

Dissenting Report by Labor Senators

1.1 Labor Senators support some measures contained in the package of bills subject to this inquiry: the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015, the Foreign Acquisitions and Takeovers Fees Imposition Bill 2015, and the Register of Foreign Ownership of Agricultural Land Bill 2015.

1.2 These measures include changes to the rules relating to residential property and the register of agricultural land.

1.3 However, Labor Senators have deep concerns about other measures, as outlined in this dissenting report.

1.4 For this reason, Labor Senators recommend the Government not proceed with the bills in their current form.

Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 (Foreign Acquisitions Bill)

1.5 The Foreign Acquisitions Bill makes substantial changes to the *Foreign Acquisitions and Takeovers Act 1975* (Foreign Acquisitions Act), changing foreign investment rules and strengthening the enforcement measures.

1.6 The Foreign Acquisitions Bill introduces civil penalties and stricter criminal penalties against foreign investors and their intermediaries breaking the rules.

1.7 The Foreign Acquisitions Bill enables the transfer of responsibility for regulating foreign investment in residential real estate to the Australian Taxation Office (ATO), which will further strengthen enforcement and compliance with the existing rules.

Foreign Acquisitions and Takeovers Fees Imposition Bill 2015 (Fees Imposition Bill)

1.8 The Fees Imposition Bill introduces fees on all foreign investment applications, intended to ensure Australian taxpayers are no longer funding the administration of the system, while providing additional resourcing to the Treasury and the ATO to improve service delivery for investors.

Register of Foreign Ownership of Agricultural Land Bill 2015 (Register Bill)

1.9 The Register Bill establishes a register of foreign ownership of agricultural land that will be operated by the ATO. Foreign persons will be required to register information about their existing holdings and subsequent acquisitions and disposals of Australian agricultural land, providing greater transparency around the levels of foreign ownership of agricultural land.

Higher fees

1.10 While Labor Senators are not opposed to the introduction of full cost-recovery arrangements, we recommend the Government consider a simpler, more streamlined approach to the one proposed.

1.11 We note that the Office of Best Practice Regulation asserts the new red tape burden is being imposed by the Government without proper assessment of the increased regulatory burden.

1.12 We also note that the Property Council of Australia has expressed concerns that the new fees could undermine, rather than promote, housing affordability. These concerns should be closely monitored.

1.13 Under the Government's proposals, Australia will have 22 different screening thresholds and categories, which vary depending on the value and type of investment and the nationality of the investor; and 33 different levels and categories of application fees, ranging from \$5,000 to \$100,000.

1.14 The increase in fees is significant. The complexity imposed by the new fee structure will make Australia a less attractive investment destination. It is hard to see how such a complex and burdensome system can do otherwise.

New housing measures

1.15 Labor Senators are prepared to support the measures in this legislation relating to residential property investment, such as the transfer of responsibility for regulating foreign investment in real estate to the ATO to ensure stronger enforcement and better compliance with existing rules.

1.16 But Labor Senators do not consider that these measures are a sufficient response to the housing affordability crisis, and these bills are a very poor substitute for a comprehensive affordable housing plan.

1.17 Recent measures that this Government has introduced have had a negative impact on housing affordability, including abolishing the National Housing Supply Council and the National Rental Affordability Scheme.

1.18 Whilst there are benefits in imposing—and enforcing—restrictions on foreign investment in real estate that does not increase housing stocks, the Government should be cautious to ensure that the value and impact of these actions is not overstated.

New agricultural land and agribusiness investment screening thresholds

1.19 Labor Senators recognise that trade and investment are two sides of the same coin. To take advantage of new markets abroad, Australia needs to continue encouraging investment—including foreign investment—to support production at home.

1.20 Foreign investment has been critical to Australia's economic development, and will remain critical to our future prosperity. The National Farmers' Federation has estimated that Australian agriculture will require investment of between \$1.2 and \$1.5 trillion over the next 35 years to increase the capacity needed to meet rising demands.

1.21 Labor Senators support meeting this demand by encouraging foreign investment in an open and transparent manner, while ensuring that substantial investments remain in our national interest. Labor Senators support policy that encourages foreign investment growth while ensuring that safeguards remain in place.

1.22 On 2 May 2015, the former Treasurer, the Hon Joe Hockey MP, announced a number of changes to the rules relating to foreign investment, including the thresholds relating to agricultural land that trigger a notifiable action to the Foreign Investment Review Board. The Government reduced the threshold test for purchases of agricultural land (previously known as Australian rural land) from \$252 million to \$15 million for investors from most countries.

1.23 The Government is now proposing to further supplement to this complex regime of differential and discriminatory thresholds for Foreign Investment Review Board screening of proposed investments—with no economic or foreign policy rationale. The new barriers to foreign investment in Australian agriculture and agribusiness are retrograde and are not in the national interest.

1.24 There is no strong policy reason to reduce the investment screening threshold for agricultural land to \$15 million for investors from China, Korea and Japan – but not for investors from Singapore and Thailand who enjoy a \$50 million threshold – or investors from the United States of America, New Zealand and Chile who enjoy a \$1.094 billion threshold.

1.25 Furthermore, the new \$15 million threshold on investment in agricultural land will apply even where an investor is seeking to make improvements to their existing property. Buying a small adjoining parcel of land, perhaps to facilitate significant investment in improved farm infrastructure, triggers a Foreign Investment Review Board review if it takes the cumulative value of the investment above \$15 million.

1.26 In this package of bills, the Government is also proposing to reduce the screening threshold for some agribusiness investments, while redefining agribusiness so broadly that it would include half of Australia's food manufacturing industry.

1.27 Labor Senators are particularly concerned that new and seemingly arbitrary rules discriminate against investors based on their country of origin. Investors from China, Korea and Japan are subject to the new \$55 million screening threshold. Investors from the United States, New Zealand and Chile are not subject to the new rules, and will continue enjoying a \$1.094 billion threshold.

1.28 Concerns about the impact of these measures relating to agribusiness have been highlighted by a range of stakeholders including the Australian Food and Grocery Council and the Business Council of Australia.

1.29 In its submission to this inquiry, the Australian Food and Grocery Council stated:

In the absence of a clearly articulated public policy objective the additional regulatory burden on food processing has not been justified. Furthermore, if the proposed changes are about transparency in relation to sensitive sectors then alternative approaches should first be considered rather than the blunt instrument of applying these legislated changes to more than half of Australia's food manufacturing sector.¹

1 Australian Food and Grocery Council, *Submission 8*, p. 4.

1.30 The Australian Food and Grocery Council opposes the proposed foreign investment legislation and regulations on the basis that the changes:

- will discourage investment in Australia's food manufacturing sector by affecting more than half of the \$97 billion sector, especially medium sized enterprises who rely on foreign capital to expand and grow;
- are not based on a clear public policy objective;
- are not an appropriate response to competition concerns—concerns about competition have not yet been fully considered and, even if found to be justified, are being addressed through additional resourcing of the Australian Competition and Consumer Commission;
- are inconsistent with the Government's efforts to attract foreign investment; and
- undermine the efforts to build stronger economic relationships through trade agreements.²

1.31 These concerns were echoed in the submission of the Business Council of Australia to the exposure draft consultation process conducted by the Treasury, in which it stated:

Investment in the Australian agrifood sector is required to ensure that it has the resources and capabilities necessary to innovate, compete and to grow. Investment is needed to ensure that the value chain is well capitalised.

In addition to domestic sources, foreign investment has been, and will need to continue to be, an important source of funds for the Australian agrifood sector.

Rather than putting up barriers to foreign investment, the government needs to make clear that Australia is open to investment, and put in place policies and actions that support this.³

1.32 The Government's arbitrary thresholds will make Australia a less attractive investment destination. Labor Senators are concerned that these foreign investment changes will make it harder for the agriculture and agribusiness sector to raise capital, and risk putting downward pressure on the values of farm assets.

1.33 Labor Senators support a foreign investment framework that encourages much-needed investment in our country while providing safeguards to ensure all foreign investment is in this country's best interest. Labor Senators do not consider that the Government's proposed discriminatory-screening thresholds and new red-tape barriers will support that objective and call for clear, non-discriminatory rules.

2 Australian Food and Grocery Council, *Submission 8*, p. 5.

3 Business Council of Australia, *Submission to Exposure Draft on Implementing Foreign Investment Reforms*, July 2015, p. 2.
<http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Implementing%20Foreign%20Investment%20Reforms/Submissions/PDF/BCA.ashx>
(accessed on 14 October 2015)

1.34 Further, at the same time as it released an exposure draft of the legislation being considered, the Government released an exposure draft of the Foreign Acquisitions and Takeovers Legislation Regulation. It is unclear exactly which measures stem from the bills and which measures will be retained in regulation. This is something the Government must clarify.

Agricultural land register

Labor Senators support the measures in the Register Bill.

Recommendation 1

That the Government separate the three bills, the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015, the Foreign Acquisitions and Takeovers Fees Imposition Bill 2015 and the Register of Foreign Ownership of Agricultural Land Bill 2015.

Recommendation 2

That the Senate pass the Register of Foreign Ownership of Agricultural Land Bill 2015 without amendment.

Recommendation 3

That the Government amend the Foreign Acquisitions and Takeovers Fees Imposition Bill 2015 to establish a more consistent, simpler and streamlined approach to fees.

Recommendation 4

That the Government make clear in the explanatory memorandum to the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 the interaction between the bill, the current regulatory regime and the proposed Foreign Acquisitions and Takeovers Legislation Regulation, particularly as they relate to screening thresholds for agricultural land.

Recommendation 5

That the Government aim to streamline screening thresholds for agricultural land and agribusiness and eliminate inconsistent, discriminatory and arbitrary thresholds—that is, reduce red tape, not create it.

Recommendation 6

That the Government should further consult with industry, and commission a broader evaluation of the proposed changes, before seeking further passage of the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and the Foreign Acquisitions and Takeovers Fees Imposition Bill 2015.

**Senator Sam Dastyari
Deputy Chair**

