



SUBMISSION BY THE  
Housing Industry Association

to the  
**The Treasury**  
on  
**Strengthening Australia's Foreign Investment  
Framework**

20 March 2015

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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.





# 1 Introduction

The Housing Industry Association (HIA) welcomes the opportunity to provide comments to the Treasury on the Australian Government's Options Paper 'Strengthening Australia's Foreign Investment Framework', released in February 2015.

The Options Paper, which canvases a range of proposed reforms under Government consideration follows the release of the report (the Report) from the House of Representatives Standing Committee on Economics in response to its 'Inquiry into Foreign Investment in Residential Real Estate' (the Inquiry).

The Options Paper considers proposals to enhance compliance and enforcement activities concerning foreign investment in residential real estate, increase criminal penalties, introduce new civil penalty and infringement notices, introduce foreign investor application fees, and implement mechanisms to increase transparency, scrutiny and monitoring (including national data collection and a national register) of foreign ownership, interests and transactions concerning agriculture land.

HIA notes the Australian Government's endorsement of the role and contribution that foreign investment has and continues to make to the Australian economy. Importantly, foreign investment in **new** residential real estate delivers a number of benefits for consumers, for housing supply, for jobs in the residential building industry and employment more broadly, and for government revenues. These benefits are specifically identified and widely acknowledged in the Report.

More specifically, HIA notes and supports the Government's central policy that "foreign investment in residential real estate should increase Australia's housing stock". Policy settings that differentiate between new and existing residential real estate acquisitions are inevitable.

In its submission to the Inquiry, HIA highlighted the impact of Australia's housing under-supply on housing affordability, and emphasised the need to adjust policy settings to reduce the taxation burden on new homes, accelerate the availability of affordable residential land, and reduce the cost and timeframe for the delivery of residential-based infrastructure.

With regard to foreign investment in residential property, policy makers must ensure policy settings are consistent with these objectives and provide adequate resources to ensure policies are implemented and adhered to. Policy settings which favour investment in new housing have provided an important source of demand for the residential construction industry and resulted in the construction of many homes which would not have been built had the industry been dependant on domestic demand exclusively.

While the lack of sufficient reporting of information relating to foreign investment in residential real estate from official sources presents a challenge in providing evidence based responses to the consultation questions in the Options Paper, this in itself is evidence of the need for and value of implementing the improvements envisaged.



## 2 Response to Consultation Questions

### 2.1 A new compliance and enforcement area

The lack of sufficient and accurate information available to assess the extent of foreign investment in residential real estate reduces the government's and the industry's ability to research, analyse, interpret and respond to new housing supply pipelines and market demand. Equally, it impacts the government's ability to monitor compliance and enforcement of foreign investment more generally.

The Foreign Investment Review Board (FIRB) Annual Report is the only official source of statistics relating to the extent of foreign investment in residential property in Australia. Unfortunately, information which is essential to drawing meaningful inference from the data remains unreported. The situation enables widely varying interpretations of the reported figures, and in turn raises questions about the effectiveness of compliance and enforcement activities.

The timeliness and quality of data collection and reporting must be improved to enable government to develop and implement informed policies, enable businesses to make informed investment decisions, enable households to make informed housing choices, and improve community confidence in the foreign investment regime.

In addition to a well-resourced compliance and enforcement unit, HIA supports the establishment of a national unit within Commonwealth Treasury with a primary purpose being to collect, analyse, interpret and report on both housing and land supply pipelines, with a terms of reference similar to those of the Indicative Planning Council for Housing, which undertook this important function during the 1980s and 1990s. Necessarily, the extent of foreign ownership should be a consideration.

Information exchange between the two units would benefit governments, industry and community confidence. A greater understanding of demand attributable to foreign investment and a level of confidence that compliance is both monitored and secured, including through enforcement proceedings, as necessary, would be highly beneficial for policy makers, the residential building industry, and the broader community.

HIA is not convinced however that a monitoring, compliance and enforcement unit for foreign investment is best placed within the Australian Taxation Office (ATO). The ATO's mission, vision and strategies, which are predominantly focused on "*fostering willing participation in our tax and superannuation systems*" ([www.ato.gov.au](http://www.ato.gov.au)), are not aligned with the key objects of foreign investment monitoring and compliance. Rather, a unit within the Treasury provides a more practical and compatible alignment with the role of the FIRB and a properly resourced housing and land monitoring unit.

### 2.2 Penalty regime

HIA is open-minded to new civil penalties and infringement notices for certain breaches of foreign investor laws. However, HIA would oppose a strict liability regime or similar attempts to reverse the burden of proof or remove 'intent' as an element of an offense.

### 2.3 Introducing fees on foreign investment applications

The Options Paper refers to the introduction of "a modest administration fee" to the current screening of foreign purchases of residential real estate "to fund compliance and enforcement activities".



HIA supports the establishment of a compliance and enforcement unit within Treasury and acknowledges the policy basis for applying a user-pays fee to support the level of resourcing within the unit. In all cases, the fee must reflect the actual cost of administering the unit's activities, relevant to the circumstances of the application(s).

HIA notes that assessing foreign investment applications and resourcing the unit's enforcement and compliance activities will be significantly different for purchases and ongoing monitoring of existing residential real estate than for new residential real estate. Fees for foreign investment applications to purchase new residential property should be significantly lower, commensurate with the laws applying to new (compared to existing) property, the level of risk of non-compliance and the respective costs of resourcing compliance and enforcement activities.

Of relevance, new residential property is already highly taxed, with up to 44 per cent of the price of a new house and land package comprised of government taxes, levies, fees and charges.

## **2.4 Advanced off-the-plan certificates**

Advanced off-the-plan certificates are an important mechanism to achieve both pre and post construction sales, and therefore a critical component of bringing new residential development to market. Underpinning the policy basis for supporting foreign investment in new residential real estate, it is essential that new developments with off-the-plan certificates be marketed domestically, whether or not they are marketed internationally. In turn, HIA supports a penalty regime for non-compliance with foreign investor marketing requirements, subject to the precautions mentioned above.

## **2.5 Definition of 'residential land'**

Industry participants report strong competition from foreign buyers in the market for broad-acre land. This situation is in many instances perceived to inflate land prices. Furthermore, there are reports that some foreign buyers are undertaking investment in land yet to be zoned for residential use, speculating on the possibility that re-zoning may occur. This action is perceived to have had a distortionary impact on prices in non-residential land markets.

While anecdotal evidence alone does not provide sufficient evidence of a market or regulatory failure, were this market activity to become endemic within land markets there would be increased risks to the stability of supply and prices of residential land. Such an outcome is avoidable with the adequate measurement and reporting of residential land development and supply.

The assessment, development and delivery of new land to market can take over 10 years, yet accurate and holistic information about Australia's land supply pipeline is scarce. HIA has recommended previously that the federal government establish a mandatory national reporting framework for land supply as a matter of priority.

Much of the information needed to achieve a holistic grasp of land, infrastructure and housing supply is captured variously by local and state/territory governments. However, the scope of data collection and its interpretation lacks consistency and is rarely compiled and shared across agencies.

With limited analysis of the residential land supply pipeline or foreign investment in residential land (including potential/future residential land), it is not possible to determine the impact that the presence of foreign buyers has in this market. This represents a substantial knowledge deficit in an area which has the potential to have significant impacts on Australia's housing supply.



While definitions around residential land use are common within state, territory and local government planning systems, they lack consistency across jurisdictions and fail to address the nature of land 'to be used for' residential purposes. For example, land within urban growth boundaries, as detailed in metropolitan growth strategies, may be earmarked for broad-acre residential purposes, however the actual final use of parcels of land within the broad-acre development may vary from residential to recreational, industrial, retail, commercial, etc.

Equally, land in an established metropolitan area that is zoned for use other than for a residential purpose, may be re-zoned for residential use subsequent to a foreign investment purchase.

Maintaining a foreign ownership of land register, with ongoing monitoring of foreign investor owned land within known metropolitan strategic planning schemes, will assist in identifying re-zoning decisions applying to land that may subsequently be used for residential purposes.