

# Chapter 1

## Introduction

### Referral of inquiry

1.1 On 25 November 2015, the Senate referred the following matter to the Senate Economics References Committee (committee) for inquiry and report by 4 February 2016:

An examination of the foreign investment review framework, including the powers and processes of the Foreign Investment Review Board, in relation to Australian assets of strategic or national significance being subject to lease or purchase by foreign owned interests, and whether there ought to be any legislative or regulatory changes to that framework to ensure Australia's national interest is being adequately considered, with particular reference to:

- (a) the decision by the Northern Territory Government to grant a 99-year-lease over the Port of Darwin to Landbridge Group;
- (b) the planned lease by the New South Wales Government of TransGrid;
- (c) the decision by the Treasurer to block the sale of S Kidman and Co on national interest grounds; and
- (d) any other related matters.<sup>1</sup>

1.2 On 4 February 2016, the committee tabled an interim report and sought an extension from the Senate to produce a final report by 8 April 2016.

### Conduct of inquiry

1.3 In accordance with its usual processes, the committee advertised the inquiry on its website, and wrote to relevant organisations and individuals in order to invite submissions.

1.4 The committee received 25 public submissions and conducted two public hearings. The first was held on 15 December 2015 in Canberra, while the second hearing was conducted in Sydney on 10 March 2016. Public submissions to the inquiry are at Appendix 1. Additional information, including questions taken on notice, is at Appendix 2. The names of witnesses who appeared at the committee's hearings are listed at Appendix 3.

1.5 During the hearing on 15 December 2015, the committee heard evidence on the decision by the Northern Territory Government to grant a 99-year lease over the Port of Darwin to the Landbridge Group. During its second hearing in Sydney on 10 March 2016, the committee heard evidence on the remaining terms of reference, with a specific focus on the overall effectiveness of the assessment process undertaken by the Foreign Investment Review Board (FIRB) in respect of its capacity to determine

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1 *Journals of the Senate*, No. 129, 25 November 2015, p. 3482.

the risks and benefits of foreign investment in critical infrastructure, the agricultural sector and agribusinesses.

1.6 The committee acknowledges the organisations and individuals that have made contributions to the inquiry through submission and appearance at the hearing.

1.7 This report should be read in conjunction with the committee's interim report, which was tabled in the Senate on 4 February 2016.

1.8 References to the Committee Hansard are to the proof Hansard – page numbers may vary between the proof and the official transcript.

### **Purpose of report**

1.9 In addition to addressing the inquiry's remaining terms of reference, this report focusses on the issues and concerns raised in the committee's interim report. To that end, this report examines some of the key concerns that came to the fore during the committee's hearing into the Port of Darwin lease process, especially in relation to effectiveness of the processes that underlie Australia's foreign investment review framework.

1.10 In particular, the report examines whether the current foreign investment process, in which the national interest test is left deliberately broad and unlegislated, provides a sufficiently robust framework to support the Government's decision-making process in respect of the likely effects of foreign investment proposals on Australia's economic development and national security. This relates, in particular, to the transparency, comprehensiveness, timeliness and overall effectiveness of the review process itself.

1.11 The report also considers whether the 2015 changes to the legislative and regulatory framework that underpins the FIRB process, principally in relation to the lowering of investment thresholds for agricultural land and agribusinesses, are likely to limit foreign investment in those sectors. The report also considers whether these changes are likely to reduce the overall openness, transparency and effectiveness of the investment review process itself.

1.12 One of the concerns raised by the committee in its interim report was that of the exemption of state and territory-owned assets, regardless of their strategic or national interest significance, from FIRB scrutiny under the regulations. Following the tabling of the report, on 18 March 2016, the Treasurer, the Hon. Scott Morrison MP, announced that the Commonwealth Government has secured an agreement with the states and territories regarding FIRB review. From 31 March 2016, under the terms of the agreement, all sales or leases of state and territory critical infrastructure assets, such as the Port of Darwin or Transgrid, will become subject to a formal FIRB review process. This reform will be incorporated into the Foreign Acquisitions and Takeovers Regulation 2015.<sup>2</sup>

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2 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Critical asset sales to fall within foreign review net', *Media Release*, 18 March 2016, <http://sjm.ministers.treasury.gov.au/media-release/031-2016> (accessed 23 March 2016).

## **Structure of report**

1.13 Chapter 2 of this report provides an overview of the legislative and regulatory framework that underpins Australia's foreign investment review process, and also includes a comparison with two broadly comparable jurisdictions, New Zealand and the United States.

1.14 Chapter 3 examines the evidence for and against the effectiveness of the current FIRB assessment process in respect of sales or leases of Australia's critical infrastructure assets.

1.15 Chapter 4 examines the evidence regarding the Government's recent changes to the thresholds for foreign investment in agricultural land and agribusinesses, especially in relation to the effects that these changes might have on the levels of foreign investment in those sectors. In addition, the chapter examines the Government's decision to introduce an Agricultural Land Registry. It also considers the evidence concerning the effects of these changes on the transparency, efficiency and effectiveness of the foreign investment review process.

1.16 Chapter 5 provides the committee's view and recommendations.

