PROPERTY COUNCIL of Australia

Australia's property industry
Creating for Generations

Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. info@propertycouncil.com.au

propertycouncil.com.au
@propertycouncil

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James McLean Dreyfus
A/Senior Adviser
Foreign Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: FIRBStakeholders@treasury.gov.au

Dear James,

Major reforms to the Foreign Investment Review Framework

Please find enclosed the Property Council's comments on the exposure draft of the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020*.

The Property Council supports the renewed focus from the Government on the integrity of the framework and the national security implications of some types of foreign investment.

We welcome the opportunity to provide comments to Treasury on the draft legislation and would like to draw your attention to a number of issues in the exposure draft that could cause unforeseen consequences for the property sector in Australia.

Australia can and should meet national security needs without harming investment

The Property Council has concerns that some aspects of the draft legislation and regulation may have unintended consequences on the attractiveness of Australia for institutional, long-term investment.

The reforms as drafted introduce uncertainty and the additional burden of time, expense and legal risks for foreign investors, which in turn raises the risk premium of investing in Australia and deters offshore capital from making investments.

In the current economically constrained global economy, any policy change which unintentionally limits the ability for institutional investment to flow into Australia should be

thoughtfully reviewed. We remain in a competition for global capital and must ensure that our investment framework is comparable to other nations with similar foreign investment review systems.

In order to ensure these changes do not have unintended consequences on Australia's investment attractiveness, the Property Council would like to see more clarity and guidance provided in respect to the definition of 'national security business' and 'national security land'. This would help provide a higher level of policy certainty to international investors that want to put capital to work in Australia.

International investors attracted to Australia have had to navigate a tumultuous market environment and greater policy uncertainty due to the significant foreign investment regime changes undertaken throughout 2020 and an increase in expected delays for gaining FIRB approval to up to six months. As a matter of priority the Government should focus on implementing measures that ease investor concerns.

Steps to resolving investment uncertainty

The Property Council's submission identifies several themes important to contextualising the impact of the significant foreign investment review framework changes proposed by the Government on the Australian property sector.

It is vital that when drafting legislation that impacts upon the ability for foreign capital to work in Australia, these two fundamental lynchpins of the property sector are correctly understood. This submission teases out these philosophies to assist Treasury in their drafting, namely:

- Foreign investment and its role in the Australian commercial property sector
- The intricacies of the landlord-tenant relationship in the context of commercial property

This submission also goes on to demonstrate how the uncertainties in the exposure draft can be overcome through simple amendments to both the draft legislation and regulation. In particular, the Property Council recommends that:

- Further guidance is provided on the definition of 'national security business' to ensure certainty for foreign investors, particularly with respect to data centre assets
- Further guidance is provided on the definition of 'national security land'
- An effective exemption or streamline regime is introduced to facilitate investment by trusted offshore investors, who are appropriately regulated and have a track record of investment in Australia
- The new Register of Foreign Ownership of Australian Assets doesn't include interests which are not direct ownership stakes, e.g. leases
- The new fees framework is amended to ensure that investors aren't unduly burdened by disproportionate fees or additional taxes
- Provisions regarding buy-backs of securities and capital reductions are wound back or, at the least, no fees are imposed on impacted investors
- Other general areas for improvement to the foreign investment framework

The Property Council looks forward to working with the Government to ensure Australia remains an attractive destination for global capital at a time when our economy is entering a vital period of rebuilding.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au, or myself on 0422 608 804 and tbrown@propertycouncil.com.au.

Yours sincerely

Torie Brown
Acting Executive Director, Capital Markets

Executive summary

The Property Council of Australia champions the industry that makes up 13 percent of our nation's GDP and generates over 1.4 million jobs, making this sector a bigger employer than mining and manufacturing combined. Property investment affects 14.8 million Australians through their retirement savings and is a massive driver of foreign direct investment into our nation.

The Property Council represents the leaders of this sector and has consulted widely with members, including listed and unlisted REITs, on this legislation. The comments contained within our submission highlight how the national security purpose of the framework can still be implemented without inadvertently disincentivising investment into Australian commercial property.

On behalf of our members – including institutional investors that deploy significant amounts of capital across the globe – we provide the research and thought leadership needed to help decision-makers create vibrant communities, great cities and strong economies. Crucially, we support globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and social well-being of Australians.

In consulting with our members on the exposure draft, we have identified a number of issues that must be addressed to ensure the legislation does not see capital driven into other international markets rather than Australia, at a time when investors are already struggling under poor pandemic economic conditions and considerable FIRB approval delays.

Aspects of the draft legislation and regulation will have unintended and far-reaching consequences on the attractiveness of Australia for institutional, long-term investment.

Addressing any investor uncertainty should be a key priority for government at a time when Australian businesses are desperate for capital as they set themselves up for the post-pandemic recovery.

The Property Council recommends that:

- Further guidance is provided on the definition of 'national security business' to ensure certainty for foreign investors, particularly with respect to data centre assets
- Further guidance is provided on the definition of 'national security land'
- An effective exemption or streamline regime is introduced to facilitate investment by trusted institutional offshore investors who are appropriately regulated and have a track record of investment in Australia
- The new Register of Foreign Ownership of Australian Assets doesn't include interests which are not direct ownership stakes, e.g. leases
- The new fees framework is amended to ensure that investors aren't unduly burdened by disproportionate fees or additional taxes
- Provisions regarding buy-backs of securities and capital reductions are wound back or, at the least, no fees are imposed on impacted investors
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1. Foreign investment into the Australian commercial property sector

Foreign investor demand for commercial property asset in Australia has been strong over many years. According to FIRB data, $242 billion of foreign investment in commercial real estate has been approved over the five-year period from 2014-2019.[1] This is a substantial amount of capital that has had a direct impact on the property/construction sector and the overall economy.

Investors are drawn to Australia's commercial property sector because of the scale of opportunities that are available across office, industrial, retail and more niche subsectors, and the professional management of both on-the-ground assets or of the funds that invest in those assets. Australia's profile as a mid-size developed and open economy with proximity to the Asia region is also a major drawcard for offshore capital.

According to RBA analysis, that strong investor demand has resulted in a stable market for commercial property, a rise in capital values over the long term, and had a positive effect on construction activity and employment.[2]

With more capital being invested into the Australian property sector from offshore every year, foreign policy changes have been undertaken over recent years to scrutinise investments that meet specific criteria. The sector in 2015 saw a number of foreign investment reforms, part of which focused on establishing monetary thresholds for determining which investments into commercial property would require FIRB approval.

Thresholds for foreign investment into land ranged from $50 million to $1,094 million depending on who was acquiring the land and the kind of land that was being acquired. For non-vacant commercial land, the monetary threshold was set at $252 million for most investors (i.e. those not from Chile, Japan, Korea, New Zealand or the United States), or $55 million from land where circumstances of particular significance existed – referred to as low threshold land. For example, land specifically fitted out for a business that provides storage of bulk data would be deemed low threshold land.

This essentially created a two-tiered system for foreign commercial property investors, with opportunities to invest into land that was deemed 'sensitive' (i.e. low threshold land) requiring careful consideration, including taking into account how long FIRB approval may take, before an investment would be made. But this was also a positive change as it allowed for more investment to flow to non-sensitive property assets.

Over the years, international investors have become more accustomed to Australia's foreign policy framework and the two-tiered system for assessing investment opportunities in Australian real estate assets. However, the announced national security changes create another layer of complexity with the introduction of the concepts of 'national security business' and 'national security land'. This is likely to cause significant confusion and uncertainty as investors would have to grapple with three layers of potentially overlapping categories when assessing the regulatory impact of a particular asset or investment opportunity. Adding additional

[1] *FIRB Annual Report 2018-19* and *FIRB Annual Report 2017-18*

[2] *Foreign Investment in Australian Commercial Property*, RBA Bulletin, September Quarter 2014

complexity to a system in the middle of a global-pandemic that has pitted Australia in a fight for global capital only acts as a further deterrent for investors.

In section 4 of our submission, we make recommendations regarding the problems that may arise by instituting multiple definition and tiers of regulatory oversight.

How the proposed changes reflect on Australia's position compared with other jurisdictions should also be accounted for, as capital is fluid and will flow to jurisdictions depending on their regulatory settings and market. Below is a table which sets out how the Australian foreign investment review framework (as proposed by the exposure draft) compares with the US and New Zealand (countries that are considered comparable markets by investors):

Feature of system	**Australia**	**US**	**New Zealand**
Maximum timeframe for a decision	90 days	90 days	No mandated timeframe
Monetary thresholds (real estate / commercial land)	• $0 for national security business/land, vacant commercial land, or for interests held by foreign government investors • $60m for low threshold land • $275m for most foreign investors • $1,192m for investors from agreement countries	No monetary thresholds apply	$0 for 'sensitive' land*
Review of property transactions	Yes for national security land or assets above monetary thresholds	Only for assets located near sensitive US military and government facilities or critical infrastructure	Yes for 'sensitive' land*
OECD FDI Regulatory Restrictiveness Index (higher number = more restrictive)	0.15	0.09	0.24

** The definition of 'sensitive' land in New Zealand is particularly complex and the Overseas Investment Office strongly recommends that applicants consult a lawyer (or other land professional) with significant experience in overseas investments if in doubt.*

New Zealand, despite its developed and market-based economy, has gained a reputation for being a restrictive market for foreign investment. According to the OECD's Foreign Direct Investment Regulatory Restrictiveness Index[3] for 2019, New Zealand ranked the most restrictive out of all other developed countries while Australia ranked 4th most restrictive.

The table above demonstrates that, while not as restrictive as New Zealand, Australia's foreign investment review system is more complex and has higher barriers than the US. As more regulation and oversight is imposed on flows of foreign capital into Australia, we run the risk of developing a reputation as a difficult market for investment that is best avoided. That would be devastating for a net capital importer economy like Australia.

As Australia's foreign investment policy framework has developed over recent years, international investors have become more attuned to the multitude of changes announced over recent months. Uncertainty due to ever-shifting policy settings and a volatile global market environment has also raised the opportunity cost for investors to buy assets in Australia compared with other jurisdictions.

It has also affected the ability of vendors, in most cases Australian businesses, to commercially negotiate with buyers because of the heightened risks and extended timeframes for approval. Australian businesses are losing out to jurisdictions that are able to offer less bureaucratic and quicker approvals, notwithstanding that some jurisdictions do not have any foreign investment review regime at all.

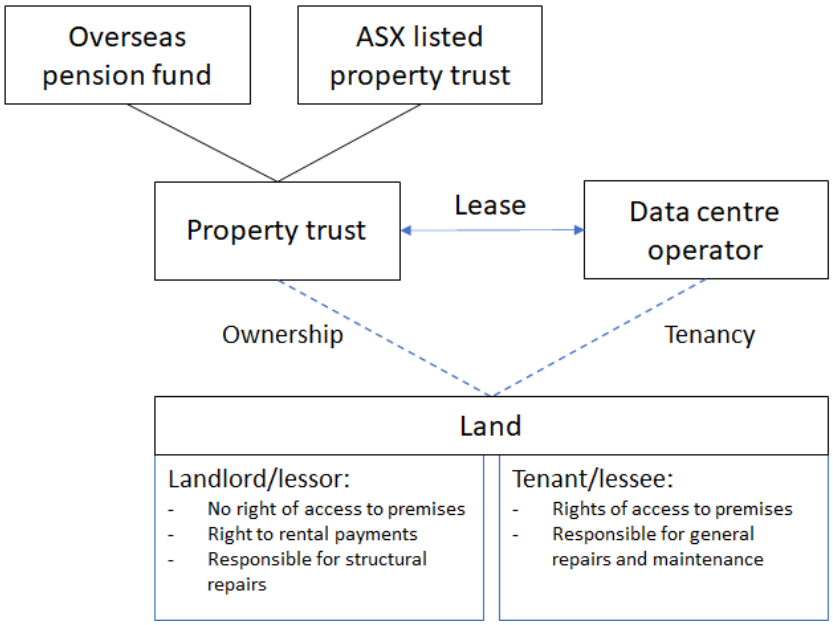
We urge the Government to be mindful of the commercial impact of policy design, particularly in a vital economic area like foreign investment as our economy begins the slow recover post-COVID.

2. The landlord-tenant relationship in the context of commercial property

It is important to understand the relationship between commercial landlords and tenants, and what role foreign investment plays in that relationship. Below is a diagram which sets out a typical arrangement between a property trust as the landowner and a tenant (in this case a data centre operator).

[3] https://goingdigital.oecd.org/en/indicator/74/

Commercial property ownership and lease example



It is helpful to highlight the rights and responsibilities of both a landlord and tenant under a standard commercial tenancy agreement. Landlords will generally have no rights of access to premises once the lease period begins, and only in extreme circumstances (e.g. premise abandonment or tenant bankruptcy) would a landlord be permitted unsupervised access to a leased property. Government tenants will also have their own set of terms and conditions that must be included in tenancy agreements; such terms and conditions can be particularly stringent given the sensitive nature of many government functions.

It appears that concerns around landowner access to sensitive data/operations arise from a misconception about the nature of the landlord-tenant relationship. A landlord will very rarely, if ever, access a tenancy without the tenant present. In simple terms, while a landlord might own the 'box', it is the tenant who owns the contents. Thus, restricting the ability of foreign investors to purchase an asset because of the existing leases within that asset displays a fundamental misunderstanding of tenant rights in Australia.

Foreign investment issues may arise with respect to both the landlord and the tenant in this arrangement if either entity is deemed a foreign person. For landlords, feedback from our members has noted that conditions imposed on landowning entities or entities further up the chain of ownership (e.g. an overseas pension fund, as shown in the diagram) are unnecessary. Examples of incongruous conditions include preventing access to land by directors of foreign entities that hold passive interests in pooled property funds. The implication that an international investment trust or its associates have any interest in the daily operations of a tenant who may or may not be a government agency or data centre operator highlights a fundamental misunderstanding of a landlord's commercial practices.

This experience aligns with the views of the Productivity Commission,[4] which found that too many conditions were imposed through the foreign investment screening process. It stated that:

> *Conditions that duplicate existing legal requirements on businesses operating in Australia add to the regulatory burden without delivering additional benefits.*

In Section 4 of our submission, we make recommendations regarding the issue of conditions imposed as part of the foreign investment review framework.

Tenants that are deemed foreign have for the most part avoided the need to go through FIRB approval until the recent introduction of COVID-related temporary FIRB measures, namely the $0 monetary thresholds. At a time of falling rental incomes and asset values, this has added further complexity and undue compliance cost/burden on the property sector at a time when it can ill afford it. Another recommendation is also made with respect to the value of leases for fee calculation purposes.

3. Issues to address in the exposure draft

Set out below are the key issues that should be addressed before the finalisation of the legislation and regulations giving effect to these latest foreign investment reforms.

3.1 Definition of 'national security business'

The proposed definition of 'national security business', in the sector's view, runs the risk of being interpreted too broadly to capture interests and assets that wouldn't normally warrant national security concerns – including data centres, government office tenants and any operation that could, unbeknown to the landlord, house information considered sensitive.

It will be challenging for any investor to determine definitively whether a proposed acquisition falls within the definition given the absence of public registers for critical infrastructure, carriage services providers or land used for defence purposes.

We particularly highlight to Treasury that our members and other institutional investors are not in a position to make an assessment on the detriment to national security in light of how broad and uncertain the definition is as currently drafted:

- a business which provides goods, technology or services to for both civilian and military purposes may be captured under the criteria of "military end-use". The scope of the definition under these reforms is even broader than existing regimes such as Defence Export Controls, and
- the reforms tie the definition of a 'national security business' to a holder in a critical infrastructure asset as defined under the *Security of Critical Infrastructure Act 2018*. We note that the Department of Home Affairs is currently undertaking consultation on protecting critical infrastructure and systems of national significance, which could both increase the scope of the regime and uncertainty for our members.

[4] *Foreign Investment in Australia – Commission Research Paper*, June 2020, Productivity Commission

Thus, we believe that the proposed definition (as it is set out in the exposure draft regulation) doesn't conform to the policy intent of the broader reforms and would have unintended consequences for the flow of capital into Australia.

It further heightens uncertainty for investors about investing in Australia, reservations which have already been rising due to the temporary COVID-related FIRB measures. These temporary measures include the lowering of dollar thresholds to zero, and other provisions in the draft legislation such as the call-in powers that allow a review of any investment which is not otherwise notifiable or already subject to FIRB oversight on national security grounds.

Of most concern to the property sector are: (1) the treatment of data centres, and (2) the effect of having government agencies or national security businesses as tenants.

The broad nature of the definition also leads to extraterritoriality concerns. The application of the tracing rules to a "notifiable national security action" means that offshore acquisitions will be captured and the mandatory notification could be triggered by an acquisition of 20% or more interest in an offshore entity which has an Australian "sensitive national security business" within its controlled group structure. Even with prudent due diligence, the broad scope of the definition means there is uncertainty as it is not clear what is and is not caught by the reforms.

We believe it would be beneficial to amend the proposed definition or clarify its narrow scope via either the Explanatory Memorandum or a guidance note.

The treatment of data centres

Of prime concern is the potential impact on investment in data centres as a distinct real estate asset class. This arises due to the inclusion in the 'national security business' definition of entities that store or have access to sensitive information, including certain types of personal information. In comparable countries in our region (e.g. Singapore, Japan) no such provisions for specific real estate asset classes exist.

We do not believe it is the intent of the legislation to capture the ownership of land that is used as a data centre in the definition of 'national security business', noting that the party that only owns the land is in the business of collecting rent and not the provision of data storage services for sensitive information.

Data centres are growing in prominence around the globe. Demand for the sector is being driven by more people working from home with an increase in demand for cloud storage. Sydney alone saw total data capacity rise by 76% from Q1 2019 to Q1 2020.[5]

Noting this and the importance of the continued assembling of capital to invest in this vital economic infrastructure, we believe it would be beneficial to remove any confusion in this regard by way of clarification in either the Explanatory Memorandum or in a guidance note.

Government agencies or national security businesses as tenants

Further guidance is sought to help the property sector determine how having certain tenants would affect the landlord or asset that is being leased. The below example illustrates the need for greater clarity.

Office buildings with government tenants (e.g. national security agencies or government agencies that hold sensitive data) that provide onsite data storage facilities incidental to the

[5] *Asia Pacific Data Centre Trends*, H1 2020, CBRE Research

office lease may fall into a category of 'national security business'. Thus, a foreign investor taking a direct interest in such an office building would need to seek FIRB approval. We believe that this case doesn't warrant FIRB notification because of the incidental nature of those data storage facilities and the inability (both legally and physically) of landlords to gain access to the facilities.

Nonetheless, we seek further clarity and guidance, particularly by way of examples of what would and would not be caught by the definition.

3.2 Definition of 'national security land'

The proposed definition of 'national security land' is likewise very broad. It is unclear whether this definition is met in certain circumstances.

For example, the second category – land in which an agency of the national intelligence community has an interest – could be interpreted to include office buildings which are leased to one of the ten agencies in the national intelligence community.

Separately, it is unclear if land that is adjacent to other 'national security land' would also be considered 'national security land'.

It is the view of the Property Council that the land in both of these cases should not be considered 'national security land' because of the incidental nature of those assets to national security matters. The Property Council seeks further clarity and guidance regarding this definition, with clear examples provided.

In addition, there seems to be an inconsistency in the exposure draft as it sets out that a 'notifiable national security action' would involve a foreign person acquiring an interest in national security land, as opposed to a *direct* interest in a national security business.

The meaning of 'interest' in Australian land under the *Foreign Acquisitions and Takeovers Act 1975* is extensive and includes legal and equitable interests, options, and leases of greater than five years.

This wording could result in foreign investors that are seeking to hold indirect ownership (such as through a real estate investment trust or other pooled and professionally managed fund) in the relevant real estate being required to seek FIRB approval before investing in those trusts or funds. Foreign persons taking out leases in the same real estate would also be required to seek FIRB approval.

We would urge the relevant part of the legislation (Part 1 s.7 of *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020: National security reviews and last resort power*) to be changed to the following:

> ***notifiable national security action*** *means any of the following actions taken, or proposed to be taken, by a foreign person:*
>
> > *(a) to acquire a direct interest in a national security business;*
> >
> > *(b) to acquire legal title to an interest in Australian land:*

3.3 Exemptions or streamlined approval for trusted foreign investors

The Property Council acknowledges the rationale for a strong national security framework and we believe that it can operate without resulting in undue costs and burdens that would discourage investment by foreign capital, particularly from institutional investors.

We believe that a broad, investor-specific exemption certification should be available to give investor certainty for low risk institutional investors who are appropriately regulated and have a track record of investment in Australia.

Any exemption should operate at the investor level, rather than at an asset or portfolio level, so that the managers may operate within reasonable cost and approval time parameters. The exemption should be granted on a case-by-case basis to each regulated investor once the Treasurer (on the advice of FIRB) is satisfied that the organisation does not pose a national security risk.

In relation to any exemption, the following factors would indicate that the investor does not pose a national security risk:

- is headquartered in a country with which Australia has a strong relationship with (e.g. the United Kingdom or United States); and
- is subject to a comprehensive and robust regulatory regime governing their funds management and investment activity, which would include in Australia by the Australian Securities and Investments Commission and in their home jurisdiction by equivalent regulators such as the Securities and Exchange Commission or the Financial Conduct Authority; and
- acts as a fiduciary that has a broad and wide client base and has statutory and common law duties to act in the best interests of their underlying clients - the primary objective is to secure better financial futures for their clients and the people they serve, rather than to pursue political or strategic objectives through their investments; and
- has a proven track record in investing in Australian assets (including land).

The exemption certificate would need to be practicable for the exempted entity, acknowledging that such investors would be practically restricted in the number of transactions that are completed each year and the number of assets or interests that are held in each underlying fund or portfolio.

It is also important to note that whilst these professional investors will often have a clear set of investment criteria, they may not know the exact investments or the sub-sectors that they wish to invest into.

Alternatively, streamlined approval should be given to these institutional foreign investors whenever an individual application is made, as part of the Government's measures to streamline less sensitive investments and similar to the proposed streamlining of investments made by some investment funds that are currently defined as 'Foreign Government Investors'.

3.4 Register of Foreign Ownership of Australian Assets

We have strong concerns about the draft provisions relating to the Register of Foreign Ownership of Australian Assets, establishing a register to record certain events such as the acquisition or disposal by a foreign person of interest in land or water, an Australian business, agribusiness or entity.

These provisions would unduly increase the compliance burden and cost on existing foreign investors. They are retrospective in nature as they would impose an obligation related to past actions that were made prior to the prospect of a register.

It may also deter future investment as prospective investors may have concerns that the register could be used outside of its stated mandate or even made public in the future.

At the very least, the register shouldn't include interests which are not direct ownership stakes but which may still be considered interests (e.g. leases of over five years).

3.5 New fees framework

We understand that a new fees framework will be implemented which is designed to be simpler and fairer for applicants and make it more flexible for Treasury to adjust fees as needed. However, we are concerned that fees will in fact rise, making the process of investing in Australia more costly than it currently is.

While we understand that these major reforms will increase regulatory oversight and will require more resources, higher application fees would encourage investors to look at other markets that aren't as costly as Australia.

We are concerned that the new fees framework creates further misalignment of fees imposed on applicants with the cost of administering the foreign investment regime.

The Productivity Commission has recently highlighted how problematic foreign investment fees have become since they were introduced in December 2015:[6]

> *These are taxes, not a fee for service.* ***They are set at levels that are out of proportion with the cost of delivering the regulatory regime****. In 2017-18, the government collected $114 million in fee revenue, while the operational costs of FIRB and its secretariats in the Treasury and the ATO totalled only $14.7 million.*
>
> *They are also likely to be fairly inefficient taxes.* ***Taxing foreign businesses reduces foreign investment, leading to lower Australian wages and incomes****. The much higher fees on (small) agricultural investment applications than on other business applications have the potential to detract from growth in regional communities.*
>
> *The Commission, in its Regulation of Australian Agriculture inquiry, recommended that the Australian Government should set application fees for foreign investment proposals at the level that recovers the costs of administration, and closely monitor the fees so that there is no over- or under-recovery of costs.* ***The case for reform has not changed since that inquiry, and if anything, it has strengthened****.* (emphasis added)

We agree with the Productivity Commission's findings with respect to the fees regime and would urge Treasury and the Government to be cautious and keep any fee increases at a minimum.

3.6 Capital reductions and buybacks

The Property Council has concerns with the provisions related to capital reductions and buybacks (section 15A of the exposure draft on *Rules relating to certain buy-backs of securities and capital reductions*).

[6] *Foreign Investment in Australia – Commission Research Paper*, June 2020, Productivity Commission

These proposed measures would have the effect of capturing some foreign investors and their interests even though no action has been taken by those investor (e.g. by not participating in a share buyback).

This is an unreasonably onerous piece of compliance for investors to abide by given the passive nature (i.e. *inaction*) of what would constitute a notifiable and/or significant *action*. We recommend that these provisions are taken out of the final version of the legislation.

Fees would also be payable in such circumstances, which we believe is inequitable for the impacted investors. At the least, no fees should be imposed on impacted investors.

4. Other recommendations to improve the foreign investment framework

The Property Council offers a series of additional recommendations to improve the foreign investment framework separate to our comments and recommendations in the preceding section.

4.1 Adjusting asset categories

Firstly, the issue discussed in Section 1 of this submission covers the multiple definitions and tiers of regulatory oversight that have been created as Australia's foreign investment framework has evolved over the years.

To address the confusion and uncertainty faced by foreign investors as a result of multiple and overlapping definitions and categories for property assets, and allow FIRB to allocate their resources to higher priority matters, the Property Council recommends that:

> (a) the pre-COVID monetary thresholds with respect to non-vacant commercial property are increased to minimise FIRB approval requirements for non-sensitive commercial transactions, and
>
> (b) that the 'low threshold land' category is rationalised to remove any overlap between that category and the national security land/business categories.

4.2 Avoiding imposition of unnecessary conditions

Secondly, the issue discussed in Section 2 of this submission focuses on unnecessary conditions being imposed as part of the FIRB approval process. In line with the views of the Productivity Commission, the Property Council recommends that conditions which duplicate existing legal requirements are not imposed as part of giving FIRB approval. Conditions which are incongruous with standard agreements and commercial practices should also not be imposed, or good reasons should be provided to applicants about why such conditions are necessary.

4.3 Calculating the value of leases

The method of calculating the value of leases for fee purposes and future threshold purposes is also a challenge for investors and we recommend that a net present value for leases be adopted instead of the current method described in FIRB Guidance Note 33.

4.4 Increasing data and awareness

Firstly, we would be supportive of government providing greater levels of data on foreign investments – properly anonymised to not disclose commercial in confidence information.

This can increase public understanding of the benefits derived from foreign investment and would enable government and stakeholders to gain insights into how foreign investment flows are changing over time, which sectors and types of investments are reliant on foreign capital, and to identify barriers to investment that could boost economic and jobs growth.

It would also allow for the development of evidence-based policy to drive further changes and improvements to the foreign investment framework. For example, a greater wealth of data would aid the National Housing Finance and Investment Corporation to tackle issues around housing supply and improve housing outcomes for Australians.

4.5 Clear messaging that Australia is open to investment

We would be supportive of moves by the Federal Government to work with their state and territory counterparts to ensure there is clear messaging that Australia is open to investment.

Policy developments over recent years have had a detrimental impact on Australia's reputation regarding foreign investment policy certainty. At the state level, foreign investor tax surcharges for stamp duty or land tax have been introduced across the country.

These tax surcharges often come with definitions that differ from one another (and from the definitions used by FIRB), which creates complexity and further uncertainty for offshore investors looking for investment opportunities here. This lack of cohesiveness across states and territories, combined with other changes over the past 10 years such as the introduction of withholding tax for certain types of foreign investors, has affected Australia's standing as a jurisdiction with low political and government risk for investors.

It is now more critical than ever for Australia to distinguish itself from other markets and strongly reinforce that we are a stable and desirable investment destination for long-term patient capital. This will be essential to creating much needed commercial and housing precincts, delivering significant economic contribution and supporting local jobs.