

Chapter 6

Committee's view and recommendation

6.1 Australia's foreign investment framework must deliver investment that is in the national interest. To achieve this objective, the framework itself must be robust and consistent in its application. It should instil confidence in the Australian public that the systems and processes in place to consider foreign investment applications are effective. It must also provide foreign investors with the confidence that the process for evaluating investment proposals is both efficient and transparent.

6.2 The committee recognises that the key concerns raised in relation to the foreign investment review framework, which came to the fore during the Port of Darwin lease process, relate to the transparency, adequacy, comprehensiveness and timeliness of the review process itself.

6.3 In particular, the committee notes that one of the most significant points of contention in respect of the review framework is the extent to which the facilitation of foreign direct investment overrides national security considerations.

6.4 The capacity of FIRB to provide informed and effective national security-related advice to the Treasurer is a matter of concern.

6.5 The committee recognises that the processes followed by FIRB in assessing proposals for foreign investment require more detailed consideration. As a case in point, the inquiry into the Port of Darwin lease brought to light a number of concerns in relation to the Foreign Investment Review Framework that currently governs decision-making in Australia:

- FIRB, as a non-statutory authority, does not have independent authority to review proposed acquisitions in relation to Australia's long term strategic interests.
- The FIRB process appears to be ad hoc, run on a case by case basis. Consistency in approach and decision making along with the desired transparency and certainty that investors require, was not demonstrated.
- It remains the case under the new regulations that State, Territory and Local Government owned assets, irrespective of their strategic importance, remain exempt from Foreign Investment Review Board scrutiny.
- The Port of Darwin lease announcements indicated that strategic partners such as the US were not necessarily fully advised of developments.

6.6 The committee recognises that regulating foreign investment is a complex and constantly changing policy area that will continue to challenge Australian governments in managing the balance between securing the benefits of such investments without jeopardising Australia's long term strategic interests. As such, the Foreign Investment Review arrangements need to be strengthened in their capacity to support assessments while also ensuring that they can continue to be responsive to new and emerging challenges.

6.7 In light of these concerns, the committee intends to undertake a full review of the current arrangements with a view to considering whether FIRB should be strengthened by being made into a statutory authority with a permanent, dedicated specialised staff. Consideration should also be given to the overall process and stakeholder engagement around such decisions.

6.8 Furthermore, the committee notes that a number of recent legislative and policy changes, which significantly alter Australia's foreign investment regime, have been introduced with seemingly arbitrary thresholds introduced for different investors and types of investments. The first task of a statutory Foreign Investment Review Board could be to develop a clear definition of what is meant by the 'national interest' and on this basis to review the regulations, restrictions and exemptions of the current framework.

6.9 The committee also intends to investigate the current thresholds guiding Government scrutiny of foreign investments in the agricultural sector to ensure that clear and transparent principles can be demonstrated to justify specific thresholds and eligibility rules.

6.10 In relation to agricultural investments, concerns have been raised regarding the investment screening threshold for agricultural land and agribusiness. What requires further consideration is whether these are likely to curtail the flow of investment into Australia's agricultural industry.

6.11 In order to continue its examination of the foreign investment review framework and comprehensively review the current arrangements as well as consider the remaining inquiry terms of reference, the committee recommends that the Senate extend the inquiry reporting date.

Recommendation 1

6.12 The committee recommends that the Senate extend the inquiry reporting date to 8 April 2016.

Senator Chris Ketter

Chair