



REIA

REAL ESTATE INSTITUTE
OF AUSTRALIA

REIA'S RESPONSE TO THE DEPARTMENT OF TREASURY'S DISCUSSION PAPER *STRENGTHENING AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK*

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PREPARED BY

Real Estate Institute of Australia (REIA)

PO Box 234

Deakin West ACT 2600

Amanda Lynch

Chief Executive Officer

amanda.lynch@reia.com.au

Ph: 02 6282 4277



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

The REIA's members are the State and Territory Real Estate Institutes, through which around 75 per cent of real estate agencies are collectively represented. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880. By occupation the key data recorded by ABS Census were 64,699 business brokers, property managers, principals, real estate agents and representatives.

The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes \$300 billion annually in economic activity.

Importantly, REIA represents an integral element of the small business sector. Some 99 per cent of real estate agencies are small businesses and 11 per cent of all small businesses in Australia are involved in real estate. Only 0.6 per cent of businesses employ 50 or more persons.

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

The REIA welcomes the opportunity to provide a response to the Department of Treasury's Discussion Paper *Strengthening Australia's Foreign Investment Framework*.

Introduction

The Department of Treasury's Discussion Paper *Strengthening Australia's Foreign Investment Framework* concludes that the current foreign investment policy remains appropriate, however, a lack of compliance and enforcement of the rules is threatening the integrity of the framework. The Paper sets out a number of reforms that the Government proposes to implement: improve the compliance and enforcement of the rules for foreign investment in residential real estate by establishing a specialised unit within the compliance and enforcement area within the Australian Taxation Office to identify and investigate breaches; introduce new penalties for breaches of the foreign investment rules, and introduce an application fee on all foreign investment proposals with the funds used for increased

enforcement activity. The paper seeks a response to a number of “consultation questions” from stakeholders as the Government considers its response.

This submission responds to a number of the questions posed - where it has, the question number is identified. The REIA also makes some observations about the roll out of the changes to ensure that industry is informed thus contributing to the desired outcomes.

General Comments

The proposals are broadly consistent with the position REIA took in its submission to last year’s Inquiry when it recommended that the powers of enforcement, the penalties and the compliance and monitoring activities of the FIRB be reviewed as to their effectiveness and appropriateness; and that the penalties applicable are also reviewed with consideration being given to an ad valorem rate and suggested that this rate is set at 10%. Whilst in REIA’s view a review of the compliance and monitoring activities and their effectiveness was much needed it also believed that the system works well and is consistent with addressing an undersupply of housing nationally at around 200,000-300,000. Without foreign investment, many building projects would simply not be viable.

Discussion Questions 1 and 2

The Government seeks feedback on the creation of a new compliance and enforcement area in the Australian Taxation Office, including: Is the creation of a new compliance and enforcement area required to address concerns with foreign investment framework compliance? Are there alternative approaches that should be considered?

Response

- This is consistent with REIA’ Submission which recommended that the powers of enforcement, the penalties and the compliance and monitoring activities of the FIRB introduced in 2010 be independently reviewed as to their effectiveness and appropriateness
- Understand the synergies that would occur with ATO undertaking this activity including their data matching activities with state Titles Offices
- Placement of the unit should be determined on a least cost and effectiveness basis.

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?

Response

- Yes.

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?

Response

- Fees.

Discussion Question 3

Would a civil penalty regime be an effective addition to the rules to ensure compliance and assist with enforcement?

Response

- Yes

Are the proposed penalty amounts appropriate and likely to serve as a deterrent?

Response

- The Discussion Paper Proposal is consistent with REIA's recommendation that consideration is given to an ad valorem rate and that this rate is set at 10 per cent.

Is it necessary to increase the existing criminal penalties in light of the proposed new civil penalties?

Response

- Should be consistency across both.

Discussion Question 4

Should the new penalty regime be extended to business, commercial real estate and agricultural applications?

- Yes.

Discussion Question 5

Should the Government charge application fees on foreign investors to fund screening, compliance and enforcement activities?

Response

- Yes
- There is merit in a 'user pays' approach to ensuring the compliance and enforcement functions of FIRB can be adequately funded, particularly at a time when the federal budget is under pressure.

- Understanding how the ATO/FIRB would undertake enforcement activities would be useful in letting real estate agents understand this element of the foreign investment system.

Is the level of the fees appropriate?

Response

- The REIA did not take a position on application fees in its initial submission.
- REIA does note that the proposed fee is less than that applicable in Hong Kong or Singapore but it is higher than that in other countries such as Switzerland and Austria. The UK, the USA, and Canada do not have any residential property application fees for foreign investors.
- REIA believes that in setting the fee level for Australia consideration needs to be given to both the level of fees that will enable cost recovery amount and to the equivalent global rates so as not to discourage foreign investment
- REIA sought input from its members with the response differing across Australia
 - Whilst in certain markets the proposed fees would be absorbed readily, in others these may discourage investment
 - A consensus view was that the fee structure recommended by the Parliamentary Inquiry of \$500 - \$1500 was a more palatable approach
- Some respondents felt that a more equitable approach would be to have a flat fee up to and including a purchase price of \$500k with an additional fee based on a percentage of the value above this. If, for example, the current order of fees is adopted a flat fee of \$5k plus 1% of value above the purchase of \$500k is proposed. This would not be more difficult administratively. In addition it would overcome the jump in fees around the “hurdle” levels of under or over the particular \$ million figure.

Will the fees act as a barrier to foreign investment?

Response

- As in the response to the earlier question, the response from REIA members varied across Australia. However even those respondents who felt the proposed fees would be absorbed by foreign investors believed that fees any higher would be a deterrent.

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?

Response

- There are situations where some applicants may be required to submit multiple applications if an application was required for each particular dwelling

that a foreign investor was considering buying. For example, bidders at auctions need prior foreign investment approval because contracts signed after an auction normally have to be unconditional. This would require applicants submitting a number of applications to enable them to bid at several auctions during a weekend. It is important to make provision for this and minimise the impact on these applicants

- Unless there is a process that ensures these investors are not hit by multiple fees this could have the added impact of deterring investors. Multiple applications should be treated with a maximum fee and not be subject to multiple cumulative fees.
- A possible course of action would be for applicants to identify the properties of interest and pay the fee on the basis of the highest valued property with an adjustment in the fee made following the purchase of a property.

Education Campaign

A national education campaign advising stakeholders, including real estate agents, of the Government's final decisions is vital in ensuring the success of the Government's initiative.

The campaign would need to be multifaceted to achieve maximum coverage and would include

- Articles/advertising in REIA's newsletter
- Articles/advertising in the publications of the state and territory Real Estate Institutes
- Articles/advertising in trade journals
- A road show to the state and territory Real Estate Institutes.