



79 Constitution Avenue
Canberra ACT 2612
t (02) 6245 1300
f (02) 6257 5658
hia.com.au

29 March 2017

Manager
Foreign Investment Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

ForeignInvestmentConsultation@treasury.gov.au

Foreign Investment Framework 2017 Legislative Package

On behalf of the Housing Industry Association (HIA) I would like to provide the following comments in relation to the *Foreign Investment Framework 2017 Legislative Package* released for public comment in early March.

HIA has provided comments in relation to the operation of the foreign investment rules in recent years and we appreciate the opportunity to comment on the current package of reforms.

HIA members include businesses operating in all housing markets across Australia. Our members deliver a range of housing products from single detached homes to high rise apartments and residential land. The effective operation of the framework for foreign investment in residential land, and hence housing, has become a significant matter for HIA members.

In a supply constrained market additional demand will contribute to upward pressure on residential property prices. This is broadly the situation that has applied in some of Australia's key housing markets over the course of the current cycle. Relatively strong rates of population growth and an inadequate response in terms of available new housing supply have been two key contributors to fast house price growth in Sydney and Melbourne. The lack of progress in reducing the excessive cost of new housing supply is the key problem on the supply side and much of this problem relates to the lack of readily available, affordable land. An environment where supply was able to appropriately respond to variations in demand would enable greater price stability.

The role of foreign investment in the Australian residential market has become contentious in recent years, particularly in markets where house prices have increased significantly and swiftly. The perception that foreign investment is a key driver of higher house prices is not consistent with the important contribution that foreign investors make to the supply of new housing stock.

It is important in considering the operation of this legislation to separate the different types of individuals and entities that may seek to purchase residential land. It would appear that some of the changes in fact seek to remedy concerns that have been raised due to confusion between these different types of purchasers.

The Federal Government's policy to channel foreign investment into new dwellings is commendable as this focus generates construction activity and economic growth. This is also the correct policy focus as it can have the effect of reducing demand for existing dwellings and therefore reduce upward pressure on existing property prices.

HIA supports the Federal Government working to ensure that the rules for foreign investment in residential land are transparent, clearly interpreted and enforceable. The proposed reforms are intended to assist in achieving this outcome and are supported in principle.

HIA's comments (attached) are focused on those recommendations that directly affect residential land and housing.

If you have any questions or require further information in relation to these comments please do not hesitate to contact me on 02 6245 1314 or k.brookfield@hia.com.au or Harley Dale, HIA Chief Economist on h.dale@hia.com.au.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in black ink, appearing to read 'Kristin Brookfield', written in a cursive style.

Kristin Brookfield
Chief Executive Industry Policy

HIA Comments on Foreign Investment Framework 2017 Legislative Package

The following comments are provided in relation to the three amendments being proposed for the treatment of residential land.

When considering the purchase of residential land by foreign investors there are a number of different scenarios that will exist. These scenarios can be characterized by the type of entity making the purchase and the type of residential land that is intended to be purchased.

An individual purchasing:

- a vacant parcel of land (to construct one future dwelling),
- a new dwelling (house and land)
- a new apartment (newly constructed)
- a new apartment 'off the plan'
- an existing dwelling (temporary residents only)
- an existing dwelling for redevelopment with more than one dwelling.

A business entity purchasing:

- broad acre residential land (for future development)
- a share in a business operation that owns broad acre residential land (for future residential development)
- a share in a business operation that owns residential land uses for commercial purposes (retirement villages, aged care facilities, student accommodation)
- an existing dwelling for redevelopment with more than one dwelling.

The current legislation should seek to address these different types of purchasers to accurately reflect their purpose in buying residential land in Australia and therefore avoid unintended consequences by treating all purchasers in the same manner.

The Paper outlines that there have been some unintended consequences to the changes made in 2015 and that for residential land the current settings may incentives non-compliance and may have distortionary affects. It appears that the issues seeking to be resolved arise in part from the failure to recognize the different types of purchasers and the manner in which they will undertake a purchase transaction.

In relation to the options proposed for residential land, HIA does not support Option 1 being to make no changes. The following comments address Options 2 – 4.

- Introduction of a new exemption certificate for new dwellings and vacant residential land

Whilst the legislation provides that property developers seeking to sell new dwellings to foreign purchasers can obtain an exemption certificate, these certificates have a limited time frame and not all developers may seek to obtain such an exemption. The concern that a purchaser is required to obtain approval before any purchase and if considering multiple properties may need to obtain multiple exemptions is a reasonable one, most commonly for those seeking to make 'off the plan' purchases where a property will not be taken off the market.

Allowing a purchaser to have better control of this situation by granting a broad exemption to a buyer for any new purchase is supported.

- Introduction of a new exemption certificate for failed off-the-plan settlements

In relation to off the plan purchases, the legislation should not restrict 'the first purchase' of a property due to deeming this to be an existing dwelling when a prior contract fails. This change is again supported and will be particularly important in the current environment where the risk of 'off

the plan' purchasers failing to settle is elevated due to significant newly introduced taxes in several jurisdictions.

Clearly the intention of the legislation is still being met and a new home has been constructed which could be sold to either an Australian resident or a foreign investor.

- Amend the treatment of residential land used for commercial purposes

The changes being proposed here relate to the scenario where a business is seeking to purchase 'commercial residential premises' and hence a different approach under the legislation to these circumstances is warranted.

The alignment of these types of residential premises with the treatment of other business operations is considered appropriate where the purchaser is operating in the form of a business as an eligible business entity under Australian laws.

This approach is also preferable and more open to encouraging business diversity and economic growth than the restrictions that are now being taken by some jurisdictions to foreign investment in Australian companies whose primary business is the purchase, development and subsequent sale of new housing stock for.

Additional Comments

In addition to the proposed changes, it is suggested that these reforms could present an opportunity to review the terminology being used for exemption certificates. An exemption is more usually a term applied where something meets certain criteria and therefore is offered a streamlined pathway that leads to 'no approval' per se.

Whilst it is recognized that the exemption certificate is being granted from the need to apply before a person would otherwise need to in the usual circumstance (being a pre-approval), it is not an exemption from the need to ultimately obtain approval. Given the purpose of these changes is to improve compliance, and there will now be even more circumstances where an 'exemption' may be rightly requested, it may be more appropriate to use alternate terminology.