 2 of this options paper.
3. While this framework provides scope to review — and if necessary, block or impose conditions upon — certain foreign investment proposals, the Government recognises that there is still a high level of public interest and community concern regarding ownership of certain types of Australian assets and businesses.
 - É Foreign ownership of Australian agricultural land and agribusinesses in particular consistently attracts strong public interest, and ignites broader debate as to the benefits foreign investment in agriculture provides to Australia.
 - É Similarly, there has been growing community concern around foreign investment in residential real estate in recent years, particularly in the context of rising house prices in major cities.
4. The House of Representatives Standing Committee on Economics *Report on Foreign Investment in Residential Real Estate* (House Economics Committee report) found that the current framework (which distinguishes between purchases of new and established dwellings) should be retained, but made a number of recommendations to improve data collection, compliance and enforcement activities.
5. **In this regard, the Government is considering the following proposed reforms:**
 - É increasing compliance and enforcement activities around foreign investment in residential real estate through the creation of a specialised investigative and enforcement area within the Australian Taxation Office; and
 - É amending the *Foreign Acquisitions and Takeovers Act 1975* (the Act) to provide for increased criminal penalties and new civil pecuniary penalties and infringement notices.

The Government is also considering the introduction of application fees for all foreign investment proposals in line with a user pays system. This means the cost of regulation will no longer fall on Australian taxpayers.

These measures are outlined and discussed in more detail in Sections 3, 4 and 5.

6. The Government is also implementing its commitments to increase transparency and scrutiny around foreign investment in **agriculture**. As announced in the joint press release of the Prime Minister, Treasurer and Minister for Agriculture of 11 February 2015, from 1 March 2015, foreign investors must obtain prior approval for a proposed acquisition of an interest in rural land where the cumulative value of the rural land owned by the foreign investor, including the proposed purchase, is \$15 million or more.
7. The Government will also establish a foreign ownership register that will start collecting information on existing foreign ownership and subsequent transactions of all interests in agricultural land from 1 July 2015. The Government will work with the states and territories so that the register will ultimately use land title transfer information from existing state and territory land title collection processes. This will remove duplicative registration processes for property owners.
8. The Government also intends to introduce a new \$55 million screening threshold for foreign investment in Australian agribusinesses. The changes around foreign investment in agriculture are discussed in more detail in Section 6.
9. This options paper seeks feedback from interested stakeholders on the proposed changes to the foreign investment framework in relation to residential real estate and agriculture. It also seeks feedback on options to simplify the Act, consistent with the Government's commitment to deregulation.

2. AUSTRALIA'S FOREIGN INVESTMENT REVIEW FRAMEWORK

10. Australia's foreign investment review framework consists of the *Foreign Acquisitions and Takeovers Act 1975* (the Act), its associated Regulations, and Australia's Foreign Investment Policy (the Policy). The framework allows the Government to review foreign investment proposals on a case-by-case basis to ensure that they are not contrary to Australia's national interest.
11. The Act allows the Treasurer to block foreign investment proposals found to be contrary to the national interest, or impose conditions on an investment to address national interest concerns.
12. The Policy provides guidance to foreign investors to assist their understanding of the review process. It also identifies a number of investment categories that need approval even if the Act does not apply. These non-legislative requirements in the Policy are administered in the same way as those in the Act.
13. The Foreign Investment Review Board (FIRB), a non-statutory advisory body, is responsible for examining proposals and advising on the national interest implications of investment proposals. Responsibility for making decisions rests with the Treasurer.
14. The national interest, and hence what would be contrary to it, is not defined in the Act. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest. The Policy outlines the factors that are typically considered when assessing foreign investment proposals in any sector. These include: national security; competition; other Government policies such as taxation; the impact on the economy and community; and the investor's character.
15. The Policy also outlines additional factors that are typically considered when assessing foreign investment proposals in agriculture. These include:
 - É the quality and availability of Australia's agricultural resources, including water;
 - É land access and use;
 - É agricultural production and productivity;
 - É Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
 - É biodiversity; and
 - É employment and prosperity in Australia's local and regional communities.
16. When examining foreign investment proposals, Treasury (which provides secretariat support for the FIRB) consults with Commonwealth, state and territory government departments, national security agencies and authorities with responsibilities relevant to the proposals. Advice and comments provided by such agencies are important in assessing the implications of proposals and in particular, in determining whether they raise any national interest issues.

17. The Act provides a 30-day statutory period for a decision to be made on proposals lodged under the Act, with up to a further 10 days after the day of the decision to advise the applicant of the decision. The Act also provides for the issue of an Interim Order, which extends the available examination period and prohibits the proposal for up to 90 days. Interim Orders are usually issued to allow the applicant additional time to provide adequate information for assessing the proposal. Proposals subject to the Policy but not the Act are decided (where possible) within a 30-day period.
18. The Act makes it an offence to acquire, or increase, a substantial shareholding or acquire certain interests in Australian real estate without seeking foreign investment approval. Consequently, where the investor intends to make an offer, tender or bid for shares or real estate, they need to ensure that the relevant agreements are conditional on foreign investment approval, or alternatively ensure they seek prior approval. The types of foreign investment proposals that generally need to be notified and require prior approval include:
- É acquisitions of an interest of 15 per cent or more in an Australian business or corporation that is valued above \$252 million (which is indexed annually);
 - É acquisitions of an interest in an offshore company whose Australian subsidiaries or gross assets are valued above \$252 million (indexed annually);
 - É all direct investments, new businesses and acquisitions of interests in land by foreign government investors, regardless of the value of the investment;
 - É investments of 5 per cent or more in the media sector, regardless of value;
 - É acquisitions of developed commercial property valued above \$55 million (indexed annually) or \$5 million if heritage listed; and
 - É acquisitions of vacant commercial land.
19. A screening threshold of \$1,094 million (also indexed annually) applies to investments by non-government foreign investors from Chile, Korea, Japan, the United States and New Zealand in non-prescribed sensitive sectors¹. This threshold will also be extended to China on entry into force of the China-Australia Free Trade Agreement.

2.1 FOREIGN INVESTMENT IN RESIDENTIAL REAL ESTATE

20. All foreign persons also require prior approval to purchase residential real estate. The Government's policy is that foreign investment in residential real estate should increase Australia's housing stock. Consistent with this aim, different rules apply depending on whether the property is a new dwelling or whether it is an established dwelling.
- É All foreign persons (temporary residents and non-residents) can apply to purchase vacant residential land for development and newly constructed dwellings in Australia.

¹ The normal business threshold of \$252 million applies in the prescribed sensitive sectors (media; telecommunications; transport; defence and military related industries; and the extraction of uranium or plutonium or the operation of nuclear facilities).

É Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia. However, reflecting the fact that foreign persons who are temporary residents need a place to live during their time in Australia, temporary residents can apply to purchase **one established dwelling** to use as a residence while they live in Australia. The purchase of an established dwelling is conditional on the foreign person selling the property when they leave Australia. Temporary residents cannot acquire established dwellings for investment (rental) or holiday purposes.

21. Under the Act, it is a requirement that each proposed acquisition of real estate be individually notified and reviewed, unless specifically exempt. However, property developers (Australian or foreign) can apply for an advanced off the plan certificate to sell all new dwellings in a development of 100 or more dwellings to foreign persons, provided the development is marketed locally as well as overseas. Foreign persons purchasing dwellings in a certified development do not require separate approval.

2.2 PENALTIES FOR NON-COMPLIANCE

22. Currently, only divestment orders and criminal penalties apply for breaches of the Act. The Act provides powers to enforce the decisions made, including the ability to:

- É order the divestment of shares, assets or property acquired without prior foreign investment approval, where the acquisition is considered contrary to the national interest (currently, any capital gain from the divestiture is kept by the foreign investor);
- É prosecute a foreign person who failed to obtain prior approval for a purchase;
- É prosecute a foreign person who failed to comply with an order to sell shares, assets or property; and
- É prosecute a foreign person who failed to comply with conditions attached to an approval.

23. The maximum penalties that may be applied by the Courts to individuals on conviction for a breach of the Act (such as failing to obtain prior approval, or comply with a condition of approval) is a fine of 500 penalty units (currently \$85,000), imprisonment of two years, or both. In the case of a corporation, a multiplier of five applies to the maximum fine for an individual.

24. Provisions of the *Crimes Act 1914* and the *Criminal Code Act 1995* also make it an offence to provide false or misleading information, for example in applications seeking foreign investment approval.

2.3 COST OF ADMINISTRATION

25. Currently, no fees or charges apply to foreign investment applications. The cost of administering the foreign investment review framework is funded through consolidated revenue.

26. Certain Government agencies also use taxpayer funded resources to provide advice and assistance to FIRB as part of the screening process. This is in addition to other regulatory processes such as those conducted by the Australian Competition and Consumer Commission.

2.4 FURTHER INFORMATION

27. Further information on Australia's foreign investment review framework is provided in Australia's Foreign Investment Policy (which is available at the Foreign Investment Review Board website at www.firb.gov.au).

3. PROPOSED RESIDENTIAL REAL ESTATE REFORMS

3.1 NEW COMPLIANCE AND ENFORCEMENT AREA IN THE AUSTRALIAN TAXATION OFFICE

28. The House Economics Committee report made a number of recommendations to improve data collection, compliance and enforcement activities around foreign investment in residential real estate. It recognised that while the Foreign Investment Review Board and Treasury were well placed to continue undertaking the upfront screening of residential real estate applications, its internal processes and lack of specialist investigative and enforcement staff have weakened the enforcement of the foreign investment rules.
29. The Government believes there would be benefits to creating a new specialist, dedicated compliance and enforcement area to support the functions of the Foreign Investment Review Board and Treasury Secretariat. Having considered a range of possible alternatives, the Government considers the **Australian Taxation Office** to be the best place to undertake this role, as it has staff with appropriate compliance and enforcement skills, sophisticated data-matching systems and experience in pursuing court action. This would involve the creation of a new unit within the Australian Taxation Office. The costs of administering this new function would be offset through the introduction of application fees on foreign investment proposals (see the section below on application fees).
30. The Australian Taxation Office (in consultation with Treasury and relevant agencies) would be tasked with using its sophisticated data matching systems to detect instances of potential non-compliance with the foreign investment rules, drawing on land titles data from the states and territories, its own taxpayer information, foreign investment approvals data and immigration movements data. Possible breaches would be followed up by compliance staff, with a range of penalties available to be applied as appropriate (see the section below on penalties).
31. The Government is also proposing to amend the *Foreign Acquisitions and Takeovers Act 1975*, the *Taxation Administration Act 1953*, an Instrument under the *Migration Act 1958* and any other relevant legislation to ensure that data can easily be shared between agencies. The *Foreign Acquisitions and Takeovers Act 1975* would also be amended to ensure that the Australian Taxation Office is able to issue statutory demands for information where it has reason to believe that a person has information about a matter that may breach the foreign investment rules.

Consultation Questions:

1. The Government seeks feedback on the creation of a new compliance and enforcement area in the Australian Taxation Office, including:
- a. Is the creation of a new compliance and enforcement area required to address concerns with foreign investment framework compliance? YES

Are there alternative approaches that should be considered? Pro-active random attendance at established home auctions with powers of audit on the spot – given the very large auction markets in Melbourne and Sydney. This would be a pro-active disincentive for would be illegal transactions. The Sale of Land Act may need amendment to enable this at the signing stage of

any contract and before settlement.

2. Are there other legislative impediments preventing data sharing between relevant agencies?
- a. Should the Treasurer and the Australian Taxation Office have authority to obtain information, documents and evidence that relate to potential breaches of the foreign investment framework? YES - ABSOLUTELY
 - i. Are there alternative approaches that should be considered?
 - b. Should the creation of a new compliance and enforcement area be funded by the Australian taxpayer or through the introduction of application fees on foreign investors? NOT AT ALL BY AUSTRALIAN TAX PAYERS BY EVEN PROFITABLY BY THE FOREIGN INVESTOR INTERESTS - WHETHER PERSON OR CORPORATE ENTITY OR GOVERNMENT.
 - i. Are there alternative approaches that should be considered?
 - c. Do the proposed changes appropriately balance the need for additional scrutiny on certain foreign investment applications while continuing to streamline the process for approving investments in single developments? NOT QUITE: REFER COMMENTS RE AUCTIONS.
 - a. A proactive fear deterrent is required to protect the proper ordering of the real estate property market ... and such on the spot auditing at contract signing and before settlement would also put real estate agents and all 3rd parties on alert. If it were a bone fide investor they would have nothing to fear.
 - b. If a foreign investor *with approval to purchase* were at an auction then these documents need to be able to be presented at this early stage. For example, if a dummy Australian company were being used – or another 3rd party person – all this could be capable of being flushed out at the start or any auction process.
 - c. Importantly the market in residential real estate *needs confidence* about the participation of *all potential purchasers* given the clear highly probable rampant activities of foreign nationals in the established market in recent times at least (2006 ff). Such informal discussions, suspicions, and rumours of complaint are commonplace at auctions in major cities it is believed. This current situation actually serves to fuel racism and intolerance in the Australian community).
 - d. Additionally, given the very active Chinese investors in existing real estate and the strident advertising of commercial activities assisting the purchase of real estate on 457 visas in the media, open discussion about any such suspicions is currently curtailed by the *anti-racism provisions* in other ACTS currently in force.
 - e. Real Estate Agents, although hopefully always intending to act with integrity to serve both vendor and purchaser in the market, have a conflict of interest in being *commercially rewarded* for acting in the *vendor's best interests*. The auditing approach on the spot here recommended would tighten up the effective regulation of the policy and address further in practice the *common belief* that “the risk is OK if one does not get caught”. The widely perceived risks of getting caught are indeed low it is suggested. Even with a prosecution approach through the courts this is likely not to be materially addressed. The approach maybe good for lawyers fees but beyond most of the existing

residential real estate market and so of little motivational benefit for good practice by all parties concerned.

- i. Are there alternative approaches that should be considered?
 - a. It is wrong that foreign investors buying into new real estate developments (even off the plan) do not have to obtain foreign investment approval. This opens up all kinds of undetected corruption possibilities and is not in the National Interest because the market is not open and fair for all Australian citizens.

4. PENALTY REGIME

32. Currently, only divestment orders and criminal penalties apply for breaches of the *Foreign Acquisitions and Takeovers Act 1975*. Criminal penalties are difficult to pursue due to the high burden of proof required. There are also loopholes within this structure that allow foreign investors who illegally purchase property to profit from breaking the rules.
33. The House Economics Committee report recommended that the Government introduce a civil penalty regime for breaches of the foreign investment framework as it applies to residential real estate, with the following features:
- É pecuniary penalty orders imposed under this penalty regime to be calculated as a percentage of the property value to act as an effective deterrent; and
 - É the regime to apply to foreign investors and any third party who knowingly assists a foreign investor to breach the framework.
34. The House Economics Committee also recommended that where a foreign owner divests an illegally purchased established property, any capital gain from the sale of that property be retained by the Government.
35. The Government is considering introducing civil pecuniary penalties and infringement notices to provide extra enforcement tools and to make it easier to pursue punishment. Divestment orders (including the ability to direct who the property can be sold to) would still be available, but in addition the Government would have the option to pursue either criminal penalties or civil penalties through the courts. Tougher penalties together with increased compliance and enforcement activities should help deter non-compliance.
36. The Government considers that foreign investors that breach the rules should not be allowed to profit from selling an illegally acquired property. Therefore, the civil pecuniary penalties should be set at a significant level. Infringement notices could apply to breaches that are more administrative in nature and could be tiered depending on whether the foreign investor voluntarily comes forward or is detected through compliance activities. Maximum criminal penalties should be adjusted accordingly.
37. The penalty regime being considered for breaches of the rules around residential real estate is set out in the table below. The indicative new penalties would supplement the existing criminal penalties (currently, 500 penalty units (\$85,000), imprisonment of two years or both).

Breach of current rule	Proposed penalties
<p>Foreign person acquires new property without approval <i>(approval would normally have been granted)</i></p> <p>Temporary resident acquires established property without approval <i>(approval would normally have been granted)</i></p>	<p>There is currently no civil pecuniary penalty or infringement notice regime under the Act for these breaches.</p> <p>Tier 1 Infringement notice — Voluntary complied by coming forward Individual — 12 penalty units (\$2,040) plus the relevant application fee. Company — 60 penalty units (\$10,200) plus the relevant application fee. NOT HIGH ENOUGH – DOUBLE THEM.</p> <p>Tier 2 Infringement notice — Identified through compliance activities Individual — 60 penalty units (\$10,200) plus the relevant application fee. Company — 300 penalty units (\$51,000) plus the relevant application</p>

	<p>fee. NOT HIGH ENOUGH – DOUBLE THEM.</p> <p>Civil Penalty Maximum civil penalty is the greater of the following:</p> <ul style="list-style-type: none"> ▪ 10 per cent of purchase price in addition to the relevant application fee; or NOT HIGH ENOUGH – NOT HIGH ENOUGH – INCREASE BY AT LEAST 50%.. 15% ▪ 10 per cent of market value of the property in addition to the relevant application fee. NOT HIGH ENOUGH – INCREASE BY AT LEAST 50%. 15% <p>Either an infringement notice or civil penalty would be sought but not both.</p>
<p>Non-resident acquires established property or temporary resident acquires more than one established property <i>(not normally approved)</i></p> <p>Temporary resident fails to sell established property when it ceases to be their principal residence <i>(breach of conditional approval)</i></p> <p>Temporary resident rents out an established property <i>(breach of conditional approval)</i></p> <p>Failure to begin construction within 24 months without seeking extension <i>(breach of conditional approval of vacant land/ redevelopment applications)</i></p>	<p>There is currently no civil pecuniary penalty under the Act for these breaches.</p> <p>Civil Penalty Maximum civil penalty is the greater of the following:</p> <ul style="list-style-type: none"> ▪ the capital gain made on divestment of the property; ▪ 25 per cent of purchase price; or ▪ 25 per cent of market value of the property. <p>NOT HIGH ENOUGH – INCREASE TO AT LEAST 30%.</p>
<p>Developer fails to market apartments in Australia <i>(breach of advanced-off-the-plan certificate)</i></p>	<p>There is currently no civil pecuniary penalty or criminal penalty under the Act for this breach.</p> <p>Civil — Individual 250 penalty units (\$42,500). Criminal — 500 penalty units (\$85,000), imprisonment of two years or both.</p> <p>Corporations subject to multiplier of five for each penalty.</p> <p>THESE PENALTIES ARE FAR TOO LENIENT GIVEN THE LARGE SCALE OF 100 UNIT + DEVELOPMENTS. DOUBLT THEM AT LEAST.</p>
<p>Property developer fails to comply with reporting conditions associated with approval <i>(breach of advanced-off-the-plan certificate)</i></p> <p>Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties <i>(a new rule)</i></p>	<p>There is currently no civil pecuniary penalty or infringement notice regime under the Act for these breaches.</p> <p>Tier 1 Infringement notice — Voluntary complied by coming forward Individual — 12 penalty units (\$2,040) Company —60 penalty units (\$10,200)</p> <p>THESE PENALTIES ARE FAR TOO LENIENT GIVEN THE LARGE SCALE OF 100 UNIT + DEVELOPMENTS. DOUBLT THEM AT LEAST.</p> <p>Tier 2 Infringement notice — Identified through compliance activities Individual — 60 penalty units (\$10,200). Company — 300 penalty units (\$51,000).</p>

	<p>THESE PENALTIES ARE FAR TOO LENIENT GIVEN THE LARGE SCALE OF 100 UNIT + DEVELOPMENTS. DOUBLT THEM AT LEAST.</p> <p>Civil penalty Maximum civil penalty: Individual — 250 penalty units (\$42,500). Corporations — subject to a multiplier of five.</p> <p>THESE PENALTIES ARE FAR TOO LENIENT GIVEN THE LARGE SCALE OF 100 UNIT + DEVELOPMENTS. DOUBLT THEM AT LEAST.</p>
<p>Third party assists foreign investor to breach rules</p>	<p>There is currently no civil pecuniary penalty under the Act for this breach.</p> <p>Civil penalty Specific offence to be included in the <i>Foreign Acquisitions and Takeovers Act 1975</i>. Pursue court action to impose a civil penalty.</p> <p>The maximum civil penalty would be:</p> <ul style="list-style-type: none"> ▪ 250 penalty units (\$42,500) for individuals. ▪ Corporations subject to multiplier of five. <p>THESE PENALTIES ARE FAR TOO LENIENT AS A MAXIMUM. DOUBLE THEM AT LEAST.</p> <p>Criminal Penalty Knowingly assisting another person to commit a criminal offence is an offence under Section 11.2 of the Criminal Code (maximum penalty is 500 penalty units (\$85,000), imprisonment of 2 years, or both).</p> <p>THESE PENALTIES ARE FAR TOO LENIENT AS A MAXIMUM. DOUBLE THEM AT LEAST.</p>

Consultation Questions:

3. The Government seeks feedback on the proposed changes to the civil penalty regime, including:
 - a. Would a civil penalty regime be an effective addition to the rules to ensure compliance and assist with enforcement?
 - b. Are the proposed penalty amounts appropriate and likely to serve as a deterrent?
 - c. Is the proposal to extend accessorial liability an effective way to increase compliance?
 - i. Are there alternative approaches that should be considered?
 - d. Is it necessary to increase the existing criminal penalties in light of the proposed new civil penalties?

4.1 EXTENDING CIVIL PENALTIES AND INFRINGEMENT NOTICES TO BUSINESS APPLICATIONS

38. The Government is considering extending civil pecuniary penalties and infringement notices to business, commercial real estate and agricultural investment applications. While there is limited evidence to suggest non-compliance in these areas, civil pecuniary penalties and

infringement notices will supplement the current criminal penalties and provide additional enforcement options should the need arise.

39. Civil pecuniary penalties could apply where a foreign person acquires a business or acquires rural land without approval. As with residential real estate the infringement notice regime could be tiered and could apply to more minor breaches, for example where a foreign investor voluntarily comes forward.
40. The penalty regime being considered for breaches of the rules around business, commercial real estate and agricultural investments are set out in the table below. The indicative new penalties would supplement the existing criminal penalties (currently, 500 penalty units (\$85,000), imprisonment of two years or both) — with corporations subject to a multiplier of five.

Breach of New Rule	Proposed penalties
<p>Foreign person makes an acquisition without approval <i>(approval would normally have been granted)</i></p> <p>Foreign person fails to comply with a condition of approval</p>	<p>There is currently no civil pecuniary penalty or infringement notice regime under the Act for these breaches.</p> <p>Tier 1 Infringement notice — Voluntary complied by coming forward</p> <p>Individual — 12 penalty units (\$2,040) plus the relevant application fee. Company — 60 penalty units (\$10,200) plus the relevant application fee.</p> <p>Tier 2 Infringement notice — Identified through compliance activities</p> <p>Individual — 60 penalty units (\$10,200) plus the relevant application fee. Company — 300 penalty units (\$51,000) plus the relevant application fee.</p> <p>Civil Penalty</p> <p>Pursue court action to impose a civil penalty. The maximum civil penalty would be:</p> <ul style="list-style-type: none"> ▪ 250 penalty units (\$42,500) for individuals. ▪ Corporations subject to a multiplier of five. <p>Either an infringement notice or civil penalty will be sought but not both.</p>
<p>Foreign person fails to comply with an order under the Act</p>	<p>There is currently no civil pecuniary penalty under the Act for this breach.</p> <p>Civil Penalty</p> <p>Pursue court action to impose a civil penalty. The maximum civil penalty would be:</p> <ul style="list-style-type: none"> ▪ 250 penalty units (\$42,500) for individuals. ▪ Corporations subject to a multiplier of five.
<p>Third party assists foreign investor to breach rules</p>	<p>There is currently no civil pecuniary penalty under the Act for this breach.</p> <p>Civil penalty</p> <p>Specific offence to be included in the <i>Foreign Acquisitions and Takeovers Act 1975</i>. Pursue court action to impose a civil penalty.</p> <p>The maximum civil penalty would be:</p> <ul style="list-style-type: none"> ▪ 250 penalty units (\$42,500) for individuals.

	<ul style="list-style-type: none">▪ Corporations subject to multiplier of five. <p>Criminal Penalty</p> <p>Knowingly assisting another person to commit a criminal offence is an offence under Section 11.2 of the Criminal Code (maximum penalty is 500 penalty units (\$85,000), imprisonment of 2 years, or both).</p>
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Consultation Questions:

4. Should the new penalty regime be extended to business, commercial real estate and agricultural applications? **YES – WITH 50% TO 100% DOUBLING OF PENALTIES.**

5. INTRODUCING FEES ON FOREIGN INVESTMENT APPLICATIONS

41. Currently, no fees apply to foreign investment applications. The House Economics Committee report recommended that the Government apply a administrative fee to the current screening for all foreign purchases of residential real estate, including purchases by temporary residents, to fund compliance and enforcement activities.
42. While noting the broad benefits to the community that arise from foreign investment, the Government considers that the cost of administering the foreign investment framework should not be borne by the Australian taxpayer. The Government is considering charging a fee on all foreign investment applications to fund screening, compliance and enforcement activities and improved data collection around foreign investment.
43. It is proposed that fees up to the level outlined in the table below will be charged on foreign investment applications, with final levels of fees to be set following consultation. In the event an application falls into a number of categories, it is proposed that the highest fee apply.
- É For residential real estate proposals and rural land acquisitions, a fee of up to \$5,000 would apply to properties valued under \$1 million. Applications to purchase a property equal to or greater than \$1 million would be subject to a fee of up to \$10,000. This would then increase in increments of up to \$10,000 for each additional \$1 million in property value. MULTIPLES? \$7,500 AND \$15,000 OR MORE IS A ONCE ONLY FEE FOR SEVERAL (? N) **
- É Property developers seeking an advanced off-the-plan certificate would be levied an application fee based on the number of dwellings sold to foreign investors.
- É Business, commercial real estate and agribusiness investments would be subject to application fees between \$10,000 up to \$100,000 depending on the size and sector.
44. To simplify collection of the fees, foreign investors would be required to pay the application fee before their foreign investment application is processed. The 30 day statutory time period for the Foreign Investment Review Board to assess an application would begin after the payment has been received.
45. There are currently situations where some applicants may be required to submit multiple applications. For example, bidders at auctions need prior foreign investment approval because bids normally have to be unconditional. Some applicants will therefore submit a number of approvals at the same time so they can bid at several auctions during a weekend. The Government will consider options to minimise the impact on these applicants.
46. Similarly, in some circumstances, business proposals are currently withdrawn and re-submitted in order to extend the statutory deadline, particularly if there are concerns about the issuing of an Interim Order, the details of which would be published in the Commonwealth of Australia Gazette. The Government will consider options to ensure that these applicants are not required to pay multiple application fees for the same proposal. ?? **

Possible fee schedule for foreign investment applications **INCREASE ALL**

Sector	Type of investment	Proposed fee of up to:
Residential	Residential real estate properties less than \$1 million	\$5,000 \$7,500 OR \$10,000 IF A ONCE OFF ONLY NEEDED **
	Residential real estate properties equal to or greater than \$1 million	\$10,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Residential real estate properties equal to or greater than \$2 million	\$20,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Residential real estate properties equal to or greater than \$3 million	\$30,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Residential real estate properties equal to or greater than \$4 million	\$40,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Residential real estate properties equal to or greater than \$5 million	\$50,000; then \$10,000 incremental fee increase per additional \$1 million in property value Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Advanced off-the-plan certificates	Fee based on rates above and number of units sold to foreign purchasers. THIS WHOLE SYSTEM NEEDS OVERHAUL: WITNESS THE HIGH RISE IN MAJOR CAPITAL CITIES WHICH MAY SUIT FOREIGNERS BUT ARE USUALLY OUT OF CHARACTER WITH TRADITIONAL AUSTRALIAN CULTURE.
Business	Commercial real estate	\$25,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Business acquisitions in non-sensitive sectors	\$25,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	New business proposals	\$10,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Any other interest in urban land (except residential real estate)	\$10,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **

Sector	Type of investment	Proposed fee of up to:
	Business acquisitions in sensitive sectors ²	\$25,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
	Business acquisitions where the value of the target's assets are greater than \$1 billion.	\$100,000 Increase by 50% to 100% IF A ONCE OFF ONLY NEEDED **
Agriculture	Rural land less than \$1 million	\$5,000
	Rural land equal to or greater than \$1 million	\$10,000 incremental fee per \$1 million in rural land value
	Investments in agribusinesses	\$25,000 or \$100,000 for agribusiness acquisitions where the value of the target's assets are greater than \$1 billion.

47. It is difficult to make comparisons with other countries because of the wide range of policies that are used to regulate foreign investment. However, Australia would not be the only country that imposes a fee or charge on foreign investors.

Screening arrangements in other countries

Country	Screening mechanism	Application fee
United States	The Committee on Foreign Investment in the United States (CFIUS) reviews foreign investment transactions that threaten to impair US national security.	No
Canada	Industry Canada reviews inward foreign investment based on whether the investment will be of 'net benefit' to Canada. In addition, since 2009 all foreign investment into Canada, regardless of value, has been subject to a national security review.	No
New Zealand	The Overseas Investment Office assesses applications from overseas persons who want to invest in sensitive New Zealand assets.	Land applications for overseas investments in sensitive land (includes farm land): \$12,573 to \$22,489 Significant business assets: \$11,142 to \$13,187 Investments in fishing quota: \$36,800

² The prescribed sensitive sectors are: media; telecommunications; transport; defence and military related industries; and the extraction of uranium or plutonium or the operation of nuclear facilities.

Japan	Japan operates a post-establishment notification process for certain foreign investment in sectors. Pre-establishment notification is required in sectors related to public order, public safety and national security.	No
Hong Kong	Hong Kong has no specific prior approval requirement for the acquisition of residential real estate by foreign persons. However, it introduced several measures in 2012 to curb speculation in the property market and discourage interest from overseas buyers.	<p>Additional buyer's stamp duty on foreigners: 15 per cent of purchase price or market value (whichever is higher).</p> <p>Special stamp duty on properties sold within four years: 4 to 16 per cent of purchase price, depending on when sold.</p>
Singapore	In Singapore, foreign persons require prior approval to acquire 'restricted residential property'.	<p>Additional buyers stamp duty on non-permanent residents: 15 per cent of purchase price or market value (whichever is higher).</p> <p>Special stamp duty on properties sold within three years: 10 to 20 per cent of purchase price, depending on when sold.</p>

Consultation Questions:

5. The Government seeks feedback on the introduction of fees on foreign investment applications, including:
- a. Should the Government charge application fees on foreign investors to fund screening, compliance and enforcement activities? Absolutely – these activities should not be subsidised in any way by taxpayers. Indeed we should make a modest profit out of this given the mega investments made over the years by Australian tax-paying citizens to support government infra-structures and local facilities at multiple levels. Moreover as this consultation paper makes clear Australians cannot even buy into land in other countries (such as China): these relationships must be to some extent reciprocal at least.
 - i. Are there alternative approaches that should be considered?

Should there be any exceptions to paying the application fee? NO – especially any foreign persons buying into off-the-plan certificates foreign approved residential development – even new ones.
 - b. Is the level of the fees appropriate? NO. Generally they are not a deterrent to bad, unethical or even illegal practice given the transaction sums involved. Increase all by between 50% and 100%.
 - i. Will the fees act as a barrier to foreign investment?
 - a. Not really as presently set. **On the spot random auditing at auctions and before settlement** by authorised persons from the proposed

specialist foreign area of the Taxation Department is required to proactively deter illegal and unethical practices.

b. Alternatively licensed agents could be required to verify FIB documentation and approval at the point of purchase. If found to be unsatisfactory then the Sale of Land Act may need to be amended to so empower and indemnify Real Estate Agents. However, given agent conflicts of interest for vendors corruption could still occur, so 'a' seems preferable.

ii. What might be the cumulative impact on business reinvestment?

c. What options should be considered to ensure applicants that submit multiple applications (for example, bidders at auctions or business applicants that withdraw and resubmit) are not charged excessive fees? A sliding scale should be developed for this: for up to, say, 20 applications.

6. ADVANCED OFF-THE-PLAN CERTIFICATES

48. Currently, property developers can apply for an advanced off-the-plan certificate to sell new apartments in a development of 100 or more to foreign investors (the investor does not then need to obtain separate approval). These certificates are granted on the condition that the apartments are marketed in Australia, as well as overseas, to ensure that domestic buyers have the same opportunity to purchase the apartments. However, there are currently no penalties for breaching this condition.
49. The House Economics Committee report recommended a tightening of the rules around advanced off-the-plan certificates to ensure developers comply with their obligations to market properties to domestic buyers, including the introduction of penalties to deter non-compliance.
50. Recognising these concerns, the Government is proposing to strengthen enforcement options by subjecting developers to civil and criminal penalties under the Act in line with other offences (see the section above on penalties).
51. In addition, the Government is proposing to tighten the rules around the use of advanced off-the-plan certificates by limiting the value of all apartments that can be bought by a single foreign investor to \$3 million in any single development. Indexed to CPI or reviewed triannually? If foreign investors want to purchase apartments above this value, they would have to seek individual approval. Not enough. This would reduce the scope for any criminal behaviour (such as money laundering) by ensuring that high wealth investors are subject to the upfront screening process.

Consultation Questions:

6. The Government seeks feedback on the proposed changes to advanced off-the-plan certificates, including:
- a. Should penalties be introduced for developers that fail to comply with obligations to market domestically? Absolutely.
 - i. If so, what should developers be required to do to prove they have marketed domestically? This problem can be solved by requiring that all such unit investments be subject to FIR or equivalent if by foreign investors with the same limitations regarding any one development unless special application is made for multiple ownership of units (say more than 15%) in one off-the-plan certificate.

What level of penalty would be appropriate for developers that fail to comply with obligations to market domestically? Same as elsewhere provided for commercial / business developments (50% to 100% increase recommended elsewhere here in this submission). The developers will object but this is our country and ownership of our land is a basic right.

Are there alternative approaches that should be considered. Developers currently have a fundamental conflict of interest in granting unlimited sales overseas for their off-the-plan certificate / developments. This situation is entirely unsatisfactory and also against local planning (taking into account cultural and social requirements) and national interests.

7. IMPLEMENTATION OF AGRICULTURE COMMITMENTS

52. Under the current foreign investment screening framework, proposed investments by private investors in rural land and agribusinesses are subject to the same thresholds that apply to other foreign acquisitions of Australian companies or business assets. That is, \$252 million (at 1 January 2015, indexed) for proposed investments from non-free trade agreement countries and the higher threshold of \$1,094 million (at 1 January 2015, indexed) for countries where Australia has given preferential treatment through free trade agreements (United States, New Zealand, Korea, Chile and Japan). The Korea and Japan agreements (and the China agreement when it enters into force) preserve the Government's ability to apply the lower screening thresholds for agribusiness and rural land. All proposed direct investments by foreign government investors and investments in rural land must be reviewed regardless of value (see Attachment B).
53. The Government is increasing scrutiny and transparency around foreign investment in agriculture. From 1 March 2015, foreign investors must obtain prior approval for a proposed acquisition of an interest in rural land where the cumulative value of the rural land owned by the foreign investor, including the proposed purchase, is \$15 million or more. Consistent with free trade agreement commitments, this will apply to all non-government investors except those from the United States, New Zealand, Chile, Singapore and Thailand (see Attachment B). All proposed direct investments by foreign government investors, including in agriculture, will continued to be reviewed regardless of value.
54. The Government will also establish a foreign ownership register that will start collecting information on existing foreign ownership and subsequent transactions of all interests in agricultural land from 1 July 2015. The Government will work with the states and territories so that the register will ultimately use land title transfer information from existing state and territory land title collection processes. This will remove duplicative registration processes for property owners.

7.1 'AGRIBUSINESS' INVESTMENTS

55. The Government has also indicated that it will introduce a new \$55 million screening threshold (based on the value of the investment) for investments in agribusinesses. All proposed direct investments by foreign government investors, including in agriculture, will continued to be reviewed regardless of value.
56. The term 'agribusiness' is currently not used within Australia's foreign investment framework as the system generally treats all non-sensitive sectors the same. Introducing a lower \$55 million threshold will require a new definition be developed. The Government is proposing to define agribusiness with reference to the Australian and New Zealand Standard Industrial Classification (ANZSIC) codes. More information on the subdivisions and groups can be found on the Australian Bureau of Statistics' website in the document 1292.0 — Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 2.0).³

³ See [www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1292.0Main+Features12006%20\(Revision%202.0\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1292.0Main+Features12006%20(Revision%202.0)?OpenDocument).

Consultation Questions:

7. Should the definition capture all primary production businesses as well as certain first stage downstream businesses beyond the farm gate (for example, meat processing, sugar milling and grain wholesaling / storage / milling)?
8. If it is decided that the ANZSIC codes be used, which divisions (or sub-divisions, groups) of the ANZSIC codes should be included in the definition for 'agribusiness'?
9. Is there an alternative approach that should be considered to define agribusiness?

7.2 DEFINITION OF 'AGRICULTURAL LAND'

57. The new \$15 million cumulative threshold for agricultural land will initially be implemented through Australia's Foreign Investment Policy. As the term 'agricultural land' is not currently used with the foreign investment framework, the Policy will rely on the existing definition of 'rural land'.

É Currently, the Act categorises Australian land as being either 'urban land' or 'rural land'. 'Urban land' is defined simply as land that is not Australian rural land, with all land in Australia therefore captured by one of these definitions.

É 'Rural land' is defined as 'land used wholly and exclusively for carrying on a business of primary production'⁴.

58. However, by defining agricultural land with reference to exclusive ongoing use as a primary production business, this definition does not capture land used for multiple purposes or land that is suitable but not currently used for agriculture.

É For example, land that was previously used as a primary production business (including disused farmland), or is used for an additional purpose (such as a bed & breakfast on a farm or a restaurant at a winery) is not currently captured by the definition of 'rural land'.

59. To avoid pursuing interim measures such as defining or referring to 'agricultural land' under the Policy, the existing definition of 'rural land' will be maintained until legislation recognising 'agricultural land' is in place. Replacing 'rural land' with an alternative definition of 'agricultural land' requires legislative amendments to be made to the Act.
60. The Government is considering introducing a definition of 'agricultural land' that more closely reflects a common understanding of the nature of the land in the context of making legislative changes. Such a definition would need to recognise agricultural land use, both past and present, while also being closely aligned and linked to an agreed definition of 'agribusiness'.

4 The definition of a primary production business is taken from the *Income Tax Assessment Act 1997*. It refers to production resulting from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming. Primary production for the purpose of the rural land definition does not include hobby farms, 'rural residential' blocks or land used for stock agistment or mining.

- a. For example, one possible definition of agricultural land that stakeholders may wish to comment on is ‘land that during the past five years has been used for carrying on a business of primary production’. That is:
- É land used primarily for the purposes of carrying on, or otherwise supplying, an Australian ‘agribusiness’⁵;
 - É land likely to be used primarily for the purposes of carrying on, or otherwise supplying, an Australian ‘agribusiness’⁶; or
 - É land which was, in the five years prior its purchase, used primarily for the purposes of carrying on, or otherwise supplying, an Australian ‘agribusiness’.⁷
61. It is intended that the legislative definition of agricultural land would apply for both the lower screening threshold and the foreign ownership register to the extent possible.

Consultation Questions:

10. The Government seeks feedback on the proposed definition for ‘agricultural land’:
- a. Is the proposed definition of ‘agricultural land’ consistent with common understanding of the term?
 - i. Are there alternative approaches that should be considered?
 - b. Would the proposed definition provide sufficient clarity as to what constitutes ‘agricultural land’ for the purposes of Australia’s foreign investment framework?

7.3 DEFINITION OF ‘URBAN LAND’

62. As a consequence of possible changes to the definition of ‘agricultural land’, the Government is also considering the need for associated changes to the definition of ‘urban land’ (as noted above, the current definition of urban land is defined in relation to rural land, with changes to one definition necessarily impacting the other).
63. Similar to the situation for ‘rural land’ described above, the definition of ‘urban land’ diverges significantly from a common understanding of the nature of the land. ‘Urban land’ goes well beyond land used for urban property (that is, residential real estate) to capture many instances of agricultural land (as noted above) and all ‘other land’ that would not be ordinarily considered urban or rural (such as mining land and other land in rural areas not used for primary production).
64. In addition to the anticipated effect of implementing the Government’s agriculture commitments on the definition of ‘urban land’, the proposed residential real estate reforms considered in this paper will also impact the appropriateness of the current definition of ‘urban land’.

5 As defined under the Act.

6 As defined under the Act.

7 As defined under the Act.

65. In particular, the possible introduction of different penalties and fees for existing and new dwellings, on developers and other third parties and other distinct categories of residential real estate and associated stakeholders would require 'urban land' to be split into multiple separate categories. That is, the possible reforms to residential real estate compliance and enforcement would require the introduction of a new concept of 'residential land' or similar, with appropriate subcategories within this new categorisation.
66. To this end, the Government is considering introducing a new definition of 'residential land' based on a common understanding of the nature of the land. For example, one possible definition of 'residential land' could be:
 - É land (that is not agricultural land) used, or to be used, for the purposes of one or more residential dwellings.
67. The definition of 'residential land' would be further explained and clarified in Australia's Foreign Investment Policy, as published on the www.firb.gov.au website.

Consultation Questions:

11. The Government seeks feedback on the proposed definition of urban or 'residential land', including:
 - a. Is the proposed definition of 'residential land' consistent with a common understanding of the term?
 - i. Are there alternative approaches that should be considered?
 - b. Would the proposed definition provide sufficient clarity as to what constitutes 'residential land' and related subcategories (such as new and existing dwellings) for the purposes of Australia's foreign investment framework?

7.4 'OTHER LAND'

68. In conjunction with considering moving to more commonly understood definitions of 'agricultural land' and 'residential land', the Government is more broadly considering moving to a revised legislative framework that defines 'agricultural land', 'residential land' and 'other land' as separate distinct categories. This would reflect a move away from defining rural and urban land with reference to each other, while considering the need to maintain screening of all land regardless of use.
69. Depending on the ultimate definitions of 'agricultural land' and 'residential land', the scope of 'other land' is likely to include mining tenements, rural land used for non-agricultural purposes, land used for commercial property or business and vacant land not proposed for residential use. Currently most of this land (other than that captured by the existing definition of 'rural land') is subject to foreign investment screening from dollar zero.

Consultation Questions:

12. The Government seeks feedback on three possible options for the screening of 'other land':
 - a. 'Other land' be defined as all land that is not 'agricultural land' or 'residential land' and continues to be screened from dollar zero;
 - b. 'Other land' is not defined and any land that is not 'agricultural land' or 'residential land' no longer requires foreign investment approval; or
 - c. 'Other land' is defined as a subset of what is left over from 'agricultural land' or 'residential land' capturing land that remains of interest while excluding some land from screening.
 - i. If option c is pursued, what types of land should continue to be screened?

7.5 AGRICULTURAL LAND REGISTER

70. The Government has committed to establishing a foreign ownership register of agricultural land and has been developing an implementation approach in consultation with state and territory governments. The Government's proposed approach to implementing the register has been developed cognisant of the House Economics Committee report recommendation that the Government, in conjunction with the states and territories, establish a national register of residential real estate.
71. There is currently no comprehensive collection of foreign ownership of land information at any level of government. The states and territories already collect a significant amount of relevant data as part of the land title transfer process. There is however, a lack of consistency on the type of data that states and territories collect on land title transfers. The Government has been working with states and territories on options to improve consistency in the data collected on land title transfers to ensure the accuracy of data on the foreign ownership register.
72. While the Government continues to work with the states and territories so that the register will ultimately use land title transfer information from existing state and territory land title collection processes (including data on foreign ownership of residential real estate), the Government recognises the need for a timely and effective solution for implementing a foreign ownership register for agricultural land.
73. For this reason, the Government will implement a foreign ownership register of land, operated by the Australian Taxation Office, which will start collecting information on existing foreign ownership of and subsequent transactions of interests in agricultural land from 1 July 2015. Legislation would be developed requiring the notification of all existing substantial foreign interests in agricultural land (as at 1 July 2015) to an Australian Taxation Office register by 30 September 2015. Legislation would further require that from 1 July 2015, the Australian Taxation Office register be notified of any subsequent acquisitions or divestments of substantial foreign interests in agricultural land within 30 days of completing the acquisition.
74. The register would collect information such as the name and contact details of both parties, location and size of the property, size of interest acquired, country of origin of the purchaser and their Australian Business Number or Australian Company Number if applicable.

75. Concurrently, the Government will continue to work with the states and territories to ensure that from 1 July 2016, ongoing transaction information on land provided to the Australian Taxation Office register will be sourced from state and territory land titles processes. This will ensure that from 1 July 2016, land acquirers and their representatives only have to complete existing state and territory land titles processes in order to have their information collected by the Australian Taxation Office register.
76. The requirements to report existing foreign ownership holdings and subsequent acquisitions to the Australian Taxation Office are proposed to be limited to collecting information on the existing stock of agricultural land, not all land. The requirements would not apply to residential real estate due to the high volume of transactions and the significant duplication of state and territory land title processes. A stocktake of residential land is not required on account of the high turnover rate of residential properties. Reporting on the flow of residential land would be expected, over time, to provide a meaningful running stock of foreign ownership without the need for a large and costly stocktake.
77. The Government intends to work with the states and territories to introduce a new obligation which requires the lawyers or registered conveyancers in a property transaction to verify whether their client is a foreign person prior to registering the land title transfer. While this new obligation would impose a regulatory cost, and may be subject to criticism from some stakeholders, it is the most effective way to ensure that the information being collected by the states and territories is accurate. The information on the register would be matched with foreign investment approval data to ensure compliance with the foreign investment rules. The details around exactly what information conveyancers would be required to verify would be determined through the public consultation process.

Consultation Questions:

13. The Government seeks feedback on implementation issues around the foreign ownership of land register, including:
 - a. the foreign ownership details that would be published and collected by the register; **open and unlimited reporting.**
 - b. the two-stage implementation approach to information collection (through self-reporting then through state and territory land titles processes); and **this must be retrospective in conjunction with State authorities – staged at say 5 years, then 10 years, then 20 years, then more the 50 years in priority. These days data matching should make this not difficult or onerous. The impacts on the market must be felt NOW.**
 - c. how lawyers or register conveyancers would verify whether their client is a foreign person? **Leave this to the Department of Foreign Affairs to consider and enable.**

8. MODERNISING AND SIMPLIFYING THE FOREIGN INVESTMENT FRAMEWORK

78. The Government recognises that the Act and Regulations have remained largely unchanged since their introduction. As such, they include obsolete provisions, as well as provisions that do not promote investor certainty or consistency in the application of the review framework. Further, the Act has not been amended to take into account major changes in other corporate regulatory frameworks such as the *Corporations Act 2001*.
79. The legislative amendments that will be required to implement the proposed changes to the treatment of residential real estate and agriculture provide an opportunity to modernise and simplify the foreign investment framework. This is consistent with the Government's deregulation agenda.

Consultation Questions:

14. The Government seeks feedback from interested stakeholders on options to modernise and simplify the Act, Regulations and Policy and streamline interaction between applicants and the Foreign Investment Review Board.
15. Are there harmonisation opportunities with other Acts (e.g. the operation of the *Insurance Acquisitions and Takeovers Act 1991* or the *Financial Sector (Shareholdings) Act 1998*? Should the definition of 'Associate' in the Act conform with the definition of 'Associate' in the *Corporations Act 2001*?)
16. Is the current regime for enforcement of FIRB conditions effective? What alternative measures could be considered? Absolutely not – as reported in many forums and anecdotally.
17. Should FIRB provide specific regulatory guidance on approaches to applications and difficult interpretation issues like the Australian Securities and Investments Commission and the Takeovers Panel do? Maybe as well to do so to cut out an emergent "middle industry of experts" giving such advice and opening the door to greater corruption.

ATTACHMENT A — CONSOLIDATED CONSULTATION QUESTIONS

NEW COMPLIANCE AND ENFORCEMENT AREA IN THE AUSTRALIAN TAXATION OFFICE

1. The Government seeks feedback on the creation of a new compliance and enforcement area in the Australian Taxation Office, including:
 - a. Is the creation of a new compliance and enforcement area required to address concerns with foreign investment framework compliance?
 - i. Are there alternative approaches that should be considered?
2. Are there other legislative impediments preventing data sharing between relevant agencies?
 - a. Should the Treasurer and the Australian Taxation Office have authority to obtain information, documents and evidence that relate to potential breaches of the foreign investment framework?
 - i. Are there alternative approaches that should be considered?
 - b. Should the creation of a new compliance and enforcement area be funded by Government revenue or through the introduction of application fees on foreign investors?
 - i. Are there alternative approaches that should be considered?
 - c. Do the proposed changes appropriately balance the need for additional scrutiny on certain foreign investment applications while continuing to streamline the process for approving investments in single developments?
 - i. Are there alternative approaches that should be considered?

PENALTY REGIME

3. The Government seeks feedback on the proposed changes to the civil penalty regime, including:
 - a. Would a civil penalty regime be an effective addition to the rules to ensure compliance and assist with enforcement?
 - b. Are the proposed penalty amounts appropriate and likely to serve as a deterrent?
 - c. Is the proposal to extend accessorial liability an effective way to increase compliance?
 - i. Are there alternative approaches that should be considered?
 - d. Is it necessary to increase the existing criminal penalties in light of the proposed new civil penalties?
4. Should the new penalty regime be extended to business, commercial real estate and agricultural applications?

INTRODUCING FEES ON FOREIGN INVESTMENT APPLICATIONS

5. The Government seeks feedback on the introduction of fees on foreign investment applications, including:
 - a. Should the Government charge application fees on foreign investors to fund screening, compliance and enforcement activities?
 - i. Are there alternative approaches that should be considered?
 - ii. Should there be any exceptions to paying the application fee?
 - b. Is the level of the fees appropriate?
 - i. Will the fees act as a barrier to foreign investment?
 - ii. What might be the cumulative impact on business reinvestment?
 - c. What options should be considered to ensure applicants that submit multiple applications (for example, bidders at auctions or business applicants that withdraw and resubmit) are not charged excessive fees?

ADVANCED OFF-THE-PLAN CERTIFICATES

6. The Government seeks feedback on the proposed changes to advanced off-the-plan certificates, including:
 - a. Should penalties be introduced for developers that fail to comply with obligations to market domestically?
 - i. If so, what should developers be required to do to prove they have marketed domestically?
 - ii. What level of penalty would be appropriate for developers that fail to comply with obligations to market domestically?
 - iii. Are there alternative approaches that should be considered

IMPLEMENTATION OF AGRICULTURE COMMITMENTS

7. Should the definition capture all primary production businesses as well as certain first stage downstream businesses beyond the farm gate (for example, meat processing, sugar milling and grain wholesaling / storage / milling)?
8. If it is decided that the ANZSIC codes be used, which divisions (or sub-divisions, groups) of the ANZSIC codes should be included in the definition for 'agribusiness'?
9. Is there an alternative approach that should be considered to define agribusiness?
10. The Government seeks feedback on the proposed definition for 'agricultural land':

- a. Is the proposed definition of 'agricultural land' consistent with common understanding of the term?
 - i. Are there alternative approaches that should be considered?
 - b. Would the proposed definition provide sufficient clarity as to what constitutes 'agricultural land' for the purposes of Australia's foreign investment framework?
11. The Government seeks feedback on the proposed definition of urban or 'residential land', including:
- a. Is the proposed definition of 'residential land' consistent with a common understanding of the term?
 - i. Are there alternative approaches that should be considered?
 - b. Would the proposed definition provide sufficient clarity as to what constitutes 'residential land' and related subcategories (such as new and existing dwellings) for the purposes of Australia's foreign investment framework?
12. The Government seeks feedback on three possible options for the screening of 'other land':
- a. 'Other land' be defined as all land that is not 'agricultural land' or 'residential land' and continues to be screened from dollar zero;
 - b. 'Other land' is not defined and any land that is not 'agricultural land' or 'residential land' no longer requires foreign investment approval; or
 - c. 'Other land' is defined as a subset of what is left over from 'agricultural land' or 'residential land' capturing land that remains of interest while excluding some land from screening.
 - i. If option c is pursued, what types of land should continue to be screened?
13. The Government seeks feedback on implementation issues around the foreign ownership of land register, including:
- a. the foreign ownership details that would be collected and published by the register;
 - b. the two-stage implementation approach to information collection (through self-reporting then through state and territory land titles processes); and
 - c. how lawyers or register conveyancers would verify whether their client is a foreign person?

MODERNISING AND SIMPLIFYING THE FOREIGN INVESTMENT FRAMEWORK

14. The Government seeks feedback from interested stakeholders on options to modernise and simplify the Act, Regulations and Policy and streamline interaction between applicants and the Foreign Investment Review Board.

15. Are there harmonisation opportunities with other Acts (e.g. the operation of the *Insurance Acquisitions and Takeovers Act 1991* or the *Financial Sector (Shareholdings) Act 1998*? Should the definition of 'Associate' in the Act conform with the definition of 'Associate' in the *Corporations Act 2001*?)
16. Is the current regime for enforcement of FIRB conditions effective? What alternative measures could be considered?

Should FIRB provide specific regulatory guidance on approaches to applications and difficult interpretation issues like Australian Securities and Investments Commission and the Takeovers Panel do?

ATTACHMENT B — FOREIGN INVESTMENT THRESHOLD CHANGES

Type of investor	Type of acquisition	Current threshold	Proposed threshold
Privately owned investors from FTA partner countries that have the higher threshold⁸	Developed commercial real estate (including heritage-listed properties)	\$1,094 million (indexed annually)	\$1,094 million (indexed annually)
	Business acquisitions in non-sensitive sectors	\$1,094 million (indexed annually)	\$1,094 million (indexed annually)
	Business acquisitions in sensitive sectors ⁹	\$252 million (indexed annually)	\$252 million (indexed annually)
	Rural land	\$1,094 million (indexed annually)	\$1,094 million (indexed annually) for US, NZ and Chile. \$15 million (cumulative) for China, Japan and Korea.
Privately owned investors from non-FTA countries and FTA countries that do not have the higher threshold	Developed commercial real estate	\$55 million (indexed annually)	\$55 million (indexed annually)
	Heritage-listed developed commercial real estate	\$5 million	\$5 million
	Business acquisitions in (sensitive and non-sensitive sectors)	\$252 million (indexed annually)	\$252 million (indexed annually)
	Rural land	\$252 million (indexed annually)	\$15 million (cumulative) \$50 million for Singapore and Thailand ¹⁰
Foreign Government Investors	All direct investments (regardless of the sector)	\$0	\$0
	New business proposals	\$0	\$0
	Interests in land (including rural land)	\$0	\$0

8 Free Trade Agreement partner countries — the higher threshold currently applies to investors from the US, NZ, Japan, Korea and Chile. It will also apply to Chinese investors once the China-Australia free trade agreement enters-into-force.

9 The prescribed sensitive sectors (where the higher screening threshold does not apply) are: media; telecommunications; transport; defence and military related industries; and the extraction of uranium or plutonium or the operation of nuclear facilities.

10 Consistent with the commitments in the Singapore and Thailand free trade agreements.