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Report on Foreign Investment in Residential Real Estate

House of Representatives
Standing Committee on Economics

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Canberra

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Chair's foreword

The Inquiry

Residential housing has been, and will always be, an issue that is at the forefront of community debate and discussion.

Owning your own home is part of the great Australian Dream. For many it represents the opportunity to build a future, it represents connection with community and security for family.

Buying into the Australian Dream doesn't come cheap. According to a recent International Monetary Fund (IMF) report[1], the current ratio of housing prices in Australia to average incomes is 31.6% above the historical average.

Is it any wonder then, that many Australians now worry that home ownership may be out of reach for them, for their children, or for their grandchildren? At the same time, Australians worry about rental and interest costs, and their impacts on the cost of living.

There is no one simple explanation for the decline in housing affordability – although lack of land supply, underdevelopment, state planning laws and regulations, local council red tape, and stamp duty and tax arrangements likely all play a part.

Over the years, however, many in the community have asked the question – what role does foreign investment play in residential real estate?

It was timely then that, on 19 March this year, the Treasurer, the Hon Joe Hockey MP commissioned the House Economics Committee to examine:

- the benefits of foreign investment in residential property;
- whether such foreign investment is directly increasing the supply of new housing and bringing benefits to the local building industry and its suppliers;

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1 International Monetary Fund, *House prices to income ratio: Deviation from historical average*, <https://www.imf.org/external/research/housing/index.htm>viewed 26 November 2014.

- how Australia's foreign investment framework compares with international experience; and
- whether the administration of Australia's foreign investment policy relating to residential property can be enhanced.

Current Foreign Investment Framework

Under our current foreign investment framework, as it applies to residential real estate, foreign investment is channelled into new housing so that more homes, units and apartments are built – meaning more opportunity for people to purchase. It also contributes directly to economic activity – generating employment for builders and suppliers.

When it comes to existing homes, there are generally prohibitions and restrictions. Non-resident foreign investors are prohibited from purchasing an existing home, and temporary residents (on visas of more than 12 months) can purchase just one existing home to live in while they are resident in Australia, but must sell this home on their visa expiring. All purchases, whether new or existing homes, are required to be pre-screened by the Foreign Investment Review Board (FIRB), supported by the Foreign Investment and Trade Policy Division of Treasury (FITPD).

According to FIRB statistics, in the first 9 months of this financial year, FIRB approved foreign investment into residential property of around $24.8 billion, 44 per cent higher than the $17.2 billion approved during all of 2012-13. Much of this investment is concentrated in the Melbourne and Sydney markets. Most of the increase is attributable to proposed investment in new property, which at $19.3 billion for the first 9 months of 2013-14 is 79% higher than 2012-13. The total number of established property approvals for the first 9 months of 2013-14 is 5,755 compared to 5,101 for 2012-13.

The key findings

Over six public hearings, and after considering more than 92 submissions, the committee has four key findings that translate into 12 practical recommendations.

First, there is no accurate or timely data that tracks foreign investment in residential real estate. No-one really knows how much foreign investment there is in residential real estate, nor where that investment comes from.

- A national register of land title transfers that records the citizenship and residency status of all purchases of Australian real estate would fix this and would allow facts to be injected into discussions about foreign investment, rather than 'best guestimates'. A national register would also help with compliance and enforcement with the foreign investment framework – allowing data to be compared easily.
- Other relevant government information should also be captured and made available to FIRB. At present, FIRB cannot access data from the Department

of Immigration and Border Protection on departing visa holders. Given the government has this information, this makes no sense.

- Together, these initiatives would allow authorities to track departing visa holders who may have purchased an existing home but who, under current rules, need to sell that home within three months of leaving.

Second, there has been a significant failure of leadership at FIRB, which was unable to provide basic compliance information to the committee about its investigations and enforcement activity.

- During the course of the inquiry, it came to light that no court action has been taken by FIRB since 2006. During the entire Rudd-Gillard-Rudd Government, not one divestment order was issued, which means not one government sale of illegally acquired property was made. This compares with 17 divestment orders between 2003 to 2007 when foreign investment in residential real estate was at much lower levels. FIRB was also unable to provide basic data on voluntary divestments.
- It defies belief that there has been universal compliance with the foreign investment framework outlined above since 2007.
- The systems failure at FIRB needs to be repaired; and new resources injected into FIRB to ensure better audit, compliance and enforcement outcomes.

Third, if you are not prepared to enforce the rules, then it is less likely that people will comply with the rules. This is especially true if the consequences of a breach are not meaningfully adverse.

- The ability to sanction people who have breached the foreign investment framework more easily is critical. Hence the need to bring in a civil penalty regime for breaches of the foreign investment framework; along with the need to capture those people, who have previously stood outside the framework but materially impact the integrity of our foreign investment regime. For instance, third parties who knowingly assist foreign investors to breach the rules.
- Currently, non-resident foreign investors can profit from the illegal purchase of property. Given this, the current financial penalty that can be applied to a property, regardless of its value, is seen by many as simply the 'cost of doing business'. Fines and pecuniary penalty orders should directly relate to the value of the property concerned. Furthermore investors who breach the framework should not be able to profit.

Fourth, currently the Australian taxpayer foots the bill for the administration of FIRB and FITPD, not the foreign investors applying for approval. This has arguably contributed to underinvestment in FIRB's audit, compliance and enforcement activities.

- Just as other regulators adopt a user pays model, the committee recognises that a modest administration fee can be implemented to fund enhanced audit, compliance and enforcement capacity within FIRB, as well as other new measures outlined in the recommendations.
- Parliamentary Budget Office analysis suggests that a modest application fee of $1,500 would generate revenue of $158.7 million over 4 years[2], yet amount to 0.27% or 0.20% of the purchase price for an average home in Melbourne and Sydney respectively[3].

Commitment to the Foreign Investment Framework

These practical measures will send a strong message about Australia's commitment to its foreign investment framework in practice, as well as in words.

This is important. Too often the signals in recent years have been in the opposite direction. For instance, in 2008, then Assistant Treasurer, the Hon Chris Bowen MP, removed the requirement for temporary residents to notify FIRB of all residential purchases.[4] This rule change allowed temporary residents to purchase existing homes without notifying FIRB.

Perhaps recognising that this neutered FIRB's capacity to monitor compliance with the "sale on departure" condition under our foreign investment framework, his successor, Senator the Hon Nick Sherry, reversed the change and announced a range of proposed measures to tighten monitoring and enforcement in the lead up to the 2010 election. Some of them are not dissimilar to those being recommended by the Committee. Regrettably, most of those announced measures were not pursued by his successor, the Hon Bill Shorten MP, nor any of the subsequent Assistant Treasurers in the last Government.

The Committee strongly recommends that the Government pursue the package of measures canvassed in this report.

Free Trade Agreements

Given the recent success in delivering Free Trade Agreements for the benefit of Australia, lest there be any confusion, it is important to note that residential property has never been part of any Free Trade Agreement. Accordingly, none of the recent agreements with Japan, South Korea and China impact the screening arrangements for residential property.

[2]PBO Costings –Appendix C.
[3]Based on an average house price of $550,000 in Melbourne or $740,000 in Sydney according to [RP Data, Submission 23.3].
[4]Bowen, Assistant Treasurer, Media Release No. 107, 18 December 2008.

In conclusion

In conclusion, the Committee found that the current foreign investment framework should be retained. In practice the framework has been undermined due to poor data collection, along with a lack of audit, compliance and enforcement action by FIRB. Australians are entitled to expect that the rules are properly enforced and our committee recommendations strengthen the ability to do this.

I would also like to acknowledge and thank all of those people who have helped inform this inquiry.

In particular, those people and organisations that made submissions and presented evidence; those who sent letters and provided their views; the Parliamentary Library and the Parliamentary Budget Office for their efficient professionalism; and members of the committee, who took a very collegiate approach to this task.

Special thanks to Committee Secretary, Mr Peter Banson, Inquiry Secretary, Dr Kilian Perrem and the House Economics Secretariat team for their diligent work on this report and their willingness to assist both the Chairman and Committee Members, to enable the report to be as comprehensive as possible.

Finally, a thank you to my incredibly hardworking staff, Tania Coltman and Sarah Nicholson, for their consistently excellent work.

I look forward to the Government's response to this report and the many practical recommendations that are contained in it.

Kelly O'Dwyer MP
Chair

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Membership of the Committee

Chair	Ms Kelly O'Dwyer MP
Deputy Chair	The Hon Ed Husic MP
Members	Mr Scott Buchholz MP
	Dr Jim Chalmers MP
	Mr David Coleman MP
	Mr Pat Conroy MP
	Dr Peter Hendy MP
	Mr Kevin Hogan MP
	Mr Craig Kelly MP
	Mr Clive Palmer MP
Supplementary Member	The Hon Matt Thistlethwaite MP

Committee Secretariat

Secretary	Mr Peter Banson
Inquiry Secretary	Dr Kilian Perrem
Research Officer	Ms Marina Katic
Administrative Officers	Ms Jazmine Rakic
	Ms Sarah Tutt

Terms of reference

The overarching principle of Australia's foreign investment policy, as it applies to residential property, is that the investment should increase Australia's housing stock. The policy seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (such as new developments of house and land, home units and townhouses) and brings benefits to the local building industry and its suppliers.

Consistent with this principle, foreign investors are able to seek approval to purchase new dwellings and vacant land for residential development. Foreign investors cannot generally buy established dwellings as investment properties or homes; however, temporary residents can apply to purchase one established dwelling to use as their residence while in Australia.

Notwithstanding these settings, concerns are raised periodically in relation to the possible impact of foreign investment on the Australian housing market.

In this context, the Committee is asked to examine:

- the economic benefits of foreign investment in residential property;
- whether such foreign investment is directly increasing the supply of new housing and bringing benefits to the local building industry and its suppliers;
- how Australia's foreign investment framework compares with international experience; and
- whether the administration of Australia's foreign investment policy relating to residential property can be enhanced.

List of abbreviations

ABS	Australian Bureau of Statistics
ASIC	Australian Securities and Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
BPM6	Balance of Payments and International Investment Position Manual, Sixth Edition
CLSA	Credit Lyonnais Securities Asia
DIBP	Department of Immigration and Border Protection
FDI	Foreign Direct Investment
FIRB	Foreign Investment Review Board
FTA	Free Trade Agreement
HIA	Housing Industry Australia
OECD	Organisation for Economic Co-operation and Development
OIO	Overseas Investment Office
PBO	Parliamentary Budget Office
RBA	Reserve Bank of Australia
REIA	Real Estate Institute of Australia
SIV	Significant Investor Visa
UDIA	Urban Development Institute of Australia
VEVO	Visa Entitlement Verification Online
WTO	World Trade Organisation

List of recommendations

Recommendation 1

The Committee recommends that the current foreign investment framework applying to foreign purchases of residential real estate be retained in its current form, utilising the existing legislated prohibitions and restrictions on purchases of established dwellings, and encouraging foreign investment to increase Australia's supply of new housing.

Recommendation 2

The Committee recommends that the Foreign Investment Review Board and the Foreign Investment and Trade Policy Division of Treasury put in place appropriate processes for the purpose of audit, compliance and enforcement of the foreign investment framework. Such processes must accurately capture audit, compliance and enforcement data for the purpose of oversight of the Foreign Investment Review Board and the Treasury.

Recommendation 3

The Committee recommends that the Government apply a modest administrative fee to the current screening for all foreign purchases of residential real estate, including purchases by temporary residents.

Fees collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Recommendation 4

The Committee recommends that the Government introduce a civil penalty regime for breaches of the foreign investment framework as it applies to residential real estate, with the following features:

- pecuniary penalty orders imposed under this penalty regime to be calculated as a percentage of the property value to act as an effective deterrent; and
- the regime to apply to foreign investors and any third party who knowingly assists a foreign investor to breach the framework.

Pecuniary penalty orders collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Recommendation 5

The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that the criminal penalties for breaching the foreign investment framework as it applies to residential real estate, apply equally to any third party who knowingly assists a foreign investor in residential real estate to breach the foreign investment framework.

Recommendation 6

The Committee recommends that in any instance where a foreign owner divests an illegally held established property, any capital gain from the sale of that property be retained by the Government.

Funds collected by this measure should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

Recommendation 7

The Committee recommends that Australia's Foreign Investment Policy be amended to explicitly require a temporary resident to divest an established property within three months if it ceases to be their primary residence.

Recommendation 8

The Committee recommends that the Government, in conjunction with the States and Territories, establish a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate. This information should be accessible by relevant agencies from a single database.

Recommendation 9

The Committee recommends that the Government establish an alert system for the expiry of temporary visas that can be used by the Treasury to issue property divestment orders in cases of non-compliance:

- by amending the *Migration Act 1958* so that the Department of Immigration and Border Protection must inform FIRB when a temporary resident departs Australia upon expiry of their visa; and
- by establishing effective and timely internal processes at the Treasury to receive and cross-check this information against its property databases to screen for compliance with the foreign investment framework.

Recommendation 10

The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that residential property sold under off-the-plan certificates that is marketed for sale overseas, must be marketed in Australia for the same period of time. Breaches of this requirement should be subject to sanctions under the Act ranging from fines to the cancellation of a sale.

Recommendation 11

In light of the expected finalisation of the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 in early 2015, the Committee recommends that the Government consider the purchase of residential property by foreign investors as a possible area of investigation when considering amendments to the legislation.

Recommendation 12

The Committee recommends that Treasury's Foreign Investment and Trade Policy Division make greater use of the databases held by AUSTRAC, and also of other relevant Federal and State Government databases, to assist the Foreign Investment Review Board in its duties and responsibilities.

1

Introduction

Referral of the inquiry

1.1 On 19 March 2014 the Treasurer, The Hon Joe Hockey MP, referred an inquiry into Australia's foreign investment framework as it applies to residential real estate to the House of Representatives Standing Committee on Economics (the committee). The specific terms of reference for the inquiry are outlined in paragraph 1.6.

Background

1.2 Australia’s foreign investment framework, with regard to residential real estate, aims to increase the supply of housing. As discussed in Chapter 2, the framework generally restricts foreign investment in residential property to new houses, land for development, or the redevelopment of existing properties to increase the number of dwellings.

1.3 All non-resident and temporary resident visa holders must seek foreign investment approval before acquiring interests in Australian residential real estate, unless otherwise exempt.[1] Temporary residents are permitted to purchase one established home to use as their residence while living in Australia provided it is sold once vacated.[2] Applications for proposed investments are submitted to The Treasury's Foreign Investment and Trade Policy Division.

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1 The Treasury, *Submission 31*, p. 11.

2 The Treasury, *Submission 31*, p. 3.

1.4 The Treasury's Foreign Investment and Trade Policy Division administers Australia's Foreign Investment Review Framework in consultation with the Foreign Investment Review Board (FIRB) and in accordance with the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and associated regulations and policy. FIRB is a non-statutory body established to provide advice on foreign investment policy and its administration.[3]

1.5 The inquiry is in response to concerns about whether the current regulatory framework for foreign investment into residential property is delivering the best social and economic outcomes for Australia.

Objectives and scope of the inquiry

1.6 The following terms of reference were referred for inquiry and report by 10 October 2014:

The overarching principle of Australia's foreign investment policy, as it applies to residential property, is that the investment should increase Australia's housing stock. The policy seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (such as new developments of house and land, home units and townhouses) and brings benefits to the local building industry and its suppliers.

Consistent with this principle, foreign investors are able to seek approval to purchase new dwellings and vacant land for residential development. Foreign investors cannot generally buy established dwellings as investment properties or homes. However, temporary residents can apply to purchase one established dwelling to use as their residence while in Australia.

Notwithstanding these settings, concerns are raised periodically in relation to the possible impact of foreign investment on the Australian housing market.

In this context, the committee is asked to examine:

- the economic benefits of foreign investment in residential property;
- whether such foreign investment is directly increasing the supply of new housing and bringing benefits to the local building industry and its suppliers;

3 The Treasury, *Submission 31*, pp. 2, 11; Foreign Investment Review Board, *Annual Report 2012-13*, p. 3.

- how Australia's foreign investment framework compares with international experience; and
- whether the administration of Australia's foreign investment policy relating to residential property can be enhanced.

1.7 In conducting the inquiry the committee adopted a holistic approach to examining whether the current policy settings are delivering the intended outcome for Australia. The inquiry did not focus on investors from any particular country into Australia's real estate market.

Conduct of the inquiry

1.8 The details of the inquiry are published on the committee's website. A media release announcing the inquiry and seeking submissions was issued on 19 March 2014.

1.9 The committee was originally requested to report by 10 October 2014 but was subsequently granted an extension to report by 28 November 2014 in order to consider additional evidence to the inquiry.

1.10 Ninety two submissions were received and are listed at Appendix A. The committee held public hearings on 30 May 2014 in Canberra, 20 June 2014 in Melbourne, 25 June 2014 in Canberra, 27 June 2014 in Sydney and 29 August 2014 and 24 September 2014 in Canberra. The witnesses who appeared are listed at Appendix B. The submissions and transcript of the public hearings are available on the committee's website at: www.aph.gov.au/economics

Structure of the report

1.11 Chapter 2 provides an overview of Australia's foreign investment framework as it relates to residential real estate and examines how the current framework could be improved.

1.12 Chapter 3 examines the current market for foreign investment in residential property and its economic impact. The lack of data on these investments and the consequences of this are discussed.

1.13 Chapter 4 discusses foreign investment with regard to accessibility and affordability in the Australian housing market. The key drivers of the property market are discussed in this context.

2

Regulation of foreign investment in residential property

Overview

2.1 Australia's regulatory framework for foreign investment in residential real estate is intended to increase Australia's housing stock. Consistent with this aim, the rules that apply to a non-resident investor in an Australian dwelling are based on whether the investment will produce such an increase.[1]

2.2 Foreign investment applications are considered in light of this overarching principle and in the case of new dwellings are usually approved without conditions. Foreign nationals are prohibited from buying established homes but temporary residents can apply to purchase one established dwelling to use as a residence while they live in Australia.[2]

The law

2.3 The *Foreign Acquisitions and Takeovers Act 1975* (the Act), the *Foreign Takeovers (Notices) Regulations 1975* and the *Foreign Acquisitions and Takeovers Regulations 1989* comprise the legislation governing foreign investment in Australia.

2.4 The Act governs the acquisition of Australian urban land (which includes residential real estate) by foreign persons.[3] Specifically, section 12A of the Act applies to acquisitions, or proposed acquisitions, of interests in

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1 The Treasury, *Submission 31*, p. 1.

2 The Treasury, *Submission 31*, p. 1.

3 The Treasury, *Submission 31*, p. 2.

'Australian urban land'.[4] A foreign person is defined as a person who is neither an Australian or New Zealand citizen nor a permanent resident of Australia.[5]

2.5 Section 26A of the Act requires a foreign person to notify the Treasurer of a proposal to acquire or increase an interest in Australian urban land, unless the acquisition is exempt under the regulations. Formal notification of a proposal under section 26A must be made in accordance with the forms prescribed in the *Foreign Acquisitions and Takeovers (Notices) Regulations 1975*.[6]

2.6 Section 21A of the Act outlines the powers available to the Treasurer in relation to foreign investment proposals to acquire interests in Australian urban land. The Act does not provide the Treasurer with the power to approve investment proposals but to prohibit any proposals that are deemed contrary to the national interest.[7] Additionally, the Treasurer may order the divestment or unwinding of investment where acquisitions are found to have been contrary to the national interest.[8]

2.7 Section 25 of the Act allows conditions to be applied to the approval of an investment proposal that are necessary to remove national interest concerns that would otherwise arise.[9]

The Foreign Investment Review Board

2.8 The Foreign Investment Review Board (FIRB) is a non-statutory body established in 1976 to advise the Treasurer and the Government on Australia's Foreign Investment Policy (the Policy) and its administration. FIRB's functions are advisory only. Responsibility for making decisions on the Policy and proposals rests with the Treasurer. The Treasury's Foreign Investment and Trade Policy Division provides secretariat services to FIRB and is responsible for the day to day administration of the arrangements.[10]

2.9 The role of FIRB, including through its secretariat, is to:

- examine proposed investments in Australia that are subject to the Policy, the Act, and supporting legislation and to make

4 Foreign Investment Review Board (FIRB), *Annual Report 2012-13*, p. 65.
5 FIRB, *Annual Report 2012-13*, p. 48.
6 FIRB, *Annual Report 2012-13*, p. 64.
7 FIRB, *Annual Report 2012-13*, p. 65.
8 FIRB, *Annual Report 2012-13*, p. 66.
9 FIRB, *Annual Report 2012-13*, p. 66.
10 FIRB web site <http://www.firb.gov.au/content/who.asp?NavID=48>viewed 15 September 2014.

recommendations to the Treasurer and other Treasury portfolio ministers on these proposals;

- advise the Treasurer on the operation of the Policy and the Act;
- foster an awareness and understanding, both in Australia and abroad, of the Policy and the Act;
- provide guidance to foreign persons and their representatives or agents on the Policy and the Act;
- monitor and ensure compliance with the Policy and the Act; and
- provide advice to the Treasurer on the Policy and related matters.[11]

Current regulations

2.10 All foreign investment in Australian real estate is screened by the Treasury through a prior approval process as outlined below.

2.11 Australia's Foreign Investment Policy sets out the rules against which the activities of foreign investors in Australian residential real estate are generally assessed. Different rules apply depending on whether the property being acquired will increase the housing stock or is an established dwelling.[12]

2.12 All foreign persons can apply to purchase vacant residential land for development and new dwellings in Australia. Applications to purchase vacant land are generally approved on the condition that construction begins within 24 months.[13] The completed dwellings may then be rented out, sold or retained for the foreign investor's own use. Applications to purchase new dwellings are usually approved without conditions.[14]

2.13 Additionally, all foreign persons can seek approval to redevelop an established dwelling. These applications are normally only approved where the redevelopment results in a net increase in available housing or in instances where the existing dwelling is found to be derelict or uninhabitable.[15]

2.14 The purchase of established dwellings in Australia by foreign persons is generally restricted to temporary residents.[16] The current policy states that temporary residents may purchase one established dwelling to be used as

11 FIRB <http://www.firb.gov.au/content/who.asp?NavID=48>viewed 15 September 2014.

12 The Treasury, *Submission 31*, pp. 2-3.

13 FIRB<http://www.firb.gov.au/content/_downloads/AFIP_2013.pdf>viewed 20 November 2014

14 The Treasury, *Submission 31*, p. 3.

15 The Treasury, *Submission 31*, p. 3.

16 The Treasury, *Submission 31*, p. 3.

their residence in Australia but must sell this property when it ceases to be their residence.[17] The standard practice at the Treasury is to allow three months for this sale to occur.[18]

Fact Box

Q: Can a foreign person buy residential real estate in Australia?

A: Yes, but there are restrictions for existing homes. A non-resident foreign investor is generally prohibited from purchasing an existing home. A temporary resident (who has a visa of more than 12 months) can purchase one existing home to live in for the duration of their visa but must sell within three months of leaving Australia at the expiration of their visa.

Q: What types of residential real estate can be bought by a foreign investor?

A: All foreign investors can purchase new dwellings but all purchases must be approved – in advance of purchase – by FIRB. This policy is intended to attract investment in new housing development to increase Australia's housing stock.

Q: Can a foreign person purchase residential real estate with an Australian citizen?

A: If the foreign person is married to an Australian citizen, the answer is yes. Otherwise, all of the standard rules apply as if the foreign person was purchasing the residential real estate in their name only (see answers to earlier questions).

Q: Can a permanent resident purchase residential real estate?

A: Yes. There are no restrictions on permanent residents, just as there are no restrictions on Australian citizens.

2.15 Property developers can apply for an advanced-off-the-plan certificate to sell all new properties in a development of 100 or more dwellings to foreign persons, provided the development is also marketed locally.[19] An individual foreign buyer is not then required to gain separate approval to purchase dwellings in a certified development.[20] Currently, no penalties

17 FIRB <http://www.firb.gov.au/content/_downloads/AFIP_2013.pdf>viewed 18 July 2014.

18 FIRB <http://www.firb.gov.au/content/faq.asp#temporary>viewed 13 November 2014.

19 The Treasury, *Submission 31*, p. 4. See also Table 2.1.

20 The Treasury, *Submission 31*, p. 4.

exist for breaches of this provision of the Act other than the cancellation of a certificate.[21]

2.16 Changes have been made to the regulatory framework for foreign investment in residential real estate over several decades. The key changes to this framework are highlighted in Table 2.1.

Administration of the policy

2.17 All foreign nationals must seek approval before acquiring interest in Australian real estate, unless the acquisition is exempt. The Treasury's Foreign Investment and Trade Policy Division is responsible for the day-to-day administration of Australia's real estate screening arrangements, in consultation with FIRB.[22] As noted earlier, FIRB's functions are advisory and the responsibility for making decisions on the Policy and proposals rests with the Treasurer.[23]

2.18 The Treasurer has provided an authorisation to the Executive Member of FIRB, who manages the Foreign Investment and Trade Policy Division, and other senior Division Staff, to make decisions on proposals that are consistent with the Policy which do not involve issues of special sensitivity. In 2012-13, such proposals comprised over 93 per cent of all foreign investment proposals decided and were mostly real estate purchases.[24]

Fact Box

- The Treasury’s Foreign Investment and Trade Policy Division is responsible for the day-to-day administration of Australia’s real estate screening arrangements, in consultation with FIRB. This Division employs around 30 staff and 8 of these staff are dedicated to residential real estate.
- The FIRB itself comprises five part-time members, including a Chairman, and one full time Executive member from the Foreign Investment and Trade Policy Division. The FIRB members have expertise in business, taxation, superannuation, banking, corporate finance, fund management, and agriculture.

21 Mr John Hill, Manager, Compliance and Real Estate Screening Unit, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 13.

22 The Treasury, *Submission 31*, p. 11.

23 FIRB, *Annual Report 2012-13*, p. 3.

24 FIRB, *Annual Report 2012-13*, p. 6.

2.19 Proposals involving transactions that are not covered by this delegation are referred to Treasury Ministers for a decision. These arrangements streamline the approval process and facilitate decisions on applications within statutory deadlines.[25]

2.20 The application process requires information about the relevant parties and their proposals to be submitted online. Information sought from applicants varies according to the property investment category, the residency status of the investor and whether an investor is an individual or corporation.[26] Approvals are considered on a case-by-case basis and foreign persons must submit proposals that identify specific property for assessment.

2.21 More screening emphasis is placed on applications from temporary residents to purchase established residential property. These applicants are required to affirm their residency status and declare their property usage intentions.[27] In examining proposals, the applicant's compliance with any conditions relating to past proposals is taken into consideration. Instances of failure to comply with conditions may result in future proposals being rejected.[28]

2.22 Property developers of a proposed new residential project can apply for advanced-off-the-plan certificates for a development of 100 or more dwellings. The developer is permitted to sell all of the dwellings to foreign buyers but must also market the properties in Australia. The conditions of these certificates require the developer to report details of all foreign persons that have acquired a dwelling in the development.[29]

2.23 If an off-the-plan dwelling with such a certificate is then on-sold by a foreign owner, it is no longer considered a new property and is therefore subject to the restrictions on foreign purchases of established properties as outlined later in this chapter.

2.24 Applications that are not consistent with the foreign investment policy are not approved. In this situation, applicants often withdraw their application before a final order prohibiting the transaction is issued.[30]

25 The Treasury, *Submission 31*, p. 11.

26 The Treasury, *Submission 31*, p. 11.

27 The Treasury, *Submission 31*, p. 12.

28 FIRB, *Annual Report 2012-13*, p. 10.

29 The Treasury, *Submission 31*, p. 4.

30 The Treasury, *Submission 31*, p. 12.

Fact Box

Q: Can a non-resident foreign investor buy a newly built house or apartment that has previously been owned by a non-resident foreign investor?

A: No, all properties purchased by non-resident foreign investors must be brand new.

Q: Can a foreign person who has been granted a temporary residency visa seek approval and buy an established property as a primary residence before arriving in Australia?

A: No, a temporary resident must be in Australia in order to seek approval to purchase an established property as a home. A temporary resident can buy a single established dwelling to live in if they have a visa that permits them to be legally resident in Australia for a continuous period of more than 12 months.

Q: Are there any circumstances in which a non-resident foreign investor can purchase an existing home?

Yes, in very specific circumstances - that is, an established dwelling can also be purchased by a foreign investor if it is to be redeveloped and replaced with at least two new residences or if a derelict residence is to be redeveloped to become habitable. Otherwise, a non-resident foreign investor is prohibited from purchasing an existing home.

Table 2.1 Changes to the Foreign Investment Framework for Residential Real Estate

Year	Change
1976	Under the Government's Foreign Investment Policy (at the time the primary mechanism under which real estate investment was screened), some acquisitions of Australian real estate by foreign interests were examinable. However, acquisitions of residential dwellings for the intended use by expatriate Australians and accepted migrants and transfers of real estate between immediate family members were not examinable. The Foreign Investment Review Board was established.
1978	All acquisitions of real estate by a single foreign interest or associated foreign interests up to a cumulative value of less than $250,000 (since 8 June 1978) did not require approval. Proposals from foreign developers to construct and sell real estate developments (including exclusively to Australians) were subject to a minimum 50 per cent Australian equity participation.
1981	All acquisitions of real estate by a single foreign interest or associated foreign interests up to a cumulative value of less than $350,000 (since 8 June 1978) did not require approval.
1985	All acquisitions of real estate by a single foreign interest or associated foreign interests up to an aggregate value of less than $600,000 (since 8 June 1978) did not require approval. Requirement of 50 per cent Australian equity participation removed for developments that are minor (less than $10 million) or short-term in nature (less than five years to complete).
1987	$600,000 threshold was abolished, with all proposed acquisitions of urban (including residential) real estate by foreign interests requiring approval regardless of size or value. Advanced-off-the-plan category was introduced with a minimum requirement of four or more dwellings in a development provided that no more 50 per cent of the units in any one project were bought by non-residents and subject to an undertaking by the developer to report all sales six monthly so that compliance with the 50 per cent restriction could be monitored.
1989	*Foreign Takeovers Act 1975* renamed *Foreign Acquisitions and Takeovers Act 1975*. Statutory backing given to the Government's Foreign Investment Policy, with existing restrictions requiring foreign persons to seek approval for the purchase of Australian urban real estate replicated in the Act.
1999	Advanced-off-the-plan certificates: only developers seeking advanced approval to sell up to 50 per cent of a development with ten or more (previously four or more) dwellings to foreign investors could apply for advanced approval.
2008	The requirement for temporary residents to obtain foreign investment approval for real estate purchases was removed. The 50 per cent rule for the advanced-off-the-plan category was removed and replaced with a new requirement that the developer must market the development domestically and the minimum number of dwellings required in a development was increased to 100.
2010	The requirement that temporary residents need approval for real estate purchases was reinstated.

Source *The Treasury, Submission 31, Attachment A, p. 14.*

2.25 The Act provides a 30-day statutory examination period for a decision to be made on proposals lodged under the Act, followed by a further 10 days to notify the applicant of the decision.[31] If the Treasurer does not take action within this period, the power to prohibit the proposal or impose

31 FIRB, *Annual Report 2012-13*, p. 6.

conditions expires.[32] The 30-day examination period may be extended by up to a further 90 days by the issue of an Interim Order which prohibits the proposal for that period.[33] Interim Orders are generally issued to allow the applicant additional time to provide adequate information for assessing the proposal.[34]

2.26 FIRB publishes data annually on its activities, including the total number and value of the approvals it grants to foreign investors and temporary residents for the purchase of a specifically identified property or piece of land.[35] However, FIRB does not record actual purchases.

2.27 FIRB cautions that there are substantial differences between statistics on proposed investments and actual investment flows.[36] Approvals data do not correspond with the number of actual purchases by foreign investors as not all approvals will result in a sale to the applicant. For example, investors may seek several approvals to allow them to bid at different auctions but may only purchase one property or none at all.[37]

2.28 Advanced-off-the-plan certificates are recorded as one approval regardless of the number of dwellings sold to foreign persons, and the value of the advanced-off-the-plan approvals is recorded as the total value of the development, even though not all of the dwellings may end up being sold to foreign purchasers.[38]

32 FIRB, *Annual Report 2012-13*, p. 64.
33 FIRB, *Annual Report 2012-13*, pp. 64-65.
34 FIRB, *Annual Report 2012-13*, p. 6.
35 Reserve Bank of Australia (RBA), *Submission 19*, p. 2.
36 FIRB, *Annual Report 2012-13*, p. 15.
37 The Treasury, *Submission 31*, p. 6.
38 The Treasury, *Submission 31*, p. 6.

Fact Box

Q: Can a foreign person in Australia on a 12 month tourist visa buy an established property to live in?

A: No. This does not satisfy the temporary residency requirements for purchasing an established property as a primary residence.

Q: Can non-residents jointly acquire an established property with a legally resident family member?

A: Non-residents cannot acquire an interest in an established residential property unless it will result in an increase in Australia's housing stock or it is a joint purchase with a spouse who is an Australian citizen or permanent resident.

Q: Can non-resident parents buy an established property for a child who is legally resident in Australia?

A: A non-resident cannot purchase an established property in their name in order to provide a home for a legally resident child. However, if an established property was purchased in the name of a temporary resident child as a primary residence, this would be lawful.

2.29 The committee notes from the evidence received by this inquiry that there are three significant limitations to the current data on foreign investment in Australian property. Foreign buyers of residential real estate who fail to apply for pre-approval are not captured by the data and are therefore an unknown quantity. In addition, the data that is captured is not always accurate as not all approvals result in a purchase. Finally, there are problems with the timeliness of the data – given the considerable delay in data release by FIRB. Issues regarding FIRB data are discussed in more detail in Chapter 3.

Fact Box

Q: Can a previous temporary resident who has left Australia continue to own a new apartment that was their former home in Australia?

A: Yes, if this apartment was brand new when it was purchased, then it can be retained by the former temporary resident as all brand new dwellings can lawfully be purchased and retained by foreign investors regardless of their residency status.

Q: Can a previous temporary resident who has left Australia continue to own an established apartment or house that was their former home in Australia?

A: No, an established property purchased by a previous temporary resident as a home whilst in Australia cannot be retained if it ceases to be their primary home. Such properties must be sold within three months of the foreign owner no longer living there. They cannot be retained by a non-resident as an investment property or as a second home. This restriction would also apply to any temporary resident who decided to move house whilst in Australia.

Q: Can a temporary resident buy additional properties or real estate whilst in Australia?

A: Only if they are brand new houses or apartments, or vacant land for residential development. A temporary resident cannot buy an established property unless it is to be used as a primary residence. An established property cannot be bought by any foreign investor, including temporary residents, as a second home, holiday home or as an investment.

Approval process

2.30 The Treasury operates an online system to process applications from foreign nationals for approval to purchase land and property. Mr John Hill, Manager, Compliance and Real Estate Screening Unit at the Treasury broadly outlined aspects of this process at the public hearing on 30 May 2014 in Canberra:

> We scan centrally as database line items the applications that flow from the website portal into our case management system. It is a more streamlined process for new and vacant land. In a sense we triage the volumes of cases that arrive each morning. Basically we pick out anything that looks particularly interesting for compliance or anomaly. We look at whether there are collective owners of applications. They may be entities, trusts, companies et cetera. They are perfectly able to acquire under the policy new and

> vacant land. The important thing is that people are well identified and that we make sure there are no gaps in the information.[39]

2.31 Mr Hill commented further that these online forms are now the primary mechanism by which these applications are received and that they take 10 to 15 minutes to complete. He advised:

> When they submit that form, their details are transferred through the internet to the Treasury management system. Typically we will get a range of diagnostic information from the applicant, and the process of screening commences at that point.[40]

2.32 Mr Hill also outlined the types of screening that occur when approval applications for new properties are submitted. He stated:

> I would estimate that about 10 per cent of all new and vacant land applications that we get each day would probably be slightly peculiar—not necessarily a problem but they would trigger a review process. If the value of the transaction is beyond a certain threshold, we immediately consult with law enforcement agencies. We will look at names and incorrect completion of declaration forms. People need to clearly accept the terms and conditions of the property acquisition. If that has not been done, we will ping it. The 10 per cent goes off to a team of staff that looks very closely at those applications and in most cases will probably contact the applicant to clarify. The rest of them are summarily approved, and that can take in the order of 24 hours from receipt.[41]

Fact Box

Q: Can foreign investors purchase vacant land to build new housing?

A: Yes, but the granting of approval to a foreign investor to purchase vacant land for this purpose would be on the condition that construction must commence within two years. Failure to comply with this condition could result in an order being issued to the foreign owner to sell the land.

Compliance and enforcement

2.33 The Treasury provided evidence that it uses a compliance framework that emphasises "information and education initiatives", supported where

39 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 3.

40 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 3.

41 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 3.

necessary by more active measures to encourage foreign investor compliance.[42]

2.34 Measures the Treasury implements to manage compliance include maintaining a hotline to initiate follow-up investigations based on information provided and monitoring relevant properties to ensure conditions imposed on approved purchases are being adhered to.[43] The committee was not provided with any precise data in relation to the operation of this hotline. In the committee’s view, detailed information on compliance activities that occur through this facility must be accurately maintained as part of future enhancements to the internal processes at the Treasury's Foreign Investment and Trade Policy Division.

2.35 The Act provides a range of powers to enforce decisions made, including the ability to:

- order the sale of a property purchased without prior foreign investment approval, where that purchase is considered contrary to the national interest;
- prosecute a foreign person who failed to obtain prior approval for a purchase;
- prosecute a foreign person who failed to comply with an order to sell shares, assets or property; and
- prosecute a foreign person who failed to comply with conditions attached to an approval.[44]

2.36 Parties that do not comply with the conditions applied to investment proposals approved by the Treasurer commit an offence under subsection 25(1C) of the Act.[45]

2.37 On conviction for a breach of the Act individuals may be fined a maximum penalty of 500 penalty units (currently $85,000), imprisonment for two years, or both. In the case of a corporation, a multiplier of five applies to the maximum fine for an individual, resulting in a current maximum of $425,000.[46]

2.38 While the Act provides wide-ranging powers to enforce decisions made, Treasury provided evidence that the use of formal prohibition or divestment orders is avoided where investors cooperate with compliance staff. The Treasury works with applicants to resolve most concerns

42 The Treasury, *Submission 31,* p. 12.
43 The Treasury, *Submission 31,* p. 13.
44 The Treasury, *Submission 31,* p. 4.
45 FIRB, *Annual Report 2012-13,* p. 67.
46 The Treasury, *Submission 31*, pp. 4-5.

relating to compliance with conditions and the experience is that there is rarely a need to resort to these penalties as most investors comply with the requirements in the Act and follow directions from Treasury staff.[47]

Fact Box

Q: Where do the regulations on foreign investment in Australian residential real estate come from?

A: The *Foreign Acquisitions and Takeovers Act 1975* gives the Federal Treasurer the power to block certain foreign investments that are deemed by this legislation to be contrary to the national interest.

Q: How are these regulations enforced in relation to residential property?

A: All foreign purchases of residential property require pre-approval from the Treasury through its Foreign Investment and Trade Policy Division which receives policy advice from the Foreign Investment Review Board (FIRB). Applications for approval are made using an online system.

Q: What happens if the regulations are breached?

A: There are a number of measures that can be taken for breaches of the rules. If a foreign person has unlawfully purchased or retained a property, or has failed to gain the required approval, the legislation allows the Treasurer to issue a final order which would block the acquisition of the property, or a divestment order which would require the foreign investor to dispose of the property.

2.39 However, the committee notes that an illegal purchase cannot be rectified without divestment. For example, a foreign buyer must not be allowed to retain an established property as an investment, when they should only be allowed to buy a brand new dwelling for this purpose. FIRB and the Treasury must ensure that there is no such circumvention of the rules and no retrospective approvals for illegal purchases. Retrospective approvals may be appropriate where a non-resident foreign investor has purchased a new dwelling but did not notify FIRB. However, sanctions may apply.

2.40 The Treasury has access to data sources such as the Department of Immigration and Border Protection (DIBP) online visa record system, fee-based property ownership searches and statistical databases provided under licence by external agencies to support its compliance activities.[48] However, the committee is aware that the most up-to-date information

47 The Treasury, *Submission 31*, p. 13.

48 The Treasury, *Submission 31*, p. 13.

from DIBP regarding the departure of temporary residents from Australia is not available to FIRB under current migration legislation. This is further discussed in Chapter 3.

2.41 FIRB is also responsible for monitoring compliance, and to this aim works with relevant members of the business community, government authorities, legal community and other government agencies (such as the Australian Federal Police, Department of Immigration and Border Protection, Australian Tax Office and Australian Securities and Investments Commission).[49]

Fact Box

Q: Can breaches of the regulations governing foreign investment in residential real estate be subject to court prosecutions?

A: Yes. Failure to comply with a final or divestment order from the Treasurer can result in a court proceeding to enforce these orders and can result in a fine of up to $85,000 for an individual (or up to $425,000 for a company), imprisonment for a maximum of two years, or both.

Q: What penalties apply to a third party, such as a real estate agent, who knowingly assists a non-resident foreign investor to breach the rules?

A: None. Currently, penalties only apply to the foreign investor.

Significant Investor Visas

2.42 A mechanism exists for foreign investment in residential real estate through the recently introduced Significant Investor Visa (SIV) scheme that is operated by the Department of Immigration and Border Protection (DIBP). This scheme commenced on 24 November 2012.[50]

2.43 The SIV is intended to target the migration of high net-worth individuals to Australia with the longer-term aim of moving the wealth of international businesses so that they become Australian businesses. Investment migrants under this scheme are required to invest at least $5 million into complying investments in Australia for a minimum of four years before becoming eligible for a permanent visa. DIBP states in its submission to this inquiry that:

> Direct investment in residential property is excluded from investments that can be considered a complying investment for the purposes of the SIV. However, it is recognised that real property in

49 RBA, *Submission 19,* p. 2.

50 Department of Immigration and Border Protection (DIBP), *Submission 50*, p. 3.

> Australia is one of a range of investments that can be made by a managed fund, which may be considered a complying investment.[51]

Fact Box

Since the commencement of the Significant Investor Visa program in November 2012, a total of 286 visas have been granted up until the end of June 2014. Immigration Department data indicates that among current SIV holders, at least 7 investments worth $27.5 million have been made into managed funds that invest in property.

2.44 At the public hearing in Canberra on 29 August 2014, the committee queried witnesses from DIBP on how the SIV scheme could apply to foreign investment in residential real estate. Mr Garry Fleming, First Assistant Secretary, DIBP responded:

> The main comment I would make in relation to residential real estate is that it is not a qualifying complying investment for an individual to go in and buy residential real estate. Even if they are doing their investment via a private proprietary company, there is a requirement that it not be a passive investment. Therefore, for example, buying an established property for residential or rental purposes would not qualify, but potentially developing new real estate might. Otherwise, the investment is via a managed fund and there is obviously different ways that managed funds operate. Yes, the key point would be that the complying investment cannot be an individual buying residential real estate for living or rental purposes.[52]

2.45 DIBP confirmed that the holder of an SIV would be eligible to purchase an established property to live in as a temporary resident with Treasury approval but reiterated that this was entirely separate from SIV compliance requirements. DIBP emphasises in its submission that an investment into a residential property development could only qualify as a complying investment under the SIV scheme under certain conditions:

> If the company operates a property development business of sizeable scale and on a consistent basis, then an investment into the company may be SIV compliant. Assessment of a qualifying

51 DIBP, *Submission 50*, p. 3.

52 Mr Garry Fleming, First Assistant Secretary, DIBP, *Committee Hansard*, Canberra, 29 August 2014, p. 1.

> business can only be on a case-by-case basis in conjunction with a valid visa application as each applicant's investment structure is different.[53]

2.46 The committee understands that Austrade will be responsible for determining complying investment policy under the SIV scheme from July 2015. It is the committee's view that the complying investment policy under the SIV program should be continually reviewed to ensure that the program is delivering investment that is in the national interest.

International comparisons

Overview

2.47 In its submission to this inquiry, the Treasury notes that individual country restrictions on foreign investment in residential real estate are difficult to compare, due in part to a lack of reliable information on such policies in many jurisdictions.[54]

2.48 The Treasury also submits that based on the available information, the United States, Canada, New Zealand, the United Kingdom and many European countries do not have explicit foreign investment restrictions or do not apply differential tax rates on foreign purchases of housing. In comparison, China, Vietnam, Singapore, Philippines, India and Thailand appear to limit foreign purchases of residential properties, and Singapore and Hong Kong impose additional stamp duties on these transactions.[55]

2.49 As the RBA commented, in China, India and Indonesia, non-residents are generally not permitted to purchase residential property.[56]

2.50 In its submission to the inquiry, SMATS Group comments that international markets are significantly more speculative than that in Australia.[57] SMATS Group also states that foreign investor activity in overseas real estate markets can be above half of all market activity at times (far greater than the corresponding activity in Australia), and unlike Australia, do not have a dependence on foreign investment to support the supply of housing stock.[58]

53 DIBP, *Submission 50*, p. 12.
54 The Treasury, *Submission 31,* p. 5.
55 The Treasury, *Submission 31*, p. 5.
56 RBA, *Submission 19,* p. 8.
57 SMATS Group, *Submission 35,* p. 10.
58 SMATS Group, *Submission 35,* p. 10.

2.51 The Reserve Bank of Australia (RBA) notes in its submission with regard to industry reports that most English speaking countries have very few restrictions on foreign purchases of residential property. The RBA states that these countries make little to no differentiation between foreign purchases of new or established dwellings, and have very few reporting requirements.[59]

2.52 The RBA further comments in its submission that European governments have recently been looking to increase foreign residential investment from outside the European Union.[60] The RBA also notes that Hong Kong, Malaysia and Singapore have comparatively minimal restrictions on foreign investment in their new and established housing markets although some Asian countries have increased property taxes in an effort to slow the pace of house price growth.[61]

2.53 The RBA submits that Australia is among the more open countries with respect to foreign purchases of new housing.[62] The Property Council of Australia suggests in its submission however that Australia ranks second to Switzerland in foreign investment strictures.[63]

Screening

2.54 At the public hearing on 30 May 2014, Mr Brian Wilson, Chairman of FIRB, commented that 'I think it is pretty clear that, amongst the OECD countries, very few countries have any particular restrictions'.[64] Mr Wilson stated:

> Switzerland is probably the only one of the so-called developed nations that has restrictions comparable to those of Australia... Australia is almost alone amongst the OECD countries for having actual restrictions or vetting.[65]

2.55 The Property Council of Australia submission compares 12 countries in respect of their foreign investment regulations. Of these, the countries that require approval for foreign investment in real estate are Switzerland, Australia, Singapore, Canada, and Denmark (if considered a non-

59 RBA, *Submission 19,* p. 8.
60 RBA, *Submission 19,* p. 8.
61 RBA, *Submission 19,* p. 8.
62 RBA, *Submission 19,* p. 1.
63 Property Council of Australia, *Submission 25,* pp. 3-4.
64 Mr Brian Wilson, Chairman, FIRB, *Committee Hansard*, Canberra, 30 May 2014, p. 1.
65 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 30 May 2014, p. 1.

resident). Singapore and Australia have specific bodies that process these approvals (the Singapore Land Authority and FIRB, respectively).[66]

2.56 The countries in this comparison that do not require approval for foreign investment are Hong Kong, Japan, Germany, France, United States (although relevant forms must be filed with Federal Authorities), New Zealand (sensitive land excepted) and the United Kingdom.[67] RP Data states in its submission that Switzerland's approval policy is exceptions-based and New Zealand imposes certain restrictions on the ability of foreign nationals to acquire what is termed 'sensitive land'.[68]

2.57 Regulation of foreign investment in real estate in Canada is determined at a provincial level.[69] Canada does not have a federal approval process but several provinces have introduced a limited approval regime.[70] The United States has a very limited approval process which only operates in respect of certain properties.[71]

2.58 In Switzerland, foreign investors can only purchase one property as a holiday home or secondary residence and cannot rent this property long term or sell within 5 years of purchase.[72] RP Data notes in its submission that nationals of European Union member states living in Switzerland who have a residency permit can buy real estate but non-residents may only purchase property if it is necessary for gainful activity. Government authorisation is required for the purchase of a second or vacation home.[73]

2.59 Currently, foreign investment in Canadian residential real estate is generally unrestrained and encouraged. Overseas investors are able to purchase property if they are spending less than six months per year in Canada and the debt finance must come from a Canadian bank.[74] There have also been calls to improve the data collection of Canada's foreign investment approval agency.[75]

2.60 In Singapore, foreign buyers are prohibited from investing in public housing.[76] Only approved foreign buyers can purchase residential real estate, and must apply to the Residential Property Advisory Committee

66 Property Council of Australia, *Submission 25*, pp. 12-14.
67 Property Council of Australia, *Submission 25*, pp. 12-14.
68 RP Data, *Submission 23,* Appendix B, p. [2].
69 Property Council of Australia, *Submission 25*, p. 4.
70 RP Data, *Submission 23,* Appendix B, p. [5].
71 RP Data, *Submission 23,* Appendix B, p. [4].
72 Property Council of Australia, *Submission 25*, p. 12.
73 RP Data, *Submission 23*, Appendix B, p. [6].
74 Property Council of Australia, *Submission 25*, p. 12.
75 Property Council of Australia, *Submission 25*, p. 4.
76 Property Council of Australia, *Submission 25*, p. 12.

for approval to purchase property.[77] Denmark does not allow foreign persons to purchase property without permission from the Ministry of Justice.[78]

2.61 In Switzerland temporary residents can purchase property with no authorisation required. Temporary residents can also purchase property in Singapore, Denmark, Hong Kong, Japan, Germany, France, United States, New Zealand and the UK. In Canada temporary residents are able to purchase property and they need to file tax returns.[79]

2.62 Switzerland potentially has caps on foreign pre-sales – each Canton is assigned a quota to allocate.[80] In Singapore, there are no caps on foreign pre-sales but a foreign person may not own all apartments within a building.[81] The following countries do not implement any caps on foreign pre-sales: Canada, Denmark, Hong Kong, Japan, Germany, France, United States, New Zealand, and the United Kingdom.[82]

Finance and Taxation

2.63 The Property Council of Australia's comparison also provides information on particular taxation and financing arrangements among countries. In respect of financing investments, in Germany, banks will not give foreign buyers finance for more than 60 per cent of the purchase price of a property,[83] and in Japan there are limitations from banks on debt finance for non-permanent residents and a Japanese citizen guarantor is required.[84]

2.64 In regards to taxation, in Switzerland, Denmark, Japan, and New Zealand there are no special tax arrangements for foreign investors.[85] Non-residents are exempt from the Capital Gains Tax in the United Kingdom,[86] while in France buyers with an EU passport get a reduced rate of capital gains tax for each year of ownership of the property (starting at 40.5 per cent after three years). Non-EU passport holders get similar treatment

77 RP Data, *Submission 23,* Appendix B, p. [3].

78 Property Council of Australia, *Submission 25,* p. 13.

79 Property Council of Australia, *Submission 25,* pp. 12-14.

80 Property Council of Australia, *Submission 25,* p. 12.

81 Property Council of Australia, *Submission 25,* p. 12.

82 Property Council of Australia, *Submission 25,* pp. 12-14.

83 Property Council of Australia, *Submission 25,* p. 13.

84 Property Council of Australia, *Submission 25,* p. 13.

85 Property Council of Australia, *Submission 25,* pp. 12-14.

86 Property Council of Australia, *Submission 25,* p. 14.

(starting at 53 per cent after three years).[87] In Hong Kong a stamp duty refund is available if redevelopment occurs within six years.[88]

2.65 Foreign buyers in the United States are subject to 10 per cent withholding tax upon sale.[89] In Canada, a foreign owner must pay 25 per cent withholding tax when renting-out.[90]

2.66 Singapore currently has a 15 per cent Additional Stamp Duty for foreign investors aimed at reducing activity from speculative and potentially damaging investment rushes.[91] Singapore also has a withholding tax of 15 per cent that applies to interest paid to a foreign lender.[92] Hong Kong has a 15 per cent stamp duty for foreign buyers[93] and additional selling fees if properties are bought or sold too quickly by speculators.[94]

2.67 An additional stamp duty for foreign purchases of residential real estate could be considered in Australia, although this may have a considerable impact on the levels of foreign investment in this sector. The Parliamentary Budget Office (PBO) provided costings for such a regime, which are included at Appendix D. These costings show that any increased level of stamp duty would have a considerable negative impact on the market. However, these figures will require further modelling by the Treasury if additional stamp duties were to be considered in the future, say, in the process of looking at tax holistically as part of the upcoming White Paper on the Reform of Australia's tax system.

Policies to increase housing stock

2.68 Of those compared by the Property Council Of Australia, the following countries do not require foreign investors in residential property to purchase new housing stock: Switzerland, Canada, Denmark, Hong Kong, Japan, Germany, France, United States, New Zealand, and the United Kingdom.[95] In Singapore foreign investors do not have to purchase new housing stock but they are restricted to apartments or condos approved under the Planning Act.[96]

87 Property Council of Australia, *Submission 25*, pp. 13-14.
88 Property Council of Australia, *Submission 25*, p. 13.
89 Property Council of Australia, *Submission 25*, p. 14.
90 Property Council of Australia, *Submission 25*, p. 12.
91 SMATS Group, *Submission 35*, p. 10.
92 Property Council of Australia, *Submission 25*, p. 12.
93 Property Council of Australia, *Submission 25*, p. 13.
94 SMATS Group, *Submission 35*, p. 10.
95 Property Council of Australia, *Submission 25*, pp. 12-14.
96 Property Council of Australia, *Submission 25*, p. 12.

2.69 In Switzerland there are restrictions on foreign buyers of development sites including continuous construction commencing within one year of purchase.[97] There are no restrictions on foreign buyers of development sites in Canada, Denmark, Hong Kong, Japan, Germany, France, United States, New Zealand, or the United Kingdom.[98] In Singapore, foreign buyers cannot purchase vacant residential land.[99]

Analysis

Application of the law

2.70 A number of submissions to this inquiry expressed concern about the effectiveness of the FIRB approval processes for foreign purchases of residential property in Australia. Among these concerns are the purchasing of property by an Australian citizen or resident on behalf of a foreign national[100] and that a foreign purchase of a residential property can be somehow granted retrospective approval.[101]

2.71 There is criticism in several submissions of the pre-approvals process for developments of 100 new dwellings or more that allows developers to obtain a single FIRB approval to sell up to 100 per cent of the properties to foreign buyers (who do not then require individual approvals).[102] A number of reports in the media have also criticised the approval regime, describing it as a rubber stamp process[103] or that it is conducted in secrecy.[104]

2.72 The industry largely takes a different view of the approvals process by FIRB. Meriton Group believes that the existing approvals arrangements are working well.[105] The Property Council of Australia takes the view that the existing regime is adequate (but needs to be better enforced) and that

97 Property Council of Australia, *Submission 25*, p. 12.

98 Property Council of Australia, *Submission 25*, pp. 12-14.

99 Property Council of Australia, *Submission 25*, p. 12.

100 Mr David Wong, *Submission 5*, p. 17.

101 Ms Jennifer Jaeger, *Submission 21*, p. [1].

102 Ms Anne Carroll, *Submission 13*, p. 1; Mr David Chandler, *Submission 41*, p. 4.

103 Media article < http://www.theguardian.com/commentisfree/2014/feb/18/wealthy-chinese-buyers-are-makingsydneys-housing-problem-worse> viewed 4 September 2014.

104 Media article <http://www.propertyobserver.com.au/forward-planning/investment-strategy/property-news-and-insights/30041-foreign-acquisitions-and-takeovers-act-1975-order-under-subsection-21a-2.html> viewed 4 September 2014.

105 Meriton Group, *Submission 14*, p. 1.

the pre-approval process is important for attracting foreign investment and enabling projects to start.[106]

2.73 Nyko Property does not agree with blanket approval arrangements for overseas investors and argues that individual approvals should be required so as not to disadvantage domestic buyers.[107] SMATS Group expresses the view that as an FIRB application to purchase a residential property is free of charge, there are limited resources available to the Treasury to police the current regulations.[108]

2.74 The committee notes from the evidence received from the Treasury and FIRB that there have been no enforcement activities through the courts since 2006[109] and that only 17 divestment orders have been issued since 2003.[110] However, since the changes to the rules regarding foreign purchases of real estate in 2008 there have in fact been no divestment orders issued. Treasury officials could not provide any data on voluntary divestments by foreign investors, despite their assurance to the committee that they had occurred as part of their compliance program.

2.75 These figures are remarkably low and the committee is concerned, as mentioned earlier, that the internal processes at the Treasury, as well as the resources, are currently not adequate to properly enforce the existing rules for foreign investment in residential property.

2.76 The Treasury emphasises in its submission to this inquiry that there are no information sources that can be used to systematically identify non-compliant property acquisitions, nor mechanisms to prevent such transactions from proceeding.[111] At the public hearing on 30 May 2014, the Treasury informed the committee that case officers examine whether a foreign acquisition of an established property is lawful.

2.77 Mr John Hill of the Compliance and Real Estate Screening Unit, Foreign Investment and Trade Policy Division, the Treasury, informed the committee that established property applications allocated to case officers to examine 'could be in the order of 500 to 1,000 a month'.[112] Mr Hill stated:

> We have a team of people that goes through a routine to review those cases… That process typically leads case officers to the

106 Property Council of Australia, *Submission 25,* p. 7.
107 Nyko Property, *Submission 28*, p. [3].
108 SMATS Group, *Submission 35*, p. 9.
109 The Treasury, *Submission 31.1,* p. 1.
110 The Treasury, *Submission 31.3,* p. [4].
111 The Treasury, *Submission 31*, pp. 1, 12.
112 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 3.

> Department of Immigration and Border Protection's visa entitlement verification online system, VEVO. That is basically a system that gives us three pieces of information. It confirms the identity of the individual. It tells us the category of visa the individual has and when that visa expires. It also tells us whether the individual in question is onshore or offshore. That is quite vital information to establishing who we are dealing with here.[113]

2.78 Mr Hill further informed the committee that the case officers undertake a routine consultation process:

> That involves moving particular cases based on value of transaction and country of origin of the applicant to the Australian Federal Police and also to the Australian Crime Commission. We have a 30-day period in which to respond to these things under the Act. We provide a window of opportunity for consultation comments to return to us.[114]

2.79 Mr Hill added that around a third of all established property applications are registered on a watch list to indicate rental activity, noting:

> It is very interesting to us to discover that a person might have received an approval to buy established property but have subsequently rented it out and disappeared or are buying something else. We will monitor around a third of our established property applications. If there is a rental trigger that we detect then we will follow that up and ask them to explain.[115]

2.80 The Treasury's submission notes that a dedicated compliance hotline has operated since 2010, from which information is used to initiate follow-up investigations. The submission advises that certain purchases identified in the media are also examined, and that information sessions with real estate agents are conducted periodically in metropolitan centres.[116]

2.81 The committee was further informed at the public hearing that the hotline is staffed from 9.00am to 5.00pm every day and receives thousands of calls. Mr Hill added:

> We do spot investigations. We might see a media article. We might see a prestige property and we will go off. The process is difficult. We might have an allegation of a foreign person that has purchased the property. All we have got is an address, so we need to establish if that person is a foreign person, and that is not a

113 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 3.

114 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 4.

115 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 4.

116 The Treasury, *Submission 31*, p. 13.

> straightforward process. We will generally go to a real estate agent in the first instance and discuss what information they can tell us about the contract for sale, and the process steps from there.[117]

2.82 As noted earlier in this chapter, the committee was not provided with any precise data in relation to the operation of this hotline, and considers that detailed information on compliance activities must be accurately maintained as part of future enhancements to the internal processes at the Treasury's Foreign Investment and Trade Policy Division.

Non-compliance

2.83 The committee queried the Treasury on its actions in response to non-compliance with the laws regarding foreign purchases of residential real estate. Mr Hill informed the committee that prosecution activity was very rare:

> Our preference, if non-compliance is detected, is that we will seek to remedy that in consultation with the individuals and bring them back into a territory of compliance. That is our standard procedure… We try to be reasonable. If you have a situation where a foreign investor might be renting, we certainly would take into consideration a family being turfed out onto the street would not be the best outcome. So we think about what might be a reasonable time to terminate that private agreement with the tenants, who could easily be an Australian family.[118]

2.84 Mr Hill also commented on questions regarding non-compliance by temporary residents who do not sell an established property when it ceases to be their residence. He advised that there are no convenient methods for detecting such breaches but commented in relation to the monitoring of visas:

> Often we could find that a person might depart in the absence of an expiry of visa… that is an opportunity to follow up on expiry of visa. We would require people to inform us about that, and we seek that from them. We have that as an opportunity that the visa system will tell us if the visa has expired. We will also talk to law enforcement agencies. In fact, they talk to us reasonably consistently. We have a compliance hotline that we operate inside the department, and that is open constantly. I do not have good data to give you, but I think it is fair to say that we would be investigating at any one time in the order of 25, 30 or 40 cases

117 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 4.

118 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 5.

> where that sort of situation might have arisen. So we are in the process of resolving that pretty much continuously.[119]

2.85 The Treasury was requested to provide figures on the incidence of non-compliance with the current regulations for foreign investors in residential real estate. In a supplementary submission to the inquiry, the Treasury indicated that no breaches had been prosecuted in the courts (as indicated earlier, there have been no prosecutions since 2006) and that investigations of foreign interests in 33 residential properties were ongoing. The Treasury states in its submission:

> All of these properties are in the established residential category, with a small number involving very high value established purchases. In most instances the investigation activity involves the need to establish the identity of the relevant investor and to assess their eligibility to own the property in question.[120]

2.86 The Treasury did not provide any data on the number of investigations it had undertaken since 2006. It appears Treasury does not have this data. The Treasury emphasises in its supplementary submission that its more recent experience is that investors that have sought foreign investment approval are seeking to be compliant with the rules. The Treasury states that investors 'have been willing to work with Treasury staff to rectify any breaches, or potential breaches'[121] but that 'provision remains in the Act to seek penalties against investors who are not prepared to cooperate when breach situations arise'.[122]

2.87 The Treasury also states in its supplementary submission that around 340 applications from foreign investors to purchase real estate were withdrawn in 2012-13 upon advice from the Treasury that they would not be approved as they related to established properties.[123]

2.88 At the public hearing on 29 August 2014, Treasury and FIRB confirmed that there have not been any court prosecutions under the Act since 2006 and they indicated that identifying cases that could lead to such court proceedings would be a challenge. Mr Brian Wilson, Chairman of FIRB, informed the committee however that enforcement activity was still taking place. Mr Wilson stated:

> I think it is worth being a little more granular about what 'enforcement' means. It can range from criminal prosecution at one

119 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 4.

120 The Treasury, *Submission 31.1*, pp. 1-2.

121 The Treasury, *Submission 31.1*, p. 1.

122 The Treasury, *Submission 31.1*, p. 1.

123 The Treasury, *Submission 31.1*, p. 1.

> end through to working with the applicants to regularise breaches, to having an applicant voluntarily dispose of a property improperly retained, to having an applicant put in a retrospective application. So to say there has been no enforcement activity is correct in terms of the prosecution component of enforcement, but there has certainly been a lot more enforcement activity, in fact, in regularising issues to bring about compliance.[124]

2.89 The Treasury was asked at the public hearing on 29 August to provide information on how many temporary residents had voluntarily disposed of their property, as required under the law, when it ceased to be their residence. The Treasury responded that it could not determine this from their records within the timeframe remaining for the inquiry.[125] The committee found this to be particularly unsatisfactory and to reflect very poor internal processes. Even with additional time, the Treasury could not supply this basic data.

2.90 Mr Jonathan Rollings of the Foreign Investment and Trade Policy Division at the Treasury emphasised at the 29 August hearing that there are different types of compliance issues but in the main they are about imposing the appropriate conditions on an approval that is sought by an investor:

> I think the point I made to the committee previously was that the fact that those people have come to us for approval indicates that they are seeking to be compliant. When they may drift outside one of those conditions, we have found it productive and effective to talk to people to bring them back within those conditions. It is a separate issue if someone has bought a property who has not actually sought approval at all. We would take a different approach to someone in that category, but they are the cases that are the most difficult to identify.[126]

2.91 Mr Wilson assured the committee that all issues of non-compliance are taken very seriously:

> I certainly do not want to leave the committee with the impression that, if faced with an example of someone who has wilfully undertaken a transaction and not sought the requisite FIRB approval, we would in some way take a soft approach and try to

124 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 31.

125 The Treasury, *Submission 31.2*, p. [3].

126 Mr Jonathan Rollings, General Manager, Foreign Investment and Trade Policy Division, the Treasury, *Committee Hansard*, Canberra, 29 August 2014, p. 31.

> talk them around to a compliance situation. We would take the identification of any such examples very seriously.[127]

2.92 Mr Rollings commented however that due to a lack of systemic data that would enable FIRB approvals data to be checked against actual transactions (discussed further in Chapter 3), it is difficult to identify non-compliance. He remarked:

> We are left to use these indirect methods to try and promote compliance as best we can. We are also promoting education, including of real estate agents, lawyers et cetera, around the requirements. But short of those methods I mentioned earlier—the compliance hotline or following up things in the media—it remains challenging to identify cases where a transaction has gone ahead that required a FIRB approval and that approval was not sought.[128]

2.93 It is of concern to the committee that the lack of any prosecution enforcement activity under the Act since 2006 may encourage a lack of compliance with the foreign investment framework as it applies to residential real estate. Strict enforcement makes a good deterrent, and is a good educator. In the committee’s view, better penalty enforcement would be expected to result in fewer people attempting to circumvent the framework.

Penalties

2.94 At the public hearing on 30 May, the Treasury and the FIRB Chairman explained the penalties that apply to any breaches of foreign investment rules relating to residential property. The committee was told that the maximum fine of up to $85 000 for an individual breach by a foreign buyer of an Australian residence was a criminal penalty. There is currently no civil penalty regime under which pecuniary penalty orders can be imposed. Mr Hill commented in this regard that:

> … the courts would need to be determining the appropriateness of setting those penalties. We certainly do not have administrative powers to issue fines. Of course, as most lawyers would realise, criminal intent is a very difficult thing around notification and we are dealing with people who may well not had the right information or the right advice. So those factors have a sway on the level of seriousness.[129]

127 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 35.

128 Mr Rollings, the Treasury, *Committee Hansard*, Canberra, 29 August 2014, p. 37.

129 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 5.

2.95 Mr Hill further elaborated on the penalty regime that currently operates at the Treasury in relation to foreign buyers of Australian property:

> We have a range of divestment powers, where we can issue divestment orders against individuals that have acquired an interest in Australian urban land without approval. The notification powers are all about compulsory notification powers around the acquisition. Section 26 of our Act establishes technically fines and imprisonment ultimately if you do not notify. There are offences provisions for failure to comply with orders. For example, we have an order-making power in our legislation that suggests that the Treasurer can, on application or outside of an application, issue an order to either prevent the purchase or to dissolve it. Those carry similar fines and imprisonment provisions. We have a provision for the courts to enforce those orders. We have information-gathering powers in the Act. We also have—I think it is similar to part IVA in the tax Act—section 38, anti-avoidance powers. In summary, it is a criminal penalty regime that we operate in; it is certainly not a civil penalty regime.[130]

2.96 The committee is concerned, however, that the criminal penalty regime only applies to foreign investors personally. At the hearing, the committee sought clarity on whether any person other than the foreign investor could be subject to a penalty for a breach of the Act. Mr Hill responded:

> The answer is no. The foreign person who acquires the interest is the individual that is captured by our regulatory notification system and subject to penalties. There are no penalties on lawyers and agents—et cetera. That could be a real estate agent, a migration agent or a law firm.[131]

2.97 A number of contributors to the inquiry comment on the current penalty regime. The Real Estate Institute of Australia (REIA), submits that 'there has not been any public evidence of significant non-compliance despite the introduction of new measures in 2010'.[132] REIA comments that:

> This could be for a number of reasons including; adherence by foreign investors to the requirements of the law; effectiveness of the penalties in discouraging non-compliance; a reluctance to prosecute; under resourcing and thus perhaps ineffectiveness of

130 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 5.

131 Mr Hill, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 12.

132 Real Estate Institute of Australia (REIA), *Submission 17*, p. 10.

> the monitoring and compliance activities of FIRB… Whatever the reasons are, individually or collectively, they are unknown.[133]

2.98 REIA recommends a review of the current enforcement regime to evaluate its effectiveness. Ms Amanda Lynch, CEO of REIA, commented at the public hearing on 30 May:

> … if the penalties are there, they need to be enforced, which is why we advocate that a review be undertaken of the compliance and monitoring activities. We also advocate penalties in line with the value of the property as being more appropriate. The current maximum fine of $85,000 is inadequate for multimillion dollar investments.[134]

2.99 At the public hearing in Melbourne on 20 June 2014, the Property Council of Australia expressed the view that a better understanding of where the problems are in the market and also of what the urban myths are is essential if considering any changes to the current penalty system. Mr Andrew Mihno, Executive Director, International and Capital Markets Division, Property Council of Australia, remarked that:

> When it comes down to it, if something is not being done, if a rule is being flouted, the Property Council is in full support of making sure that any measures have sufficient impact to ensure that that would happen, if penalties are required.[135]

2.100 Mr Mihno was also asked by the committee for his views on developing a civil penalty system for breaches by foreign buyers of residential property. He responded:

> … we also sympathise with how difficult it is to get a jury to agree to a criminal charge, especially in complex matters. We understand that in many cases a criminal case might be much harder. We would be in favour of implementing a civil penalty. Again, the usual caveats apply. If it gives an added string to the bow that enables you to monitor and enforce what is already in place, then that is a sensible measure.[136]

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133 REIA, *Submission 17*, p. 10.

134 Ms Amanda Lynch, CEO, REIA, *Committee Hansard*, Canberra, 30 May 2014, p. 28.

135 Mr Andrew Mihno, Executive Director, International and Capital Markets Division, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 13.

136 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 14.

Fact Box

- Civil penalties are based on civil rather than criminal court processes and are often aimed at preventing or punishing public harm. Criminal penalties may serve as a last-resort punishment after repeated or wilful violations.
- Criminal penalties used in Australia include fines, imprisonment and forfeiture of property. Civil penalties are often financial in nature, closely resembling fines, and often carry strict or absolute liability, in which no proof of fault or state of mind is required.
- There are no federal non-criminal penalties that include a prison sentence.
- Currently, only criminal penalties apply under the foreign investment framework.

2.101 In respect of current penalties applying only to the foreign investor in cases where a breach has occurred, Mr Mihno expressed the view that the regime could be extended to third parties who have intentionally broken the law:

> As far as third parties are concerned we are in favour of there being penalties if they intentionally break the law or assist others to intentionally break the law on FIRB rules, which comes back to the whole concept of restrictive liability. It is obviously unfair to penalise a real estate agent if they do not know what is actually going on. Having said that, yes, penalties can be put in place for those people.[137]

2.102 Mr Bill Nikolouzakis, Director of Nyko Property, was supportive of pecuniary penalty orders under a civil regime but questioned the ability to enforce such a system. He stated:

> They definitely should have a fine. I think the big issue at the moment with FIRB and buying in the existing market is not the policy, it is the policing. The policy is there. If they are buying at auction, then it is not the policy's fault, it is the policing of the policy.[138]

2.103 Mr Chris Curtis, Managing Director, Curtis Associates, expressed the view at the public hearing in Sydney on 27 June 2014 that a civil penalty regime was probably a good idea and that pecuniary penalty orders should relate to the value of the transaction:

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137 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 16.

138 Mr Bill Nikolouzakis, Director, Nyko Property, *Committee Hansard*, Melbourne, 20 June 2014, p. 23.

> I think penalties should be ad valorem, in a similar way as stamp duty—$85,000 on a $500,000 transaction would be a complete impediment, whereas $85,000 in a $15 million transaction would be a fly in the ointment. If you are going to have penalties you should peg it to the asset value and make it really hurt.[139]

2.104 Meriton Group also expressed support for 'enhanced compliance' that would deter rule breaking and enhance public confidence in the regime submitting that:

> … we are aware of concerns that temporary residents retain established dwellings after leaving the country on expiry of their visas. We understand that there is little evidence to show whether this is actually a significant problem and note that there is no reporting of compliance arrangements in the FIRB Annual Report. We consider that ongoing concerns about possible non-compliance undermine public confidence in the entire foreign investment and raise the risk of inappropriate policy responses to an established program which is making significant contributions to the national economy. We would welcome enhanced compliance arrangements for residential real estate which are commensurate with the risks involved and reported publicly as a means of boosting public confidence.[140]

2.105 At the public hearing on 27 June, in response to questions about whether there is a need to strengthen the current penalties, Mr James Sialepis, National Sales Director, Meriton Group was supportive of this possibility and commented that:

> I think there needs to be a huge deterrent for people who are abusing the system, especially if it states quite clearly that they cannot buy an existing property they are purchasing—fundamentally the FIRB rules were not set up for that; it was purposely set up to help new construction—so they are obviously abusing the system and I think we should increase penalties, definitely.[141]

139 Mr Chris Curtis, Managing Director, Curtis Associates, *Committee Hansard*, Sydney, 27 June 2014, p. 30.

140 Meriton Group, *Submission 14*, p. 10.

141 Mr James Sialepis, National Sales Director, Meriton Group, *Committee Hansard*, Sydney, 27 June 2014, p. 38.

Conclusion

2.106 The current Australian framework for foreign investment in residential real estate is appropriate and is at least comparable to that in many other countries. It balances the need to enable valuable overseas investment into Australia's residential property market and at the same time ensure that the stock of housing available to Australia's citizens and residents is not diminished.

Recommendation 1

2.107 **The Committee recommends that the current foreign investment framework applying to foreign purchases of residential real estate be retained in its current form, utilising the existing legislated prohibitions and restrictions on purchases of established dwellings, and encouraging foreign investment to increase Australia's supply of new housing.**

2.108 Improvements could be made, however, to assist the Treasury and FIRB to better monitor and enforce these existing rules. The committee is not satisfied with the internal processes at FIRB and at the Treasury's Foreign Investment and Trade Policy Division and takes the view that significant improvements need to be made in this area if the public is to have confidence in the regime governing foreign investment in residential property.

2.109 The committee is also less than impressed with the amount of compliance and enforcement data that is reported in the FIRB annual report or that could be provided to the committee under questioning. The committee considers this to be a further reflection of a deficiency in internal processes. Better processes and better data collection within the Treasury and FIRB in the future will enable better reporting and engender greater confidence among policymakers, and the public at large, that this system is beneficial and is working effectively.

Recommendation 2

2.110 **The Committee recommends that the Foreign Investment Review Board and the Foreign Investment and Trade Policy Division of Treasury put in place appropriate processes for the purpose of audit, compliance and enforcement of the foreign investment framework. Such processes must accurately capture audit, compliance and enforcement data for the purpose of oversight of the Foreign Investment Review Board and the Treasury.**

2.111 Additional resources would enable the Treasury and FIRB to conduct more detailed audits to ensure compliance with the law and enhance public confidence that the rules are being properly enforced. The introduction of an administrative fee for all screening applications for foreign purchases could provide such resources if the revenue was hypothecated to Treasury for the purpose of audit, compliance and enforcement.

2.112 The level of the fee should be such that it does not significantly deter future foreign property investment. It could be determined based on the value of the transaction, such as 0.1 per cent of the property investment value, but this would be difficult to administer. A simpler administrative arrangement would be a flat fee for every application. A fee of between $500 and $1,500 could be considered. Costings were provided by the Parliamentary Budget Office (PBO) for fees of $500, $1,000, and $1,500 and are included at Appendix C.

2.113 A fee regime of this nature would not only provide valuable new resources for compliance activities but also contribute greatly to data collection on completed purchases of properties by foreign investors. This fee regime would not conflict with Australia’s existing World Trade Organisation (WTO) and Free Trade Agreement (FTA) obligations.

Recommendation 3

2.114 **The Committee recommends that the Government apply a modest administrative fee to the current screening for all foreign purchases of residential real estate, including purchases by temporary residents.**

Fees collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

2.115 It is notable that no prosecutions have taken place under the current criminal penalty regime since 2006. A civil penalty regime should be introduced for breaches of the regulations, which would remove the need to engage in onerous court proceedings to impose a pecuniary penalty. Such proceedings could then be reserved for cases of very serious misconduct. The difficulty associated with initiating a criminal case, and the lack of good internal Treasury and FIRB processes, has almost certainly contributed to the very small number of prosecutions.

2.116 Civil penalties should be imposed using a sliding scale based on the value of the property, so that it is not simply seen as the 'cost of doing business'. This will motivate better compliance and again, additional revenue can be hypothecated to the Treasury for the purpose of audit, compliance and enforcement.

Recommendation 4

2.117 **The Committee recommends that the Government introduce a civil penalty regime for breaches of the foreign investment framework as it applies to residential real estate, with the following features:**

- **pecuniary penalty orders imposed under this penalty regime to be calculated as a percentage of the property value to act as an effective deterrent; and**
- **the regime to apply to foreign investors and any third party who knowingly assists a foreign investor to breach the framework.**

Pecuniary penalty orders collected should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

2.118 Third parties (such as real estate agents, lawyers, or accountants) who knowingly assist a foreign investor to breach the framework as it applies to residential property should also be subject to a civil and criminal penalty.

Recommendation 5

2.119 **The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that the criminal penalties for breaching the foreign investment framework as it applies to residential real estate, apply equally to any third party who knowingly assists a foreign investor in residential real estate to breach the foreign investment framework.**

2.120 Only foreign investors who are temporary residents have the right to purchase an established property to reside in and must sell this dwelling when they leave Australia. Under the current rules however, a foreign investor who holds an existing dwelling illegally faces no real penalty if they are caught. If an order to divest such a property or properties is made by the Government, or even if an unlawfully held property is voluntarily disposed of, the investor can keep any capital gains that result from this sale. As these gains can be substantial there is a clear disincentive to comply with the rules. Any windfall gain of this nature should be forfeited to the Government. This again will motivate better compliance and provide additional revenue that could be used by the Treasury for better auditing, compliance and enforcement procedures.

Recommendation 6

2.121 **The Committee recommends that in any instance where a foreign owner divests an illegally held established property, any capital gain from the sale of that property be retained by the Government.**

Funds collected by this measure should be hypothecated to the Treasury's Foreign Investment and Trade Policy Division for the purpose of funding audit, compliance and enforcement activities.

2.122 The committee understands that while the requirement for a temporary resident to divest an established property within three months if it is no longer a primary residence is standard Treasury practice, it is not contained in Australia's Foreign Investment Policy. It is the committee's view that this standard practice should be reflected in the Policy – and as such the Policy should be amended to explicitly state this divestment time limit.

Recommendation 7

2.123 **The Committee recommends that Australia's Foreign Investment Policy be amended to explicitly require a temporary resident to divest an established property within three months if it ceases to be their primary residence.**

3

The foreign market for Australian housing

Levels of foreign investment in Australian property

3.1 The residential property market in Australia is substantial, underpinned by a total stock of approximately 8.6 million dwellings with a current estimated market value of $5.4 trillion.[1] RP Data indicates in its submission that 184,000 new property (including land) transactions totalling $78.5 billion and 363,000 individual sales of established dwellings with a total value of $192 billion took place in 2013 in Australia.[2]

3.2 In terms of the foreign investment component of these sales, the Treasury summarizes Foreign Investment Review Board (FIRB) approvals to purchase residential property in the last two financial years as follows:

- Approved proposed investment for the first nine months of 2013-14 was around $24.8 billion, 44 per cent higher than the $17.2 billion approved during all of 2012-13. The total number of residential real estate proposals increased by 4,331 proposals to 15,999 approvals in the first nine months of 2013-14.
- The majority of the increase is attributable to proposed investment in new property, which at $19.3 billion for the first nine months of 2013-14 is 79 per cent higher than the $10.8 billion in 2012-13. Approvals for proposed investment in new property also represent the majority of the overall increase, with 10,244 approvals in the first nine months of 2013-14 compared to 6,567 approvals in 2012-13.
- The total number of established property approvals for the first

1 RP Data, *Submission 23*, p. [1].
2 RP Data, *Submission 23*, p. [2].

nine months of 2013-14 is 5,755 compared to 5,101 for 2012-13.[3]

3.3 Notably however, these data correspond to approvals and not actual purchases and, as mentioned in Chapter 2, foreign acquisitions of real estate that have bypassed the required approval process will not be captured. The Treasury emphasises:

> … not all approvals will result in an actual purchase. For example, some investors will seek several approvals to allow them to bid at different auctions but may only purchase one property, or be unsuccessful and purchase none at all. As such, approval data does not correspond with the number of actual purchases by foreign investors.[4]

3.4 FIRB data on approvals for foreign purchases of real estate by country in the 2012-13 financial year are listed in Table 3.1. The United States, China and Canada were the three largest sources of foreign investment in this sector, with Singapore and the United Kingdom also featuring prominently.

3.5 Of the total FIRB approved investment of about $51.9 billion in Australian real estate in 2012-13, $17.2 billion was for residential dwellings.[5] The remaining $34.7 billion was for commercial property.[6] However, the residential component of foreign real estate investment is not disaggregated by source country in the available data. Hence, the values in Table 3.1 for total FIRB approved investment in real estate include both commercial and residential property. In this regard, the committee is of the view that disaggregated country data needs to be collected and made available to policymakers to make better informed decisions in the future.

3.6 The value of FIRB approvals for residential property has fluctuated significantly in recent years. These figures are $8.8 billion in 2009-10; $20.9 billion in 2010-11; $19.7 billion in 2011-12; and $17.2 billion in 2012-13.[7] As mentioned in paragraph 3.2, there has been a marked increase in the number of approvals and property values associated with these approvals ($24.8 billion) in the first nine months of the current financial year.

3 The Treasury, *Submission 31*, p. 6.

4 The Treasury, *Submission 31*, p. 6.

5 Foreign Investment Review Board (FIRB), *Annual Report 2012-13*, p. 29.

6 FIRB, *Annual Report 2012-13*, p. 30.

7 FIRB, *Annual Report 2012-13*, p. 29.

Table 3.1 FIRB approved investment in real estate sector by source, $ million (figure totals include both residential and commercial properties)

Country	2012–13 (top 5 ranking)	2011–12 (top 5 ranking)	2010–11 (top 5 ranking)	2009–10 (top 5 ranking)	2008–09*	2007–08 (top 5 ranking)
USA	4406 **(3)**	8162 **(1)**	3404 **(3)**	3369 **(1)**	-	11998 **(1)**
UK	1671 **(5)**	3783 **(4)**	4610 **(1)**	2264 **(3)**	-	4430 **(3)**
China	5932 **(1)**	4187 **(3)**	4093 **(2)**	2421 **(2)**	-	1491 **(5)**
Singapore	2008 **(4)**	5705 **(2)**	1487	2113 **(4)**	-	1779 **(4)**
UAE	885	-	1088	11	-	4712 **(2)**
Germany	769	1020	1128	1247 **(5)**	-	1289
Malaysia	1600	1791	1863 **(4)**	612	-	268
Canada	4926 **(2)**	2457 **(5)**	807	375	-	590
Netherlands	229	-	1691 **(5)**	936	-	1452
South Africa	953	1736	826	497	-	433
South Korea	903	443	497	1165	-	1153
Japan	895	1743	598	368	-	275
Hong Kong	649	777	404	404	-	463
Switzerland	346	523	455	497	-	407
Sweden	-	-	-	397	-	1011
New Zealand	644	864	64	45	-	274
France	100	426	45	34	-	51
India	-	148	163	53	-	144
Russia	-	47	245	-	-	88
Thailand	-	34	13	-	-	-
Others	10541	13494	12280	2762	8500	10454

Source FIRB Annual Reports, various years. Figures include both commercial and residential real estate.
**not allocated by country source*

3.7 Urban Taskforce Australia notes that:

> Reports based on the Foreign Investment Board and Australian Bureau of Statistics data suggest that the Chinese contribution of the total foreign investment in residential real estate … [is] approximately $5 billion per annum. However this is in a market that saw $250 billion in residential property being sold. While 2 per cent of the market is a worthy contribution to new housing, it is not considered to be at a level to warrant the community concerns and intense media scrutiny of late.[8]

8 Urban Taskforce Australia, *Submission 11*, p. 2.

3.8 The Reserve Bank of Australia (RBA) comments in its submission that 'the value of approved foreign investment in residential property in Australia has increased, rising from around $6 billion annually in the 1990s to over $17 billion in 2012/13'.[9] The RBA notes however:

> … with overall dwelling prices and turnover having increased significantly in Australia over the past 20 years, the share of foreign residential approvals in the value of total dwelling turnover in Australia has remained broadly steady through time, fluctuating around 5–10 per cent, and in 2012/13 it was in the middle of that range.[10]

3.9 The Treasury notes that 'a large proportion of the growth in residential real estate approvals has been from non-resident Chinese investors'.[11] The Treasury also comments however:

> … data limitations (including the lack of a comprehensive data source on nationwide dwelling purchases)... make it difficult to gauge how significant foreign purchases are as a share of national housing demand.[12]

3.10 FIRB approval data that are disaggregated by category and State/ Territory indicate that the large increases in the first nine months of 2013-14 were primarily for new developments in New South Wales and Victoria.[13]

3.11 RP Data referred to these FIRB data in their opening remarks to the committee at the public hearing on 27 June 2014 and compared them with the sales data that they themselves had generated.[14] The data for Victoria were highlighted due to the particularly stark increase in the foreign investment component of the gross residential real estate by sales value in that State. These data are included in Table 3.2.

3.12 In response to questions about the high figures for Victoria at the public hearing on 27 June, Mr Tim Lawless of RP Data commented that 'the FIRB number for Victoria was $9.7 billion for the number of approvals over that nine-month period in 2013-14 compared to a total value of sales across Victoria of $41.6 billion'.[15] He went on to say however that:

9 Reserve Bank of Australia (RBA), *Submission 19*, p. 3.
10 RBA, *Submission 19*, p. 3.
11 The Treasury, *Submission 31*, p. 7.
12 The Treasury, *Submission 31*, p. 1.
13 The Treasury, *Submission 31*, Attachment B, p. 16.
14 RP Data, *Submission 23.1*, p. 5.
15 Mr Tim Lawless, Director Research, RP Data, *Committee Hansard*, Sydney, 27 June 2014, p. 16.

> There are two differences here. There is the magnitude based on volume and of value, and you can see that the volume is relatively reasonable at just under 10 per cent, 9.3 per cent. It suggests to me that those foreign buyers investing in the Victorian housing market are doing so at a relatively higher price point than what you would find for most domestic buyers.[16]

Table 3.2 Percentage of total value of FIRB approvals to gross value of dwelling sales by location

	2011–12				**2012–13**				**2013–14***			
	Total sales (000)#	**Gross value ($b)**	**% approvals**	**% value**	**Total sales (000)#**	**Gross value ($b)**	**% approvals**	**% value**	**Total sales (000)#**	**Gross value ($b)**	**% approvals**	**% value**
VIC	99	50.2	3.7	13.1	102	52.23	4.4	11.1	75	41.61	9.3	23.2
NSW	137	74.7	2.2	9.3	139	80.76	2.5	6.9	115	73.03	4.6	13.2
QLD	83	36.6	1.8	7.3	93	41.53	1.8	4.5	76	34.64	2.7	7.8
WA	43	22.5	2.0	5.0	52	28.43	2.4	3.1	39	22.64	2.9	5.6
NT	4	1.61	0.8	1.9	4	1.90	0.7	0.5	3	1.61	1.0	34.1
SA	31	12.9	1.8	2.5	31	12.25	1.8	2.3	25	10.32	1.8	2.1
ACT	8	4.15	1.0	2.9	7	3.96	1.6	3.3	5	2.89	2.2	2.1
TAS	9	2.7	0.6	0.4	9	2.91	0.5	1.0	7	2.10	0.7	0.5
Total	413	205	2.4	9.6	437	223.97	2.7	7.7	345	188.8	4.6	13.2

Source RP Data
*# (numbers are rounded) *(9 months to March 2014)*

3.13 Mr Lawless further qualified this data by again pointing out that they are based on FIRB approvals and not completed transactions.

3.14 FIRB approval data, if considered to be a reliable proxy for foreign investment levels in real estate, show that the marked increase in approvals in the first nine months of 2013-14 was principally for new dwellings (7675 vs 4499 in the entire 2012-13 financial year). Approvals for established dwellings also increased during this same nine month period, but to a lesser extent, whereas ‘off-the-plan’ approvals do not seem to have changed substantially (see Table 3.3).

16 Mr Lawless, RP Data, *Committee Hansard*, Sydney, 27 June 2014, p. 16.

Table 3.3 Foreign investment in residential real estate by type and number of proposals approved

	2010–11		2011–12		2012–13		2013–14(a)	
	No.	$billion	No.	$billion	No.	$billion	No.	$billion
RESIDENTIAL								
Existing	3881	3.57	3952	2.87	5091	5.42	5751	5.23
New								
vacant land	1514	2.33	1518	0.68	1821	1.39	2125	1.29
individual new dwellings	3911	2.46	4022	2.54	4499	2.91	7675	5.14
off-the-plan (b)	65	10.08	70	10.92	50	5.73	73	11.97
redevelopment	171	0.45	191	0.50	189	0.36	363	0.50
Sub-total ‘new’	*5661*	*15.32*	*5801*	*14.64*	*6559*	*10.39*	*10236*	*18.9*
TOTAL RESIDENTIAL (000)	**9.5**	**18.89**	**9.8**	**17.51**	**11.7**	**15.81**	**16**	**24.13**

Source: Modified from the Treasury, Submission 31, Attachment B, p. 15.
(a) Data for 2013-14 is for the nine months to 31 March 2014.
Note: Totals may not add due to rounding. Annual employer-based programs have not been included.
(b) Advanced-off-the-plan certificates are included in the figures above. That is, one advanced-off-the-plan certificate equates to one approval in terms of the number of approvals but the entire value of the proposed development is included in the value columns. The number of applications approved during 2012-13 and the first nine months of 2013-14 corresponded to a maximum of 10,019 and 19,504 new off-the-plan dwellings respectively that could be sold to foreign investors in those years.

3.15 Meriton Group refers to the 2012-13 FIRB data in its submission and comments in relation to foreign purchases that ‘this is only a small number [of dwellings] (around 2.5 per cent by number of sales) of the total residential real estate market which in 2013 had total annual sales of 468,354 dwellings’.[17] Meriton Group further submits in relation to the approvals for 2012-13:

> … at least 43.7 per cent were for the use of accommodating people legally in Australia under our temporary migration arrangements… The impact of this is that non-resident purchases are probably closer to one per cent of the total housing market.[18]

17 Meriton Group, *Submission 14*, p. 3.

18 Meriton Group, *Submission 14*, p. 3.

Foreign investment preferences

Overview

3.16 The committee is cognisant of the complexity of the residential real estate market in Australia and that in fact there are different markets operating within that sector. Likewise, the evidence to this inquiry indicates that it is specific parts of the residential property market in Australia that attract the majority of foreign investment. The RBA submits in this regard:

> Foreign investment appears to be concentrated in some parts of the overall housing market, particularly in new rather than established dwellings, in higher- rather than lower-priced dwellings, in medium- and high-density rather than detached dwellings, and in inner-city areas of Sydney and Melbourne rather than other geographic areas.[19]

3.17 The RBA also comments in its submission that 'bank liaison with housing market contacts suggests that, rather than being for short-term speculative purposes, foreign purchases of dwellings in Australia generally reflect a decision to invest for the longer term'.[20] The RBA remarks:

> … these purchases appear to be motivated to meet housing needs for business persons located temporarily in Australia, for children studying in Australia, to acquire a second residence (possibly for eventual migration) and/or to diversify holdings of wealth geographically.[21]

New versus established properties

3.18 When appearing before the committee on 27 June 2014, Dr Christopher Kent, Assistant Governor of the RBA, remarked in his opening statement in relation to the types of properties bought by foreign investors that 'while incomplete, the FIRB data and the information received through our liaison with developers suggests that most foreign residential purchases are for new, high-density, inner-city properties, as well as properties close to universities'.[22]

3.19 Dr Kent further commented in relation to foreign buyers that 'the properties they purchase tend to be valued well above the average national sales price'.[23] He stated:

19 RBA, *Submission 19*, p. 1.

20 RBA, *Submission 19*, p. 5.

21 RBA, *Submission 19*, p. 5.

22 Dr Christopher Kent, Assistant Governor, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

23 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

> There are some foreign buyers who purchase cheaper homes outside the inner-city areas, just as there are some first home buyers who purchase inner-city properties priced above the national average. But in the main foreign buyers appear to be purchasing properties that are typically quite different in their characteristics from those purchased by first home buyers.[24]

3.20 Mr Scott Haslem, Chief Economist, UBS Australia, commented at the public hearing on 29 August on the extent to which foreign investors in the residential property market may be impacting on first home buyers:

> It remains the case, as outlined by the RBA, that foreign citizens or temporary residents tend to purchase new housing at above average prices, suggesting limited aggregate impact on affordability faced by first home buyers, who typically purchase established housing below the medium price. But the absence of any material impact becomes much less certain when we consider the rising trend of first home owners towards new property and particularly in the city regions of Sydney and Melbourne, where average prices are already above the national medium and where foreign demand may have risen more sharply in those particular areas.[25]

3.21 The potential impacts of foreign investors on the first home buyers' market are discussed in more detail in Chapter 4.

3.22 Housing Industry Association (HIA) presents a view on who the typical foreign buyers of Australian property are and why they purchase dwellings in Australia, submitting:

> Foreign buyers are typically individuals (the use of trust or company structures is very rare) and the majority would not be considered 'sophisticated investors'… The majority of properties purchased by foreign investors are held as investments and buyers require returns commensurate with prevailing market rates… It is very uncommon for foreign investors to leave properties vacant for extended periods or be motivated by short term speculation on dwelling price movements.[26]

3.23 SMATS Group concurs with the view that most foreign purchases of Australian housing are long term investments, submitting:

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24 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

25 Mr Scott Haslem, Chief Economist, UBS Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 26.

26 Housing Industry Association (HIA), *Submission 20*, p. 4.

> … the great majority (estimated at well over 90%) of foreign buyers hold their property for a considerable period after settlement, choosing to rent the property out for extended periods… The fact that the overwhelming majority of foreign investors retain their property for long term period post settlement is also a stabilizing factor in both the property industry and also the property market as a whole.[27]

3.24 Nyko Property states in its submission that 'when purchasing new property, we have found that foreign investors normally buy apartments in the larger blocks within the CBDs of Melbourne and Sydney and to a lesser extent Brisbane'.[28]

3.25 At the public hearing on 30 May 2014, the Real Estate Institute of Australia (REIA) commented that Australian first home buyers have an 80 per cent preference for established real estate. Ms Amanda Lynch, CEO of the REIA, commented:

> This is a different buying habit from foreign investors, who favour new apartments. Foreign investors who are not temporary residents cannot buy established houses. The preference for foreign investors is at the higher end of the market, with a $1 million average for established real estate for temporary residents, and a $647,000 average for individual purchasers of new dwellings.[29]

3.26 Also at the 30 May hearing, Dr Brent Davis from Master Builders Australia remarked that from the various sources available to his organisation, foreign buyers account for about five to six per cent of the Australian housing market. He further commented in relation to foreign buyers:

> They probably do not compete with the first home buyer segment of the market. They probably position themselves towards the higher end of the market. The first home buyer is in the $350,000 to $400,000 range. ... From the data we have seen, the foreign buyer in the new segment tends to be in about the $650,000 market.[30]

3.27 Property Council of Australia comments in its submission that while there are no formal data on the types of projects being developed by

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27 SMATS Group, *Submission 35*, p. 6.

28 Nyko Property, *Submission 28*, p. [3].

29 Ms Amanda Lynch, CEO, Real Estate Institute of Australia (REIA), *Committee Hansard*, Canberra, 30 May 2014, p. 28.

30 Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 30 May 2014, p. 26.

international investors, anecdotal evidence indicates that high-rise apartments and medium-density housing represent the majority.[31]

3.28 Mr Bill Nikolouzakis of Nyko property commented when appearing before the committee on 20 June 2014:

> We have found that predominantly investors are buying in Australia as a way to get their money into a stable country, to diversify their asset portfolio—and it is generally wealthy individuals, not mum-and-dad type investors—into a country with a political system and a judicial framework that is perceived to be very positive and safe. There is also demand for investors who want to send their children to Australia.[32]

3.29 Upon questioning by the committee on the types of dwellings being purchased by foreign buyers, Mr Nikolouzakis noted that they are looking to buy inner-CBD apartment buildings:

> What we try and educate them to buy is probably not that; inner-suburban apartments and townhouse type developments is what we believe the right thing to be buying is. But what they want to buy is the inner-CBD apartment buildings, generally high-rise.[33]

3.30 In evidence to the committee, Mr Lawless of RP Data commented that 'if you look at some of the stock that is being built in the $500,000 to $600,000 market, it is being built very purposefully for foreign investment, I think you will find'.[34] He further remarked:

> A foreign investor is probably looking at units with one to two bedrooms, max, with a very small square meterage, whereas your typical first home buyer, for example, would be seeking something more substantial, probably with a larger net area and potentially not right in the middle of the CBD or next to a university…[35]

3.31 Mr Ray Ellis of First National Real Estate commented in his opening remarks to the committee at the public hearing on 29 August that 'whilst foreign investment has become a media issue nationally, the epicentres are Sydney and Melbourne'.[36]

3.32 Mr Stewart Bunn of First National Real Estate remarked in relation to Melbourne that 'foreign buyers seem to be most interested in suburbs

31 Property Council of Australia, *Submission 25*, p. 11.

32 Mr Bill Nikolouzakis, Nyko Property, *Committee Hansard*, Melbourne, 20 June 2014, p. 21.

33 Mr Nikolouzakis, Nyko Property, *Committee Hansard*, Melbourne, 20 June 2014, p. 22.

34 Mr Lawless, RP Data, *Committee Hansard*, Sydney, 27 June 2014, p. 19.

35 Mr Lawless, RP Data, *Committee Hansard*, Sydney, 27 June 2014, p. 19.

36 Mr Raymond Ellis, Chief Executive, First National Real Estate, *Committee Hansard*, Canberra, 29 August 2014, p. 13.

where properties are close to exclusive schools, the CBD and have wide leafy streets and good land sizes'.[37] Mr Bunn went on to say with respect to Sydney:

> The situation is broadly similar in Sydney, particularly on the north shore and in the north-west, although the range of suburbs that are of interest to foreign investors is certainly expanding.[38]

3.33 Mr John McGrath of McGrath Estate Agents commented that there is a lot of media hype around this issue but expressed the view that it is no more than that. Mr McGrath further remarked in relation to Chinese investment:

> We think that the vast majority of Chinese buyers that we deal with are buying in very tight geographic pockets. They are not buying across Sydney or across Melbourne; they are buying in specific areas.[39]

Off-the-plan investments

3.34 As outlined in Chapter 2, current FIRB rules allow a property developer to apply for an advanced off-the-plan certificate to sell all new dwellings in a development of 100 or more dwellings to foreign persons, provided the development is also marketed locally. This mechanism is designed to reduce compliance and administrative costs.[40]

3.35 Foreign buyers are not required to obtain separate approval to purchase a dwelling that has received an advanced off-the-plan certificate but developers must report the details of all foreign buyers under this certificate scheme.

3.36 The FIRB figures show that 73 advanced off-the-plan approvals were granted for the first nine months of 2013-14 for a total value of almost $12 billion. This is an increase on the previous year in which 50 such approvals were granted for developments totalling $5.73 billion in value (Table 3.3).

3.37 Treasury emphasises however that most dwellings in off-the-plan developments are purchased by domestic investors:

> … the value of advanced-off-the-plan approvals is recorded as the total value of the development, even though not all of the dwellings may end up being sold to foreign purchasers. Based on

37 Mr Stewart Bunn, National Communications Manager, First National Real Estate, *Committee Hansard*, Canberra, 29 August 2014, p. 13.

38 Mr Bunn, First National Real Estate, *Committee Hansard*, Canberra, 29 August 2014, p. 13.

39 Mr John McGrath, CEO, McGrath Estate Agents, *Committee Hansard*, Canberra, 29 August 2014, p. 14.

40 The Treasury, *Submission 31*, p. 4.

> historical data, the average size of an advanced-off-the-plan development is around 170 dwellings. On average, around 35 per cent of dwellings in a development have been sold to foreign persons.[41]

3.38 The Property Council of Australia submits that the pre-approval system is vital as it provides flexibility and enables developments to proceed, thus generating housing supply, but that the pre-approved amount for individual developments rarely translates into the actual purchase of off-the-plan dwellings:

> Industry evidence indicates that while in some circumstances the ratio between FIRB approvals and realised sales may be as high as 50 per cent, the typical band of realised sales as a portion of approvals is in a range of 10-20 per cent.[42]

3.39 Mr Brian Wilson, Chairman of the FIRB, reiterated at the public hearing on 30 May 2014 that most off-the-plan dwellings with FIRB approval are eventually purchased locally. He further commented:

> I think it is worth noting that most of the applicants for advanced off-the-plan certificates and most of the beneficiaries of that regime are actually Australian property developers seeking to get their development going.[43]

3.40 At the public hearing in Sydney on 27 June 2014, Mr Justin Brown of CBRE informed the committee that most of the 6000 apartments sold off-the-plan by his company were not sold to foreign investors. Mr Brown advised:

> We have offices right through Asia and throughout the world that we use. In Melbourne, we sell 15 per cent to foreign investors requiring FIRB [approval]; in Sydney, 12 ½ per cent; and in Brisbane, around five per cent of those numbers… Last weekend we launched a project for Lend Lease called Darling Square, which has 357 apartments. They all sold out on the day. We simultaneously launched in Sydney, Hong Kong, Singapore and China. But, in totality, only 20 per cent of the sales were made offshore.[44]

3.41 Official data, however, is not easily maintained due to the nature of the advanced off-the-plan certificate process. As noted by Treasury in its submission with respect to the use of advanced off-the-plan certificate

41 The Treasury, *Submission 31*, p. 6.

42 Property Council of Australia, *Submission 25*, p. 7.

43 Mr Brian Wilson, Chairman, FIRB, *Committee Hansard*, Canberra, 30 May 2014, p. 13.

44 Mr Justin Brown, Chairman, CBRE Residential, CBRE, *Committee Hansard*, Sydney, 27 June 2014, p. 39.

approvals as a measure of foreign investment, there is a lag that impacts on the data:

> There can often be a lag of several years between the time a certificate is granted to a developer and the time the development is constructed and individual dwellings in it are sold.[45]

3.42 The committee is also aware of concerns in the community that some off-the-plan properties are not accessible to domestic buyers. For example, when asked at the public hearing in Melbourne on 20 June 2014 whether he was aware of any examples of where developments of over 100 units had been marketed overseas only, Mr Martin Vockler, Regional Sales Manager at SMATS Group responded:

> That has been happening recently, and it is probably more with some of the Asian developers. They are buying sites and they are paying quite a high premium for the sites. The price of the apartment developments per square metre is extremely high. The size of the apartments is extremely small; they are really designed for the overseas market.

3.43 Further evidence on this matter is discussed later in this chapter. The committee's strong view is that Australians must have the same opportunity to purchase a property in any new development as a foreign investor. Currently developers who receive a certificate to sell to foreign investors off-the-plan must advertise in Australia. There is, however, no real penalty if they do not – other than a revocation of their certificate which can be redundant if all the properties have already been sold.

3.44 Again, it is not clear that Treasury has in place adequate processes for monitoring.

Analysis

Current data limitations

3.45 The quality of the currently available data on foreign investment in residential property was a regular topic of discussion in the written submissions to this inquiry and in the evidence given to the committee at public hearings. A consistent theme emerges from this evidence, which is that data needs to be improved to enable better informed decision-making.

45 The Treasury, *Submission 31*, p. 4.

3.46 The committee is also aware that foreign investors who do not seek approval to purchase a property cannot be captured by the current data framework and indeed, by the Treasury's own admission, it is currently difficult to detect instances of non-compliance (see paragraph 2.80). It is the committee's view that this situation must change.

3.47 The principal source of data on foreign investment in residential real estate currently comes from FIRB approvals. However, as alluded to earlier in this chapter, this information cannot precisely determine the levels of foreign purchases of residential real estate. The Treasury stresses in its submission that 'care must be exercised when analysing Foreign Investment Review Board approval data because it represents approvals and does not reflect actual purchases'.[46]

3.48 Meriton Group submits that 'there is a lack of publicly available data on foreign investment in residential real estate, which leads to speculative assumptions around its effect, and potentially leads to poorly informed policy changes'.[47]

3.49 The RBA comments in its submission that 'there is no adjustment made to the published approvals data as to whether the proposed purchases were subsequently completed'.[48]

3.50 In his opening remarks to the committee at the public hearing on 27 June 2014, Dr Kent of the RBA further emphasised that 'it is important to remember that the share of actual residential purchases by foreign citizens and temporary residents is likely to be much lower than the FIRB suggests, because not all of the approvals lead to a purchase'.[49]

3.51 HIA submits in this regard:

> The Foreign Investment Review Board (FIRB) Annual Report is the only official source of statistics relating to the extent of foreign investment in residential property in Australia. Unfortunately, information which is essential to drawing meaningful inference from the data remains unreported. The situation enables widely varying interpretations of the reported figures.[50]

3.52 Property Council of Australia agrees that the data is limited, submitting that 'FIRB data overstates the volume of international investment in residential real estate'[51] and adding:

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46 The Treasury, *Submission 31*, p. 1.

47 Meriton Group, *Submission 14*, p. 2.

48 RBA, *Submission 19*, p. 2.

49 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 1.

50 HIA, *Submission 20*, p. 7.

51 Property Council of Australia, *Submission 25*, p. 7.

> The current negative commentary around foreign investment in residential real estate has been spurred by the limited data available from government sources including the FIRB.[52]

3.53 The committee has formed the view that while there is an argument that foreign investors may be over-represented in the data – equally, it may be argued that if there are foreign investors that do not currently comply with screening requirements, there may be an underestimate. This is, however, difficult to prove, hence the need for better and more complete data.

3.54 Mr Nick Proud, Executive Director of the Property Council of Australia, also commented at the public hearing on 20 June that better decisions could be made with better information. He stated:

> The data looks like it is a starting point for analysis, but there is more detail across the numbers that would be useful. Looking at vacant land, for example, there is no detail about the apartments or the builds that go with that. That is an investment number that is not visible here. Regarding across-the-line items, there are definitely better decisions that could be made, and the contentious arguments that we are seeing played out in the media would be dispelled… and put to rest in many cases if that data were a lot more visible.[53]

3.55 Urban Development Institute of Australia also submits that the data limitations on foreign investment in residential real estate are problematic and have timing issues:

> At the moment the FIRB only provides limited publicly available data in their annual report to Treasury, and the data that is provided lacks key details such as residential investment by country of origin and investment by state or region. This, combined with the infrequency with which data is published makes it very difficult to build an accurate picture of the foreign investment landscape, and means that industry, the media, and the public must rely predominantly on anecdotal evidence and conjecture.[54]

3.56 Further to this issue, Dr Harley Dale, Chief Economist, HIA, recognised at the public hearing on 30 May 2014 that 'there are anecdotes that foreign

52 Property Council of Australia, *Submission 25*, p. 7.

53 Mr Nick Proud, Executive Director, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 2.

54 Urban Development Institute of Australia, *Submission 27*, pp. 2-3.

buyers have been able to circumvent the existing regulations in regard to established residential property'.[55] He added however:

> The fact that the government agencies have not provided complete information about the scale of foreign investment or evidence that existing policies are being enforced has probably added fuel to the speculation. There is, however, currently no evidence of widespread regulatory failure, but improved data collection and reporting of foreign buyer activity would no doubt assist authorities in ensuring regulatory adherence.[56]

Data collection overseas

3.57 RP Data provides direct comparisons in its submission of the approval processes and data available for foreign investment in residential real estate in other countries. The foreign countries included in its analysis are New Zealand, Singapore, United States, Canada, Switzerland and England.[57]

3.58 In England, there is neither an approval process nor a requirement for foreign nationals to declare their purchases. The available data are limited to reports from real estate agencies (based upon their sales information). Various interest groups also produce data but this is based on the statistics proffered by real estate agencies.[58] Switzerland has limited statistical data available, as does Canada which only produces data for provinces where consent is required and then only in respect for which approval is required.[59]

3.59 There are no data available in Singapore.[60] The US has various enactments under which foreign investment data is collected, although land ownership by non-US citizens is considered sparse.[61]

3.60 In New Zealand the Overseas Investment Office (OIO) publishes summaries of its decisions (redacted as necessary) and monthly statistics of applications made and approved/declined, the value of applications and the amount paid for the acquisition of the interest.[62] Many applications in New Zealand are approved subject to ongoing conditions.

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55 Dr Harley Dale, Chief Economist, HIA, *Committee Hansard*, Canberra, 30 May 2014, p. 20.

56 Dr Dale, HIA, *Committee Hansard*, Canberra, 30 May 2014, p. 20.

57 RP Data, *Submission 23,* Appendix B, pp. [1-7].

58 RP Data, *Submission 23,* Appendix B, p. [7].

59 RP Data, *Submission 23,* Appendix B, pp. [5-6].

60 RP Data, *Submission 23,* Appendix B, p. [3].

61 RP Data, *Submission 23,* Appendix B, p. [4].

62 RP Data, *Submission 23,* Appendix B, p. [2].

The OIO is tasked with ensuring ongoing compliance with any conditions imposed. For example, it can require statutory declarations to be given by the overseas persons.[63]

3.61 At the public hearing on 25 June 2014, the Australian Bureau of Statistics (ABS) commented that the collection of foreign investment data with respect to real estate was an issue in other countries. Mr Paul Mahoney of the ABS remarked:

> … most countries have a lot of difficulty collecting information on direct ownership of real estate. They are not so interested from an international investment position, where that ownership is not mediated by a domestic corporate structure. They are more interested in the ownership of the corporate structure rather than the subsequent ownership of the land.[64]

3.62 In response to questions about whether any particular country had better data collection in this respect, Mr Mahoney commented:

> Not that I am aware of. The OECD used to collate a lot of information about how countries collected foreign direct investment and what was included and excluded by member countries. They have not done that recently… To a large extent what we have recognised is that it is an area of poor coverage.[65]

Future data benchmarks

3.63 The committee sought views on how the current shortfalls in the data on foreign investor activity in Australian housing could be addressed in the future, ostensibly from the key agencies that would be involved in procuring this information.

3.64 It is notable that RP Data comments in its submission that the FIRB data do not meet the standards set out in OECD recommendations for foreign investment activity:

> It is not accurate, reliable or timely and fails to meet the benchmark standards set out in the OECD Report [OECD Benchmark Definition of Foreign Direct Investment fourth edition 2008]… [66]

63 RP Data, *Submission 23,* Appendix B, p. [2].

64 Mr Paul Mahoney, Assistant Statistician, Australian Bureau of Statistics (ABS), *Committee Hansard*, Canberra, 25 June 2014, p. 9.

65 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 9.

66 RP Data, *Submission 23*, p. [3].

3.65 RP Data cites an extract from the OECD report it mentions to illustrate this point:

> Internationally harmonised, timely and reliable statistics are essential to assess the trends and developments of the Foreign Direct Investment (FDI) activity, and to assist policy makers in dealing with the challenges of global markets. The usefulness of direct investment statistics depends on their compliance with several quality parameters: a) alignment with international standards; b) avoiding inconsistencies between countries and reducing global discrepancies; c) achieving consistent statistical series over time; d) timeliness; and e) allowing a meaningful exchange of data between partner countries.[67]

3.66 At the public hearing on 30 May 2014, Mr Jonathan Rollings, Foreign Investment and Trade Policy Division, the Treasury, emphasised to the committee regarding data collection that 'the focus of the FIRB has never really been on trying to measure actual investment'.[68] He stated:

> We are essentially reporting our activities and I think that this is where the challenge lies with people seeking more information on what actually happens compared to our reporting on our regulatory activity, and there are key differences there.[69]

3.67 The ABS affirms in its written submission to the committee that the current data are limited in terms of the information they can provide:

> Both in terms of dissemination and collection practices, it is not possible to dissect the available information to define values for foreign investment in real estate, either at the total level, or the split between residential and commercial real estate. This is a consequence of the methodology used to collect and compile these estimates.[70]

3.68 ABS further comments in its submission that 'detailed information on actual investment by country of investor would assist in meeting data gaps in the ABS's foreign investment in real estate estimates'.[71]

3.69 At the public hearing on 25 June 2014, Mr Mahoney of the ABS, noted in his opening statement in relation to foreign investment data for residential real estate:

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67 RP Data, *Submission 23*, p. [2].

68 Mr Jonathan Rollings, General Manager, Foreign Investment and Trade Policy Division, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 8.

69 Mr Rollings, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 8.

70 ABS, *Submission 34*, p. [1].

71 ABS, *Submission 34*, p. [2].

> There are identified data gaps in this area and issues where we have had interest expressed in the past in around collecting more information. One is with the direct holding of real estate, but there is nobody in Australia to whom we can send a survey, so we find it very difficult to identify and capture information about the direct holding of real estate.[72]

3.70 The committee asked the ABS to outline the extent of its data gathering in relation to foreign investment in residential real estate. Mr Mahoney remarked that these data are essentially not collected by ABS:

> Conceptually, all foreign investment into residential real estate directly by a non-resident would be within the scope and coverage of Australia's international investment position. We would record that as part of foreign ownership of Australian equity. It would appear as foreign direct investment, but it would not be separately identified within all other foreign direct investment.[73]

3.71 Mr Mahoney went on to say that the ABS estimate of foreign investment in residential real estate, as a component of foreign direct investment in equity, is made very conservatively and agreed when questioned that it could be an underestimate. He emphasised however:

> … it would be coloured by the fact that our data sources—limited as they are—generally identify purchases of real estate by non-residents but they often do not identify sales of real estate by non-residents. So once we identify something as being held by a non-resident we are unlikely to identify it as then moving out of the series as well. And even then we do not publish to anywhere near this level of detail.[74]

3.72 The committee inquired about the level of collaboration between the ABS and FIRB. The ABS commented at the public hearing that they mainly get information from FIRB annual reports and that they would be limited by their legislation to providing only aggregate level information back to the Treasury if requested. Mr Mahoney stated however when questioned about whether better collaboration could improve data collection:

> We could do better in terms of collaboration, particularly if the review board was given the mandate to go further, beyond just reviewing the intentions and collecting information about the outcomes of those investment intentions—addressing the issues

72 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 5.

73 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 6.

74 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 6.

> that I mentioned before: whether the investment goes ahead, the actual timing of the investment, and the price of the investment. If that information were available to us then it would feed through to a more robust series around real estate.[75]

3.73 Also at the hearing on 25 June, ABS was asked by the committee whether a simple solution to providing accurate data on real estate holdings would be for the States to require a disclosure of nationality on property transfer documents. Mr Mahoney responded:

> That does sound very much like the gold standard: complete coverage; quality valuation; fair timing.[76]

3.74 Mr Peter Bradbury, Director, ABS, added that he would be 'overjoyed' to have access to such a data source with which to compile statistics.[77]

3.75 The ABS were asked by the committee at the public hearing to outline what the ideal scenario would be for data collection to provide comprehensive information on foreign investment in residential real estate. The ABS provided a response to this question in a supplementary submission in which it indicates that the following data would be required for this purpose:

- Market value of property transacted:
  - ⇒ To generate quarterly transactions and stock of residential real estate estimates.
- Settlement date:
  - ⇒ To allocate transactions to the period in which the transaction took place, in accordance with change of economic ownership principles in the BPM6 [Balance of Payments and International Investment Position Manual, Sixth Edition] framework.
- Residency of investor:
  - ⇒ To determine the nationality of the counterparty to the purchase and allow for alignment of direct invest to counterpart country.
- Australian Residency status of purchaser:
  - ⇒ To determine whether a purchaser is a permanent resident, long-term or non-resident resident. Determination of this will allow for appropriate treatment in the international investments accounts.

75 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 7.

76 Mr Mahoney, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 8.

77 Mr Peter Bradbury, Director, ABS, *Committee Hansard*, Canberra, 25 June 2014, p. 8.

- Seller residency:
  - ⇒ To mitigate the risk of including out of scope non-resident to non-resident transactions, and having an effective view of existing stock.
- Purchaser Type, Corporation (and ABN) or individual:
  - ⇒ To identify corporate based ownership structures that may have foreign investors, and allow for derivation of foreign holding through such structures.[78]

3.76 The ABS further emphasises in its supplementary submission:

> Extensions on state transfers and titles offices administrative data have the capability to meet the ABS's requirements to derive high quality estimates. By extending requirements to collect market value of property transacted, settlement date, residency of investor, residency status of purchaser, seller residency and purchaser type all required dimensions to generate quality estimates will be available.[79]

3.77 At the public hearing on 29 August 2014, the committee asked a number of the witnesses for their views on improving the data on foreign investment in Australian property.

3.78 Mr Scott Haslem, Chief Economist, UBS Australia, commented when asked about changes that could improve current data limitations that proof of citizenship on title transfers was one area that should be considered. He further remarked:

> I think we need to ensure that temporary residents, when they vacate at six months, do actually sell those properties, because we are unclear about the cumulative impact of that over 10 or 20 years in terms of stock that is left on the market but owned by someone overseas.[80]

3.79 Also at the public hearing on 29 August, Mr Ray Ellis of First National Real Estate expressed the view that the largely self-regulatory aspects of the industry made monitoring for compliance difficult. He commented:

> The ABS, Foreign Investment Review Board and the Reserve Bank need comprehensive data to better understand the extent of noncompliance. We believe that one of the solutions could be a national rollout of e-conveyancing, which creates the opportunity

78 ABS, *Submission 34.1*, pp. [7, 10-11].

79 ABS, *Submission 34.1*, p. [7].

80 Mr Scott Haslem, Chief Economist, UBS Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 29.

> to consolidate and cross-reference data. It would enable the Foreign Investment Review Board to meet its objectives.[81]

3.80 Mr Andrew Johnston, Senior Analyst, CLSA was also asked at the same hearing for his views on data improvement. Mr Johnston stressed that there was no data on whether temporary residents, such as 457 visa holders, are disposing of established dwellings when vacating the property as required by law:

> If in fact there is a significant amount of temporary visa purchasers who are not selling their established properties when they are leaving… having that data would help us form a view of the extent to which that is a meaningful issue that needs to be addressed.[82]

3.81 The Treasury and FIRB were asked at the public hearing on 29 August to comment on issues that had been raised during the inquiry regarding the integrity of the data. Mr Wilson commented:

> I think it is important to categorise the concerns around integrity of data into what seem to me to be two buckets. One is the integrity of data as it applies to enforcement action or the specific Foreign Investment Review Board approval processes. The other appears to be more of a general view of lack of general economic knowledge or publicly available information on what is actually happening in the property market generally as applies to foreign trends and the like. The first of those obviously are part and parcel of our general remit; the second has been something that has more come out of recent publicity and this inquiry and the various submissions that have been made.[83]

3.82 Based on the evidence received during the inquiry, the committee does not have confidence in the integrity of the current FIRB data on foreign investment in residential real estate. This lack of accurate and timely data represents a fundamental deficiency preventing proper understanding and analysis of the impact of foreign investment on the Australian real estate market.

3.83 The committee inquired of Mr Wilson at the hearing on 29 August whether requiring title registries in the States and Territories to record foreign ownership of land and property, as is done in Queensland alone,[84]

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81 Mr Ellis, First National Real Estate, *Committee Hansard*, Canberra, 29 August 2014, p. 14.

82 Mr Andrew Johnston, Senior Analyst, CLSA, *Committee Hansard*, Canberra, 29 August 2014, p. 23.

83 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 40.

84 Queensland Department of Natural Resources and Mines, *Submission 45*, pp. 2-3.

would be beneficial in addressing some of the current data gaps. He responded:

> I think that, generally, having that throughout the country would be helpful to us. As I said earlier, and various other submitters have noted, by far the most effective way to collect data at that level is using the land transfer office—that does get, in a simplified way, to all 500,000 or 600,000 transactions a year.[85]

3.84 Mr Wilson further elaborated on the superiority of this approach in adequately capturing these foreign investment data remarking that it 'generally is the single biggest, relatively cost-effective step that could be taken to shine a light on what is happening here'.[86] He also commented:

> It will be useful to the market and for everybody to understand better what is happening in the marketplace. It will be useful to us, at some level, in a macro sense in trying to determine how our applications and changes in the level of our applications—the various categories of properties—actually marry up to what is happening in terms of actual property transfers. So if we find that the number of tick the boxes for 'I am foreign' on actual transfers doubles, but the number of applications to the FIRB has only gone up 10 per cent, that is going to be useful to us in the macro sense to know that something is going wrong.[87]

Marketing and financing

3.85 The issue of how Australian properties are marketed overseas to prospective buyers and the sources of financing that are used by foreign investors in Australia's real estate market was of interest to the committee throughout the inquiry.

3.86 There are concerns in the community about the marketing of properties to wealthy overseas investors to the exclusion of domestic buyers. Media articles that have reported on this have been cited in submissions to the inquiry.[88]

3.87 At the public hearing on 30 May, the committee asked the Treasury and FIRB whether the exclusive marketing of real estate overseas was permissible under the current regulations. Mr Wilson responded that although an off-the-plan FIRB approval does require that the properties in

85 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 40.

86 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 41.

87 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 29 August 2014, p. 41.

88 Ms Pat Sutton, *Submission 7*, Appendix, pp. 9-10; Ms Anne Carroll, *Submission 13*, pp. 15-17; Mr Ian Hundley, *Submission 18*, p. 6.

a development must also be marketed locally, this is not a requirement otherwise. He stated:

> If it is a large approval—advanced off the plan; 100 dwellings or whatnot—that must be marketed to Australians as well as foreigners. I suppose theoretically someone could gain approval to buy a derelict house, knock it down, put up three units and only sell to foreigners. I suppose that would be the case. Each of the foreign buyers in that case, because it would not be an advance off the plan, would be required to notify as with any new property.[89]

3.88 Following questions about the overall trends regarding marketing of Australian properties overseas by real estate agents, REIA responded by saying that this was limited by the fact that most properties are established and cannot be sold to non-residents. Ms Lynch commented that such marketing was not aggressive but was 'just in response to any demand that is out there and inquiries that are taking place'.[90]

3.89 The requirement that at least 50 per cent of a development with an advanced off-the-plan FIRB approval must be purchased locally was removed in 2008 (see Table 2.1). However Mr Nikolouzakis of Nyko property commented at the hearing on 20 June that this change had made no difference to the level of foreign investment because Australian banks would not permit more than a small percentage of the presale portion of a development to be from overseas. He stated:

> I think it made zero difference. For anyone who is getting funding—if you are an Asian developer, who, as you said, is coming in and you are using cash to build it, well that is a different story… We expect our developers prior to going to the market to tell us, 'I need 20 pre-sales, but my bank is telling me that only four or five of those can be overseas developers.[91]

3.90 RP Data commented at the hearing on 27 June that based on anecdotal knowledge, extensive overseas marketing of certain developments of over 100 dwellings does occur. Mr Lawless remarked:

> … I think you will find that a lot of developers do that. They are on the Asian road shows and are marketing very heavily across China, Singapore and Malaysia. You will find that there are particular developments that do have a very high proportion of foreign buyers based on that level of marketing.[92]

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89 Mr Wilson, FIRB, *Committee Hansard*, Canberra, 30 May 2014, p. 9.

90 Ms Lynch, REIA, *Committee Hansard*, Canberra, 30 May 2014, p. 30.

91 Mr Nikolouzakis, Nyko Property, *Committee Hansard*, Melbourne, 20 June 2014, p. 24.

92 Mr Lawless, RP Data, *Committee Hansard*, Sydney, 27 June 2014, p. 20.

3.91 Also at the 27 June hearing however, Mr James Sialepis, National Sales Director, Meriton Group, commented that he had no knowledge of developments that were wholly marketed overseas. He commented:

> First of all, it is very difficult for developers to market completely and wholly overseas with funding issues at the moment. I think most banks have a cap anyway of 25 or 30 per cent, so unless a developer is completely viable financially, it is very rare for someone to take a development and sell it completely overseas. Definitely, increasing the penalties to prohibit that would be one way, but it would also be very foolish of a developer to sell a development completely overseas to a number of different buyers. Your risk there is massive. There are so many fluctuations between the two economies, between the dollars, between the approval processes—it is a massive risk to take for not much more of a gain or any gain at all.[93]

3.92 On the question of whether there are many instances of 100 per cent overseas marketing of a development, Mr Brown of CBRE responded 'no, I think there are very few of those. If you are doing that, you cannot be borrowing the money locally'.[94]

3.93 As noted in paragraph 3.43, the committee is strongly of the view that Australians must have the same opportunity to purchase a property in any new development as a foreign investor. Developers in possession of a certificate to sell to foreign investors off-the-plan must advertise in Australia, but do not currently face any real penalty if they do not.

3.94 The question of the sources of finance used by foreign investors to purchase Australian property was also addressed during the inquiry, including whether shadow banking played any part. The general view put to the committee was that most of these funds are sourced locally, although this was not supported by evidence from the major banks.

3.95 Mr Mihno of the Property Council of Australia commented at the hearing on 20 June that 'in terms of the domestic developments you will find the majority is onshore and banks'.[95] He remarked:

> If you think about it, in order to minimise your risk, you want to have as much financing onshore as possible to avoid having things like exchange rate risks et cetera. We do not have specific data on hand today on the foreign investment coming in using overseas

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93 Mr James Sialepis, National Sales Director, Meriton Group, *Committee Hansard*, Sydney, 27 June 2014, p. 35.

94 Mr Brown, CBRE, *Committee Hansard*, Sydney, 27 June 2014, p. 42.

95 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 8.

> investment. But, to the extent that we have any money going through a financial institution of any sort, we have anti-money laundering laws—which involves 'know your client' et cetera—so that basically filters out grey money and shadow money.[96]

3.96 The RBA comments in its submission that foreign developers in Australia often use offshore financing which 'diversifies the source of funding and at times may increase the overall level of funds available for dwelling investment in Australia'.[97] At the hearing on 27 June, Dr Christopher Kent, Assistant Governor, RBA, commented in relation to the possible contribution of shadow banking to these types of investments:

> It may be a source of some funding for some of the larger foreign developers which are operating here. The foreign developers, the Chinese ones, who are building properties here in Australia might tap into some of that finance to fund their activities here. But I do not think it is likely to be a source of significant funding, if much at all, for foreign buyers.[98]

3.97 Dr Kent also expressed the view that the levels of lending by foreign financial institutions for the purchase of Australian properties are likely to be limited due to the risks involved. He commented:

> … unless that financial institution which is offshore lending that money somehow has some other source of collateral to back that loan, or they have a presence here in Australia and are comfortable that if that foreign borrower were to default that they could get access to some sort of collateral to make good on the loan… they are taking a significant risk.[99]

3.98 Mr Chris Curtis, Managing Director, Curtis Associates, is confident that foreign buyers are sourcing funds locally and commented at the 27 June hearing:

> Yes, without exception. They get it from local banks… from principal banks, the majors. I can think of some of our larger acquisitions done by people who are absolutely, fairly and squarely, foreign non-residents.[100]

3.99 Meriton Group concurs with this view. Mr Sialepis commented at the 27 June hearing that all of the sales to foreign investors by Meriton in the

96 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 8.

97 RBA, *Submission 19*, p. 7.

98 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 5.

99 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 5.

100 Mr Chris Curtis, Managing Director, Curtis Associates, *Committee Hansard*, Sydney, 27 June 2014, p. 30.

previous 12 months involved financing, and most of these loans were from a local bank. He remarked:

> They go through the same measures, the same valuations, as the local buyers… There is no difference between how they source a loan and how an ordinary Australian would source a loan. The majority of them are using the big four banks.[101]

3.100 Mr Brown commented however that financing for CBRE sales to foreign investors is often sourced from their home countries. He remarked in relation to his overseas customers:

> There is a mixture. They generally will try, if they can, to borrow where their income is earned, because they can hedge that and they are generally lower interest rates than Australia. Others that have bought a number of properties in Australia over the time have used the local bank. Our banks are also starting to get more of an inroad, particularly into Asia… [102]

3.101 At the public hearing on 29 August, Mr McGrath of McGrath Estate Agents, in responding to this same issue, remarked that some foreign investors pay cash but that those requiring financing are using Australian banks:

> Those that are not paying cash are being funded, generally, through Australian banks. In fact, we often work very closely with the Asian units within the Australian banks to develop connections and to assist their clients find the right investment. So I would say that the majority would be through, if not Australian banks, banks like HSBC that are perhaps external banks that have strong local profiles here.[103]

3.102 The committee notes that the view that foreign investors mainly source financing of residential property purchases from Australian banks is not supported by the Australian banks themselves. For example, Mr Brad Gravell, General Manager, Deposits and Mortgages, ANZ Bank, informed the committee at the 20 June hearing in Melbourne that about 0.3 per cent of the mortgage portfolio at ANZ comprised loans to offshore foreign investors. He added:

101 Mr Sialepis, Meriton Group, *Committee Hansard*, Sydney, 27 June 2014, p. 36.

102 Mr Brown, CBRE, *Committee Hansard*, Sydney, 27 June 2014, p. 39.

103 Mr McGrath, McGrath Estate Agents, *Committee Hansard*, Canberra, 29 August 2014, p. 17.

> … of all of the residential investment coming from offshore, based on our personal experience, only a small proportion is financed by Australian institutions.[104]

3.103 At the Sydney hearing on 27 June, Mr Steven Munchenberg, Chief Executive Officer, Australian Bankers' Association, concurred with these comments:

> As I understood it and I had a conversation with other banks, the evidence given to you by ANZ seems fairly typical… to the extent that we are looking at non-resident foreign investors into Australia, my expectation would be a typical non-resident foreign investor into Australia is wanting to invest money from overseas into the Australian market. They are not going to be coming to us for a mortgage. They have got the money.[105]

3.104 When queried about the conflicting advice regarding the sources of finance for foreign investors in the property market, Mr McGrath responded at the 29 August hearing:

> It is odd because most of the banks—in fact all the big banks that we are dealing with now—have well-equipped, well-organised Asian units dealing with these generally high-net-worth entities—though not essentially or exclusively. I think two of them have half a dozen or more people, so they have got to be servicing a lot of clients and often in that process we are called in and we meet with their bankers and have discussions. So it is surprising, but it could well be that the left hand is not talking to the right and there could be funding taking place that the people that you are getting the information from are unaware of.[106]

3.105 The committee notes that this remarkable degree of contrary evidence will be dealt with by stronger reporting requirements as explored and recommended later in this report.

Impacts of foreign investment in residential real estate

3.106 An examination of the economic benefits of foreign investment in residential real estate is a central part of this inquiry. Treasury submits that notwithstanding the data limitations in this area, foreign investment in residential property increases the demand for, and supply of, housing;

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104 Mr Brad Gravell, General Manager, Deposits and Mortgages, ANZ Bank, *Committee Hansard*, Melbourne, 20 June 2014, p. 33.

105 Mr Steven Munchenberg, Chief Executive Officer, Australian Bankers' Association, *Committee Hansard*, Sydney, 27 June 2014, pp. 45-46.

106 Mr McGrath, McGrath Estate Agents, *Committee Hansard*, Canberra, 29 August 2014, p. 17.

is likely to put downward pressure on rental costs; and increase government revenue from stamp duties and higher economic activity that flows from these additional investments.[107]

3.107 HIA submits that 'the market structure is such that there would likely be fewer new homes built for domestic buyers in the absence of demand from foreign buyers'.[108]

3.108 Meriton Group concurs that foreign investment is a vital component of Australia's real estate sector and contributes to its development:

> Although offshore buyers represent only a small percentage of Australia's overall sales, this market is an important factor in maintaining business confidence and giving developers the impetus and security to embark on new projects – directly increasing the supply of new housing. If Australia wishes to keep housing affordable and to keep developers building, it is imperative that we embrace foreign investment in real estate and the certainty it can bring to industry.[109]

3.109 Meriton Group further comments in its submission on the economic benefits of foreign investment into Australian residential property:

> This investment also contributes significantly to the local economy, adding to jobs in the building and construction industry and related supply and services sectors, and providing drive for the development of related social infrastructure.[110]

3.110 REIA conclude from their analysis that foreign investment is having a direct impact on housing supply in Australia, submitting:

> … the change in the level of approvals for foreign investment and the change in the number of residential buildings approved for construction follow similar paths suggesting that there is a relationship and that foreign investment, or at least the prospect of foreign buyers for new developments, is increasing the supply of new housing. This is supported by anecdotal evidence from the market which suggests that many, particularly large scale, developments would not occur had it not been for the prospect of foreign buyers.[111]

107 The Treasury, *Submission 31*, p. 9.
108 HIA, *Submission 20*, p. 3.
109 Meriton Group, *Submission 14*, p. [1].
110 Meriton Group, *Submission 14*, p. 1.
111 REIA, *Submission 17*, p. 6.

3.111 The RBA comments on a variety of positive benefits flowing from foreign investment in real estate, submitting:

> … foreign demand for Australian dwellings can – and has – provided a stimulus to the local residential construction industry, which accounts for around 9 per cent of total employment in the Australian economy and is more labour intensive than most other industries. In addition, to the extent that materials used in the construction industry are sourced domestically, an increase in residential building supports local suppliers of building materials and can boost demand for household durable goods. The Bank's liaison contacts report that foreign residential demand has been especially helpful in boosting construction activity in the current stage of the economic cycle… [112]

3.112 The RBA further comments in its submission that 'the impact of foreign residential developers in adding to the overall supply of new dwellings in Australia is more difficult to determine, although on balance it is probably positive'.[113]

Fact Box

According to HIA, Australia averaged approximately 156,000 new home commencements between 2004 and 2013. HIA's conservative estimate is that 180,000 new dwellings per annum must be built between now and 2050 to meet Australia's supply needs.

3.113 At the public hearing on 27 June, the RBA was queried on the positives and negatives associated with foreign investment. Dr Kent responded by reiterating the view that foreign demand has probably boosted construction. He further remarked:

> An obvious other economic benefit, if you like, is that many of these purchases are associated, as best as we can tell, with foreign students—reasonably well-off foreign students whose parents are perhaps buying them apartments rather than renting them something and along the way therefore contributing to construction. More generally, though, I think that these sorts of purchases are associated also with business links of different types and other capital inflows and business opportunities.[114]

112 RBA, *Submission 19*, p. 7.

113 RBA, *Submission 19*, p. 7.

114 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

3.114 Master Builders Australia comments in its submission that its anecdotal evidence supports a positive effect of foreign investment on housing supply.[115]

3.115 Property Council of Australia also emphasises in its submission that international investors play an important role in boosting the supply of Australian homes:

> The average capacity of the domestic residential development industry is 150,000 dwellings per annum. Global investment in Australian residential real estate, has potential to add a further 5,000 – 10,000 new dwellings per annum… International investors have sought approval for 1,821 vacant development sites in Australia in FY 2012-13. These developments are creating new development that is being injected into the rental market. [116]

3.116 SMATS Group agrees that foreign investment makes an important contribution to housing supply, remarking:

> Foreign investors are an important part of the supply equation in Australia… newly constructed dwellings of foreign investors provide important rental accommodation and expansion of projects and estates that may otherwise not attract sufficient pre-sales to permit financing to begin and allow many larger scale projects to move from concept to reality.[117]

3.117 At the public hearing on 20 June, Mr Rod Cornish, Division Director, Macquarie Group Limited, also expressed the view that foreign investment boosts housing construction and supply. He commented:

> … it does increase supply, and we will see this over the next couple of years. So if you look at housing approvals, for the last 12 months there were 188,000 dwelling approvals. That is trend numbers from the Australian Bureau of Statistics. That is the highest in 19 years and a high proportion of that—36 per cent—is apartments. So if you look historically, that is a very high proportion. The foreign developers came in fairly early in 2012, purchased a number of sites that had been in some cases trying to find buyers over an extended period of time.[118]

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115 Master Builders Australia, *Submission 22*, p. 3.

116 Property Council of Australia, *Submission 25*, p. 8.

117 SMATS Group, *Submission 35*, pp. 4-5.

118 Mr Rod Cornish, Division Director, Macquarie Group Limited, *Committee Hansard*, Melbourne, 20 June 2014, p. 28.

3.118 The committee notes the generally positive comments from the industry stakeholders about the impacts of foreign investment and the need for foreign demand to continue to assist the domestic building industry and housing supply. Improvements in the data collected through the establishment of a national register of the residency status of the buyer of a property, as outlined in Chapter 2, will make these impacts clear.

Conclusion

3.119 There is a current lack of timely and accurate data on foreign investment in residential real estate. The consequences of this include:

- an inability to determine the real number and value of these investments;
- difficulty in assessing economic and social benefits such as the contribution to housing supply;
- difficulty in ascertaining levels of non-compliance with the regulatory framework;
- potential eroding of public confidence in the value of foreign investment in the housing market;
- inadequacy of the evidence base upon which policy makers can make informed choices.

3.120 Information on the nationality and residency status of the purchaser on a title transfer would be one of the most effective solutions to this problem. The views of State and Territory Ministers with responsibility for land titles were sought on how a scheme which recorded this information and made it available on a national database could be implemented in practice. The views of Ministers varied but responses from most jurisdictions indicated that such a scheme could be implemented in some form, with appropriate consultation, funding and any necessary changes to legislation.

3.121 The Victorian Government response noted that 'States and Territories are committed to making property transfer processes as consistent across jurisdictions as reasonably practical'.[119] Other responses indicated that the introduction of a national e-conveyancing scheme was well advanced, with four States to be participating by the end of the year and the remaining States and Territories expected to join by early 2016.[120]

119 Minister for Planning, Victoria, *Submission 69*, p. 3.

120 For example, see Attorney-General, Northern Territory, *Submission 70*, p. 2.

3.122 In this regard, the Queensland Government response noted that if the Commonwealth Government wished to develop a single database which recorded the nationality and residency status of property purchasers, 'there may be some limited capacity to leverage off data processed through the national e-conveyancing system (known as PEXA – Property Exchange Australia).'[121]

3.123 The Government should enter into negotiations with the States and Territories to develop a nationwide framework requiring that documents for the transfer of property titles state this information in a way that can be collected by relevant agencies such as the Treasury and ABS. A possible component of such a framework could be the establishment of a single electronic registry, for instance under the Australian Securities and Investments Commission (ASIC). This would facilitate data-matching from a single database.

3.124 Notwithstanding that a national register should be developed, existing data, such as that contained in the Queensland register, should be used by FIRB to supplement current data while the national register is being developed.

Recommendation 8

3.125 **The Committee recommends that the Government, in conjunction with the States and Territories, establish a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate. This information should be accessible by relevant agencies from a single database.**

3.126 This title transfer data will also contribute to compliance and to the enforcement of existing rules. This is particularly pertinent to the purchase of established dwellings by temporary residents. It would be useful to develop an alert system through the existing visa entitlement verification online (VEVO) resource whereby the Department of Immigration and Border Protection would inform the Treasury when temporary visas expire and whether a permanent residency visa has been issued. This information could then be cross-checked against the title transfer database and allow a divestment order to be issued if necessary.

121 Minister for Natural Resources and Mines, Queensland, *Submission 71*, p. 1.

3.127 The committee is of the view that information sharing between relevant Commonwealth agencies and the FIRB need to be enhanced in conjunction with improvements to the internal processes at the Treasury's Foreign Investment and Trade Policy Division. As discussed below, the committee believes that this same principle should also apply to AUSTRAC data.

3.128 The committee firmly believes that there should be no barriers to the screening by FIRB of temporary residents who may be no longer using an established dwelling as a primary residence in Australia.

3.129 The committee is aware that current provisions in the *Migration Act 1958* prevent the Department of Immigration and Border Protection (DIBP) from informing FIRB when a temporary resident has left Australia after expiry of their visa.[122] It is the committee's view that this legislation should be amended to require DIBP to provide this information to FIRB and that FIRB should establish effective processes to continually cross check this incoming data against their existing property databases to ensure compliance with foreign investment rules. As outlined in paragraph 2.126, the committee believes that Australia's Foreign Investment Policy should be amended to explicitly state the requirement for a temporary resident to divest an established property within three months if it is no longer a primary residence.

Recommendation 9

3.130 **The Committee recommends that the Government establish an alert system for the expiry of temporary visas that can be used by the Treasury to issue property divestment orders in cases of non-compliance:**

- **by amending the *Migration Act 1958* so that the Department of Immigration and Border Protection must inform FIRB when a temporary resident departs Australia upon expiry of their visa; and**
- **by establishing effective and timely internal processes at the Treasury to receive and cross-check this information against its property databases to screen for compliance with the foreign investment framework.**

122 Department of Immigration and Border Protection (DIBP), *Submission 50.1*, p. 1.

3.131 Not all new developments need to be marketed in Australia under the current rules. Only properties in large developments that receive an advanced off-the-plan certificate from the FIRB have such a condition. There should be a requirement, however, that domestic investors receive the same information and opportunity to purchase a new property as a foreign buyer. All new properties for sale that are marketed overseas must be advertised to a reasonable extent in Australia for the same duration. As noted earlier in this chapter, currently no real sanctions apply to developers who fail to market domestically under the foreign investment framework.

Recommendation 10

3.132 **The Committee recommends that the Government amend the *Foreign Acquisitions and Takeovers Act 1975* to provide that residential property sold under off-the-plan certificates that is marketed for sale overseas, must be marketed in Australia for the same period of time. Breaches of this requirement should be subject to sanctions under the Act ranging from fines to the cancellation of a sale.**

3.133 The sources of financing used by some foreign nationals to purchase residential real estate in Australia is a potential concern, including the possibility that shadow banking may be involved in some cases. The extent of this issue is uncertain but it would be prudent to ensure that any transactions involving an overseas purchase of an Australian property can be thoroughly investigated if considered suspicious. This should be an area that is considered when the review into anti-money laundering legislation is finalised in 2015.

3.134 The committee thus considers that it would be desirable for the Treasury and FIRB to use AUSTRAC data where applicable, as part of its internal screening processes of foreign purchases of real estate.

Recommendation 11

3.135 **In light of the expected finalisation of the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 in early 2015, the Committee recommends that the Government consider the purchase of residential property by foreign investors as a possible area of investigation when considering amendments to the legislation.**

Recommendation 12

3.136 **The Committee recommends that Treasury's Foreign Investment and Trade Policy Division make greater use of the databases held by AUSTRAC, and also of other relevant Federal and State Government databases, to assist the Foreign Investment Review Board in its duties and responsibilities.**

3.137 It is vitally important that the current data limitations are addressed as described above, as this will improve compliance and enforcement and contribute to public confidence in the current policy settings. As also discussed in this chapter, it is important to ensure that Australians are not excluded from any sections of the property market and have equal opportunities to bid for any property that comes up for sale.

4

Accessibility and affordability of housing

Impact of foreign investment on house prices

Overview

4.1 Residential property prices in Australia have risen significantly over the past three decades, particularly in the major capital cities (see Table 4.1). It is notable also that prices in Sydney have grown very strongly since 2010.

4.2 RP Data states on its website that 'combined capital city home values reached a recent low point in May 2012 and over the 21 months from May 2012 to January 2014, home values have increased by a total of 13.2 per cent'.[1]

4.3 Contributions to this inquiry from a number of personal submitters have expressed concerns that overseas investors in Australia's property market make it more difficult and more expensive for Australians to buy a home, as they put additional upward pressure on house prices. This chapter focuses on the factors affecting affordability and accessibility in Australia's housing market, with an emphasis on the impacts of foreign investment.

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1 RP Data website < http://www.rpdata.com/research/capital_markets_report.html> viewed 15 September 2014.

Table 4.1 Median residential property prices in Australia's major capital cities since 1980

Year end+	National ($000)		Sydney ($000)		Melbourne ($000)		Brisbane ($000)		Adelaide ($000)	
	Houses	Units	Houses	Units	Houses	Units	Houses	Units	Houses	Units
1980	37	38	50	58	40	35	32	38	*na*	*na*
1985	67	64	80	73	75	63	55	56	*na*	*na*
1990	108	116	160	150	135	117	108	95	*na*	*na*
1995	124	129	175	170	130	116	133	131	110	96
2000	160	180	292	272	200	189	154	175	137	100
2005	293	288	495	380	320	284	316	264	270	211
2010	430	410	600	475	502	450	471	390	404	342
2014	468	425	740	571	550	452	477	390	415	349

Source RP Data, Submission 23.3
**Median house and unit prices are calculated across the three months ending June in each year (and are rounded)*
+Year end is at 30 June for the year listed; na, data not available.

Table 4.1 continued

Year end+	Perth ($000)		Hobart ($000)		Darwin ($000)		Canberra ($000)	
	Houses	Units	Houses	Units	Houses	Units	Houses	Units
1980	*na*	*na*	*na*	*na*	*na*	*na*	*na*	*na*
1985	*na*	*na*	*na*	*na*	*na*	*na*	*na*	*na*
1990	90	82	78	70	*na*	*na*	*na*	*na*
1995	120	105	100	94	*na*	*na*	145	127
2000	150	125	118	95	163	140	185	140
2005	275	250	250	220	259	186	373	315
2010	492	411	349	279	507	420	520	415
2014	543	444	340	267	550	440	560	424

Source RP Data, Submission 23.3
**Median house and unit prices are calculated across the three months ending June in each year (and are rounded)*
+Year end is at 30 June for the year listed; na, data not available.

Drivers of house prices

4.4 The committee was interested to explore through the inquiry whether foreign investment puts measurable upward pressure on house prices in Australia. In its February 2014 Statement on Monetary Policy, the Reserve Bank of Australia (RBA) notes that 'the rise in housing prices over the past year or so is broadly consistent with the historical relationship between interest rates and housing prices'.[2] The Statement continues:

> The reduction in interest rates has eased some financing constraints, reduced the user cost of housing and increased the attractiveness of investing in riskier, higher-yielding assets, resulting in stronger demand for residential property.[3]

4.5 Meriton Group states in its submission in relation to house prices that 'housing affordability is driven by many supply and demand factors, including interest rates, land availability and costs of development (mostly subject to state policy and planning regulations, taxes and costs of labour).'[4] Meriton Group submits however that:

> Foreign investment is not a significant driver of increased housing prices, playing a minor role in the overall housing market, and representing around 2.5 per cent of total annual sales.[5]

4.6 When asked at the public hearing on 27 June whether it is fair to say that foreign investment is having some impact on house prices, Dr Kent of the RBA observed:

> … I think it is hard to deny. If you imagine an auction on a weekend where you throw in an extra buyer who is willing to pay a little bit more than everyone else there, if that buyer happens to be foreign, maybe as a temporary resident, and they are buying the single place that they are able to get approval for, it is hard to deny that it would not push up the price.[6]

4.7 At the public hearing on 29 August, Scott Haslem of UBS Australia was also asked his views on the impact of foreign investment on house prices, and he commented:

> …when I as an economist look at demand and supply, if there has been a material increase in demand then it would seem disingenuous for me not to assume that there has at some point been some increase in price, unless supply is able to catch up. I think the RBA made this point as well. I—like the RBA, I think, but certainly on my part—think the general thrust of the laws is right:

2 Reserve Bank of Australia (RBA), *Statement on Monetary Policy*, February 2014, Box B: The Housing Market <www.rba.gov.au/publications/smp/2014/feb/html/box-b.html> viewed 15 September 2014.

3 RBA, *Statement on Monetary Policy*, February 2014, Box B: The Housing Market <www.rba.gov.au/publications/smp/2014/feb/html/box-b.html> viewed 15 September 2014.

4 Meriton Group, *Submission 14*, p. 2.

5 Meriton Group, *Submission 14*, p. 2.

6 Dr Christopher Kent, Assistant Governor, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 8.

> we should be encouraging foreign investment and it should be focused towards new. But we cannot always be confident that the supply response is as rapid as the demand response, and therefore, whilst foreign investment is clearly going to add to the level of supply, the supply response may well be too slow to avoid a period of higher prices.[7]

4.8 Meriton Group further comments in its submission on what it describes as the recognised drivers of house price growth in Australia:

> It is widely recognised that the key drivers of the demand for housing and the growth in prices have been:
>
> - demand for housing fuelled by strong population growth and growing per capita incomes, as well as high levels of aggregate employment across the economy linked to a sustained period of economic growth;
> - the preference provided to housing – to both homeowners and investors - by taxation settings and by some government assistance programs such as the state-run first home owner schemes; and
> - the increased capacity of Australian households, and investors, to obtain and service larger mortgages due to greater access to cheap credit.
>
> In addition, supply factors have also contributed to the growth in dwelling prices. In particular, the availability of land for development and the cost of developing such land has been a significant constraint.[8]

4.9 Real Estate Institute of Australia (REIA) notes in its submission that the undersupply of housing was identified at an industry roundtable in March 2014 as a major driver of increasing house prices and declining affordability.[9] REIA also submits on this issue:

> It is fair to say that it is because of an inadequate supply of housing that questions are raised from time to time about the efficacy of foreign investment. Addressing housing supply would avoid any future questioning about impact of foreign investors in residential real estate.[10]

4.10 Housing Industry Association (HIA) comments in its submission that although house and rental price increases (62 and 55 per cent over 10

7 Mr Scott Haslem, Chief Economist, UBS Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 28.

8 Meriton Group, *Submission 14*, p. 5.

9 Real Estate Institute of Australia (REIA), *Submission 17*, p. 9.

10 REIA, *Submission 17*, p. 9.

years, respectively) have been well above inflation and household income growth in recent years, this is not due to speculative demand, including that of foreign investors:

> … concurrent growth in home prices and rental prices is not consistent with the thesis that speculative activity is a primary driver of price rises. Rental prices reflect the value of housing services rather than any entitlement to future growth. Strong concurrent growth in home prices and rental prices is consistent with the demand for housing services exceeding the supply.[11]

4.11 Property Council of Australia submits that there is not enough foreign investment to influence house prices and that '… there is no evidence that international investment is swamping the residential housing market or influencing prices'.[12]

4.12 SMATS Group expresses the view in its submission to the inquiry that increased demand from population growth is the main driver of house price growth:

> The general community does not fully appreciate that the main driving force in property price increases is Australia's growing population, which rose 1.8% to the year 30th September 2013. This equates to an additional 405,400 people and places enormous pressure in the property market for homes to accommodate this rising tide.[13]

4.13 The RBA notes in its submission to this inquiry that any impact of foreign investment on house prices is not dependent only on the purchasing of Australian real estate by overseas buyers:

> The overall impact on the housing market of ownership by foreign citizens also depends not only on their purchases, but also on their subsequent sales. If the flow of purchases and sales by foreign citizens roughly balance, then there is likely to be little effect on overall demand and house prices from foreign participation in the housing market.[14]

4.14 At the public hearing on 27 June, the RBA was asked by the committee to further comment on possible house price pressures caused by foreign buyers entering the market, including temporary residents. Dr David Orsmond, Deputy Head, Economic Analysis Department, RBA, responded:

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11 Housing Industry Association (HIA), *Submission 20*, p. 9.
12 Property Council of Australia, *Submission 25*, p. 4.
13 SMATS Group, *Submission 35*, p. 3.
14 RBA, *Submission 19*, p. 6.

> When you are thinking about whether or not foreign purchases are affecting any particular part of the market, one useful thing to think about is what is happening in all of the other parts of the market where you do not believe there is a large foreign investor aspect… The price increase in certain pockets around the country is not markedly different from the average that has gone up across the whole nation. That suggests that the price increase we have seen over, say, the last year is a phenomenon that is not focused on foreign investors per se, although maybe at the margin there is some effect in some markets.[15]

4.15 Dr Kent of the RBA further commented at the 27 June hearing that recent house price rises were to be expected given the current market conditions:

> … it is, in many ways, not surprising that house prices have gone up, because interest rates are very low, and, as I said, population growth, now at 1.7 per cent a year, is reasonably robust. Those two things help to explain why house prices have gone up. I do not think they have gone up any more than we might have expected, given those forces.[16]

4.16 The Treasury comments in its submission that the extent of house price rises that are attributable to foreign demand is difficult to isolate from other factors.[17] At the public hearing on 30 May 2014, the committee inquired of Treasury officials whether foreign investment was sufficient to have a material impact on housing affordability. Mr Brenton Goldsworthy, Principal Adviser, Macroeconomic and Conditions Division, responded:

> I think the best way to answer that question is to point to the role that low interest rates are clearly having on house prices. It is certainly fair to say that the stimulus incentive that is provided to domestic investors and also to domestic owner occupiers would likely be having the much larger impact on house prices.[18]

4.17 UBS Australia also expresses the view that the actual impact of foreign investment on house price pressures is difficult to measure:

> … it remains near-impossible to assess the extent to which this has positively impacted house price growth over the past year, from

15 Dr David Orsmond, Deputy Head, Economic Analysis Department, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 8.

16 Dr Christopher Kent, Assistant Governor, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 8.

17 The Treasury, *Submission 31*, p. 9.

18 Mr Brenton Goldsworthy, Principal Adviser, Macroeconomic and Conditions Division, the Treasury, *Committee Hansard*, Canberra, 30 May 2014, p. 6.

> 'minimally' to 'materially', particularly relative to other important factors that are contributing to upward pressure on house prices, such as the persistent undersupply (and rising cost) of housing, as canvased by a broad range of other submissions to the Inquiry.[19]

4.18 At the public hearing on 20 June 2014, Mr Rod Cornish of Macquarie Group Limited also commented that the impacts of foreign investment on house prices are not as great as the factors that have been seen in previous cycles such as interest rate reductions:

> I think the bigger force that we are seeing in this cycle is the same force we have seen in other cycles, which is an improvement in people's capacity to pay or to obtain a mortgage through rate cuts… This time we have seen a price increase in the last two years of 14.5 per cent, so it does not to me look out of synchronisation with previous cycles and the same drivers, being an improvement in affordability.[20]

4.19 Mr Ellis of First National Real Estate expressed the view at the public hearing on 29 August 2014 that foreign investment is not a principal driver of house price increases in outer residential areas:

> In the outer residential area the pushing up of prices by foreign investors is I think a bit overstated. It has been pushed up by the strength of the economy, the lowest interest rates for 50 years… the pent-up demand is probably pushing the prices up greater than foreign investment.[21]

Analysis

Impacts of foreign buyers on affordability

4.20 There are many Australians who are finding it difficult to afford their first home as price growth continues to be very strong in the major capitals. The possibility that foreign buyers are exacerbating this problem is analysed in the next three sections. The committee is fully aware of concerns in parts of the community, expressed in a number of personal submissions to this inquiry, that the policies allowing foreign investment in residential real estate are not benefitting Australians because they make

19 UBS Australia, *Submission 51*, p. 2.

20 Mr Rod Cornish, Division Director, Macquarie Group Limited, *Committee Hansard*, Melbourne, 20 June 2014, pp. 27-28.

21 Mr Raymond Ellis, Chief Executive, First National Real Estate, *Committee Hansard*, Canberra, 29 August 2014, p. 16.

housing less affordable. Conflicting evidence has been received by this inquiry, although on balance it is the committee's view that the benefits of foreign investment outweigh the negatives.

4.21 Meriton Group emphasises in the covering letter for its submission that 'if Australia wishes to keep housing affordable and to keep developers building, it is imperative that we embrace foreign investment in real estate and the certainty it can bring to industry'.[22] Meriton Group further submits:

> At the margin, foreign purchasers may be pushing up prices in particular segments of the market such as high-quality new apartments in Sydney, Melbourne and the Gold Coast. However, even these markets are dominated by local purchasers.[23]

4.22 Urban Taskforce Australia states in its submission that housing affordability needs to be addressed by looking at planning laws and supply constraints:

> If the Government is truly concerned with housing affordability it should look more closely at the complex state and local planning systems and risky development approval process… if the Government wants to tackle housing affordability it must focus on ways to increase supply. Foreign investment in new housing is but one of the ways of supporting the delivery of new housing stock.[24]

4.23 The Property Council of Australia was queried on the factors affecting affordability at the public hearing on 20 June. Mr Mihno commented:

> The real enemies to affordability, from our perspective, are bad planning systems, lack of land supply and crippling taxes and charges… Lack of land supply in itself forces everyone to compete for limited housing and inevitably hikes up prices. From our perspective, it is time to end the confusion and focus on the fact that we can keep foreign investment working for us.[25]

4.24 Ms Caryn Kakas, Executive Director, National Policy and Strategy, at the Property Council of Australia expressed the view at the 20 June hearing that Australians are being priced out of the market by other Australians and not by foreign buyers:

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22 Meriton Group, *Submission 14*, p. [1].

23 Meriton Group, *Submission 14*, p. 8.

24 Urban Taskforce Australia, *Submission 11*, pp. 2-3.

25 Mr Andrew Mihno, Executive Director, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 2.

> I think the most important issue is domestic ability to pay. We see an increased housing affordability issue… we continuously see people being priced out of the market, but they are being priced out of the market by the people in their communities. They are not being priced out of the market by overseas buyers… What worries me is: if you move foreign investment out, which is the underpinning of trying to deliver supply, how much less supply are we going to have, how much more demand are we going to have, and how much more are we going to see prices increase? [26]

4.25 The Urban Development Institute of Australia also argues in its submission that foreign investment is not the cause of reduced housing affordability:

> UDIA believes that the underlying cause of Australia's housing supply and affordability problems continues to be supply side barriers to new land and housing supply. The solution is not to further restrict foreign investment, but for all levels of government to remove supply side constraints on housing to ensure that foreign investor demand is able to be most effectively transformed into more homes for Australians.[27]

4.26 Nyko Property comments in its submission that the current regulatory framework for foreign investors strikes the right balance in terms of affordability:

> … the current regulations around foreign investment in residential property strike the right balance and should not be altered. A change making it easier for overseas investors to purchase existing property could negatively affect the affordability of housing for home owners in Australia and making it more difficult for foreign investors to purchase new property will almost certainly hurt jobs in the construction industry by reducing building activity, especially in the inner city areas.[28]

4.27 At the public hearing on 29 August 2014, representatives of CLSA Australia were asked for their opinions on whether the positive contributions of foreign investment included a reduction in the price of some housing stock. Mr John Kim, Head of Australia Property, CLSA responded:

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26 Ms Caryn Kakas, Executive Director, National Policy and Strategy, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 10.

27 Urban Development Institute of Australia, *Submission 27*, p. [2].

28 Nyko Property, *Submission 28*, p. [3].

> I would definitely say so for some of the developers that we cover… they could sell that to the local market without the aid of foreign investors, but with the velocity of the sales a lot of that is supported by foreign investors—it [gives] them confidence to move on to projects… more profit margin and, importantly, the cash-flow to move on to buy other sites. All together I think that helps with the overall prices going forward with some of the larger projects.[29]

Housing supply

4.28 The issue of housing supply, and indeed undersupply, was raised consistently throughout the inquiry. This was of interest to the committee as it relates directly to housing affordability and the benefits of foreign investment in the property market in Australia.

4.29 The evidence points to a continuous lack of supply in Australia as a key driver of price increases. Importantly, foreign investment is regarded by industry experts as vital to increasing this supply. Rather than causing price pressures, the evidence suggests that foreign investments may actually help keep prices lower by increasing supply.

4.30 Urban Taskforce Australia highlights in its submission that New South Wales is experiencing significant shortfalls in supply and that this is a key factor in considering the policy framework for foreign investment:

> For many years the New South Wales development industry was not able to produce sufficient housing to meet demand. Prohibitive planning policy resulted in a massive supply problem driving the cost of housing to such a level that for a great proportion of the population housing has become unaffordable… This is the context in which the Government must consider its foreign investment in residential real estate policy. We argue that the current policy is good government policy as it is supporting the production of new housing.[30]

4.31 Meriton Group comments in its submission that foreign investment is critical for housing supply:

> We strongly believe that foreign investment is critical to the continued supply of new housing to the Australian market, and that any attempts to further restrict this investment will ultimately

29 Mr John Kim, Head of Australia Property, CLSA Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 20.

30 Urban Taskforce Australia, *Submission 11*, p. 1.

> result in adverse consequences for the supply of housing in Australia and its affordability.[31]

4.32 REIA submits also that supply is falling well short of demand in Australia's housing market and putting pressure on prices:

> Supply has been unable to keep pace with demand due to a number of reasons: land availability; taxation policies; length and cost of planning process; zoning policies, and environmental regulations. Furthermore, unless supply is addressed the gap between supply and demand is forecast to widen to 375,000 dwellings by 2015. A major contributor to increases in house prices and declining affordability is the undersupply of housing.[32]

4.33 Master Builders Australia expressed the view in its submission that policy settings must ensure that supply is increased:

> Insofar as foreign buyers of Australian real estate may be adding to the demand-supply imbalance, the appropriate policy response is not to impede demand but to reform and liberalise the supply side of the Australian housing market.[33]

4.34 Property Council of Australia details in its submission the benefits of foreign investment to housing supply in six ways:

- Use it or lose it provisions—Foreign Investment Review Board (FIRB) approvals require development to commence within 24-months.
- Level playing field—international developers must market their projects within Australia.
- Global pool of buyers—the ability to sell some dwellings offshore assists domestic developers to start new projects and supply Australians.
- Two must replace one—every home demolished by an international investor must be replaced by at least two.
- Better housing options—international investors help State Governments meet their infill development targets.
- Savings to government—international investors focus on infill development, which means less infrastructures spending in the suburbs.[34]

4.35 Property Council of Australia also submits that undersupply pressures are fuelling the debate on the merits of foreign investment in Australian housing:

31 Meriton Group, *Submission 14*, p. 1.
32 REIA, *Submission 17*, p. 9.
33 Master Builders Australia, *Submission 22*, p. 3.
34 Property Council of Australia, *Submission 25*, p. 2.

> International investment would be a non-issue if there were enough housing supply and choice. Blockages in the regulatory environment, including moribund planning systems, excessive infrastructure charges and slow development approvals, are reducing housing affordability.[35]

4.36 Mr Mihno of the Property Council of Australia outlined his views on the importance of foreign investment to housing supply at the public hearing on 20 June:

> What is not realised by many… is the leverage that foreign investment creates for supply of housing to Australians. I will illustrate that with a bit of an example: on current figures, foreign investment has directly contributed just over 8,200 homes. Importantly, foreign investment in new developments is often necessary for presales that get developments off the ground. Typically, what you will find is that 20 per cent of apartment developments are sold to foreign buyers, which means that 80 per cent of those developments are given to residents and owe their start to foreign investment. In short, every foreign buy ensures that there are four new apartment dwellings built for Australians if you take that as a relatively simple but illustrative example.[36]

4.37 Also at the public hearing on 20 June, Ms Kakas of the Property Council outlined her views on supply-side issues in Australia's housing market:

> The fact of the matter is… that there is a substantial market failure. There has been report after report at a state and federal level indicating where the market is actually not operating at optimal levels because of local state and sometimes federal rules and regulations. This has been very much specifically in the planning space that you would well know in New South Wales—that has consistently had some of the worst supply delivery in the country against your population and demographic growth… The market will deliver as much as it can. There is a high level of demand there and the market would like to deliver at a lower price. It would like to deliver at price points that currently cannot be met. But it cannot be done unless the market is actually being addressed and is able to operate functionally.[37]

35 Property Council of Australia, *Submission 25*, p. 2.

36 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, pp. 1-2.

37 Ms Kakas, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 14.

4.38 Urban Development Institute of Australia makes a similar argument in its submission:

> It's important to remember that the efficacy of foreign investment as a mechanism to increase the size of Australia's housing stock ultimately depends on the ability of developers to supply the market with new homes. It is still unfortunately the case that the supply of new housing in Australia is heavily and unnecessarily constrained by governments through high taxes and charges on new housing, inadequate investment in urban infrastructure, poor planning, inefficient zoning and approvals systems, and regulatory delays and burden. As a result, any increase in demand for housing (including demand from foreign investors) has the potential to place upward pressure on prices.[38]

4.39 Dr Dale of HIA commented at the 30 May hearing that foreign investment was contributing to supply in different parts of the housing market:

> Independent research commissioned by HIA demonstrates the benefit of increased new housing supply to the broader economy. Foreign investment is contributing to that. One example is the foreign investment as it relates to the construction of apartments, although I would point out that foreign investor demand for new residential property also extends to low- and medium-density housing and also house-and-land packages.[39]

4.40 At the public hearing on 30 May, the Chairman of the FIRB, Mr Brian Wilson, expressed the view that a focus on increasing the supply was hard to argue against:

> I think that, if we look back at history—and this was included in the Treasury's submission about the changes in the rules to residential real estate—they probably tighten and loosen pretty much in accordance with the housing market and economic activity. I would certainly say—and it is probably outside my ambit as Chairman of the Foreign Investment Review Board—that the Governor of the Reserve Bank said to this committee at some stage that it may be better to concentrate on increasing the supply than restricting the demand. As a private citizen I would find that difficult to disagree with.[40]

38 Urban Development Institute of Australia, *Submission 27*, p. [2].

39 Dr Dale, HIA, *Committee Hansard*, Canberra, 30 May 2014, p. 20.

40 Mr Brian Wilson, Chairman, FIRB, *Committee Hansard*, Canberra, 30 May 2014, p. 9.

First home buyers

4.41 The issue of housing affordability probably affects first home buyers more than any other group of investors in the residential property market. The committee was interested in any negative impacts of competition from foreign buyers on Australians seeking to purchase a first home. The evidence suggests however that these two investor markets are largely separate.

4.42 REIA submits that first home or average buyers are not competing in the price bracket that applies to residential properties purchased by overseas investors:

> The broad conclusions from the perspective of an impact on the domestic market are that: the FIRB guidelines of increasing the supply of housing are being met; the market segments of existing dwellings and vacant land are in a price category well beyond median prices and are not likely to compete against 'average' buyers or first home buyers; new dwellings and off-the-plan purchasers appear to be in a price category higher than the median for units.[41]

4.43 Ms Amanda Lynch, CEO of REIA, reiterated this point at the public hearing on 30 May 2014:

> Australian first home buyers have an 80 per cent preference in their buying habits for established real estate—they want to buy existing houses. These are near to transport corridors and they are also near to services, and they are cheaper than new houses and apartments. This is a different buying habit from foreign investors, who favour new apartments… The preference for foreign investors is at the higher end of the market, with a $1 million average for established real estate for temporary residents, and a $647,000 average for individual purchasers of new dwellings… it is way beyond the reach of an aspiring first home buyer and it is beyond the average price for Australian property.[42]

4.44 In his opening statement at the public hearing on 30 May, Dr Brent Davis of Master Builders Australia also discussed the differences in the markets for first home buyers and foreign investors that are evident from the available data:

> From what we are aware of from the various sources available to us, foreign buyers account for about five to six per cent of the

41 REIA, *Submission 17*, pp. 8-9.

42 Ms Amanda Lynch, CEO, REIA, *Committee Hansard*, Canberra, 30 May 2014, p. 28.

> Australian housing market… They probably do not compete with the first home buyer segment of the market. They probably position themselves towards the higher end of the market.[43]

4.45 The RBA also comments in its submission that the markets for foreign investors and first home buyers are different:

> Some commentators have noted a potential for foreign residential housing demand to push up the price of housing for first home buyers. However, the data available – while incomplete – suggest that first home buyers have generally purchased established rather than new dwellings, and purchased dwellings that are cheaper than the overall national average…[44]

4.46 At the public hearing on 27 June 2014, Dr Kent of the RBA further argued that foreign investor and first home buyers are unlikely to compete for the same properties:

> … the information available suggests that foreign residential purchases have probably not had a large direct effect on the price of housing that is typically purchased by first home buyers. While incomplete, the FIRB data and the information received through our liaison with developers suggests that most foreign residential purchases are for new, high-density, inner-city properties, as well as properties close to universities. Furthermore, the properties they purchase tend to be valued well above the average national sales price. In contrast, most purchases by first home buyers have been for established homes that are priced well below the national average.[45]

4.47 Property Council of Australia also takes the view in its submission that the first home buyer market does not intersect with that for foreign investors:

> 80% of first-homebuyers purchase established homes and do not compete with foreign investors… competition is low between first-home buyers and foreign buyers, who are restricted to new housing.[46]

4.48 Mr Mihno of the Property Council of Australia further expressed the view to the committee at the public hearing on 20 June that current foreign investment rules are not adversely impacting on first home buyers:

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43 Dr Brent Davis, National Director, Industry Policy, Master Builders Australia, *Committee Hansard*, Canberra, 30 May 2014, p. 26.

44 RBA, *Submission 19*, p. 6.

45 Dr Kent, RBA, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

46 Property Council of Australia, *Submission 25*, p. 3.

> From our analysis the current data shows that our foreign investment rules are among the toughest in the world and they are not taking homes away from first home buyers. There is no significant impact on residential affordability. It does not push houses out of reach of the average Australian. There is simply not enough foreign investment to skew the residential market as a whole.[47]

4.49 Nyko Property also considers the commentary on first home buyers being out-competed by foreign buyers to be inaccurate:

> … we consider the 'noise' regarding overseas investors buying residential property in Australia and pricing first home owners out of the market as wildly inaccurate. Vision on our television networks of people of Asian appearance bidding at auctions and outbidding other Australians does, in our opinion, simply kindle xenophobia and is anathema to the long-term goal of Australian policymakers to further integrate our economy with Asia–the fastest growing economic region in the world. As we stated above, overseas investors can only buy new property (with some exceptions of course) and as such cannot be held responsible for rising prices in the established home market.[48]

4.50 Mr Scott Haslem, Chief Economist, UBS Australia commented on the disparity between the price points at which first home buyers and foreign investors enter the residential property market in his opening statement at the public hearing on 29 August:

> Can we see an impact of foreign activity on prices and thus first-homeowner affordability? The average purchase price by foreign citizens and temporary residents is much higher than the average of total national dwellings. The average purchase price by foreign citizens and temporary residents for established dwellings has trended around $1 million in the last five years; for new dwellings, it has been around $700,000. Both of these are well above the average of national turnover for that period, which is about $550,000. Further, if we look at what first home owners buy, they buy established dwellings with a median or average price around $328,000. On that basis, you would think there should be limited impact for first home buyers.[49]

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47 Mr Mihno, Property Council of Australia, *Committee Hansard*, Melbourne, 20 June 2014, p. 1.

48 Nyko Property, *Submission 28*, pp. [2-3].

49 Mr Scott Haslem, Chief Economist, UBS Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 26.

4.51 Mr Haslem further commented on the issue of first time buyer affordability:

> … it is nonetheless the case that, despite the strong pick-up in activity, with overall activity in housing in Australia up 21 per cent, first-home-owner activity is at a record low. This is more likely to do with a generalised lack of affordability than price pressures specific to greater foreign activity at an aggregate level, but the limitations of the data make it virtually impossible to measure the impact of higher foreign activity on prices, particularly in narrower segments of the market.[50]

Conclusion

4.52 The committee is acutely aware that many in the community are struggling to afford a first home in the face of rising house prices. There are many factors involved in the strength of current property prices in Australia, some of which have been touched on in this report, but they are beyond the scope of this inquiry. Of interest in this regard, affordable housing is currently the subject of an inquiry by the Senate Economics References Committee which is due to report its findings by 27 November 2014.

4.53 The focus of this inquiry is whether foreign investment in Australia's residential property market brings benefits to the housing market. The committee is satisfied that it does and that it is a vital component of this sector of the economy. Importantly, the committee is also satisfied from the evidence received that foreign investment is not causing the market distortions that have been advocated in some quarters, particularly for first home buyers. This is because foreign investment levels are not large enough to do so overall and because overseas buyers mainly operate at a different price bracket from first home buyers and buy different types of properties.

4.54 Although foreign buyers represent only a small percentage of the housing market, they are vitally important to the continuing development of this sector. The housing supply issues that have been ongoing in Australia would worsen if foreign investment was curtailed. One of the likely outcomes of any restrictions on foreign buyers could therefore be further price increases – the opposite to what some in the community believe would occur if foreign investment was further restricted.

50 Mr Haslem, UBS Australia, *Committee Hansard*, Canberra, 29 August 2014, p. 26.

4.55 The issue of occupancy, in particular concerns around foreign owned properties being left vacant, was not dealt with in any great detail during this inquiry as the committee did not receive any hard evidence that this occurs with any regularity. The committee is cognisant, however, that this is a concern among many in the community and there are questions that may need to be addressed on this issue. The establishment of a property register may shed some light on this and help determine whether further investigation is warranted at a future point in time.

4.56 Another suggestion by some in evidence to the committee is that some new apartment developments in Australia are not being built to the usual standards for Australian occupancy, but rather are specifically being built for the overseas market. The committee notes in this regard that planning laws are set by State and Territory governments and that all buildings, commercial and residential, need to meet these standards. Any diminution of building standards is a matter that should be addressed by State and Territory governments.

4.57 As discussed in Chapters 2 and 3, the committee regards the current regulations around foreign investment in residential real estate to be appropriate. Foreign investment is needed for future residential developments to proceed and to therefore increase Australia's housing stock. However, as also discussed in Chapters 2 and 3, the laws need to be properly enforced and foreign investments must be trackable and measurable. This will increase public confidence in the current framework and enable proper oversight of its effectiveness by policy makers.

Kelly O'Dwyer MP
Chair
24 November 2014

A

Appendix A – List of Submissions

Submissions

No.	
1	Mr Kristijan Gjikoski
1.1	Mr Kristijan Gjikoski Supplementary Submission
2	Mr Justin Brooks and Ms Cheriece Johnson
3	Mr Bryan Kavanagh
4	Confidential
5	Mr David Wong
6	Confidential
7	Ms Pat Sutton
7.1	Ms Pat Sutton Supplementary Submission
8	Name Withheld
9	Name Withheld
10	Dr Adrian Lee and Dr Lorenzo Casavecchia
11	Urban Taskforce Australia
12	Curtis Associates
13	Ms Anne Carroll
13.1	Ms Anne Carroll Supplementary Submission
14	Meriton Group

15 EPS Property Search

16 Australian Housing and Urban Research Institute

17 Real Estate Institute of Australia

17.1 Real Estate Institute of Australia
Supplementary Submission

18 Mr Ian Hundley

19 Reserve Bank of Australia

20 Housing Industry Association

20.1 Housing Industry Association
Supplementary Submission

21 Ms Jennifer Jaeger

22 Master Builders Australia

23 RP Data

23.1 RP Data
Supplementary Submission

23.2 RP Data
Supplementary Submission

23.3 RP Data
Supplementary Submission

24 Confidential

25 Property Council of Australia

25.1 Property Council of Australia
Supplementary Submission

25.2 Property Council of Australia
Supplementary Submission

26 ACT Deputy Chief Minister

27 Urban Development Institute of Australia

28 Nyko Property

29 Mr Peter C. Anderson

30 NSW Treasurer

31 The Treasury

31.1	The Treasury Supplementary Submission
31.2	The Treasury Supplementary Submission
31.3	The Treasury Supplementary Submission
31.4	The Treasury Supplementary Submission
32	Mr Steven Feilding
33	Name Withheld
34	Australian Bureau of Statistics
34.1	Australian Bureau of Statistics Supplementary Submission
35	SMATS Group
36	Mr Stephen Koci
36.1	Mr Stephen Koci Supplementary Submission
37	Mr Mitchell Rilington
38	Confidential
39	ANZ
40	Confidential
41	Mr David Chandler
42	Macquarie Group Limited
43	Australian Bankers' Association
44	Mr Arthur Carruthers
45	Queensland Department of Natural Resources and Mines
46	Mr Phillip Dews
47	Attorney-General's Department
48	Mr Roger Howard
49	Mr David Morrell
50	Department of Immigration and Border Protection

50.1 Department of Immigration and Border Protection
Supplementary Submission
50.2 Department of Immigration and Border Protection
Supplementary Submission
51 UBS Australia
52 Name Withheld
53 First National Real Estate
54 Confidential
55 Name Withheld
56 Mr Dayle O'Sullivan
57 Mr Richard Corbett
58 CPA Australia
59 Ms Mandy Nordstrom
60 Name Withheld
61 Mr Mark Naber
62 Ms Rachel Stokes
63 Name Withheld
64 Dr Richard Xu
65 Corrs Chambers Westgarth
66 Mr Simon Hosking
67 Name Withheld
68 Minister for Primary Industry and Water, Tasmania
69 Minister for Planning, Victoria
70 Attorney-General, Northern Territory
71 Minister for Natural Resources and Mines, Queensland
72 Attorney-General, Australian Capital Territory
73 Minister for Finance and Services, New South Wales
74 Minister for Lands, Western Australia

B

Appendix B – Hearings and Witnesses

Friday, 30 May 2014—Canberra

Foreign Investment Review Board

Mr Brian Wilson, Chairman

The Treasury

Mr Jonathan Rollings, General Manager, Foreign Investment and Trade Policy Division

Mr John Hill, Manager, Compliance and Real Estate Screening Unit, Foreign Investment and Trade Policy Division

Mr Brenton Goldsworthy, Principal Adviser, Macroeconomic and Conditions Division

Ms Nu Nu Win, Manager, Macroeconomic Policy and Analysis Unit

Housing Industry Association

Mr Shane Goodwin, Managing Director

Mr Graham Wolfe, Chief Executive, Industry Policy and Media

Dr Harley Dale, Chief Economist

Master Builders Australia

Dr Brent Davis, National Director, Industry Policy

Real Estate Institute of Australia

Ms Amanda Lynch, Chief Executive Officer

Mr Jock Kreitals, Manager, Policy

Urban Taskforce Australia

Mr Chris Johnson, Chief Executive Officer

Friday, 20 June 2014—Melbourne

Property Council of Australia

Mr Nick Proud, Executive Director, Residential Development Council

Ms Caryn Kakas, Executive Director, National Policy and Strategy

Mr Andrew Mihno, Executive Director, International and Capital Markets Division

SMATS Group

Mr Martin Vockler, Regional Sales Manager

Nyko Property

Mr Bill Nikolouzakis, Director

Macquarie Group Limited

Mr Rod Cornish, Division Director

Mr Trevor Burns, Division Director

ANZ

Mr Brad Gravell, General Manager, Deposits and Mortgages

Mr Rob Lomdahl, Head of Government and Regulatory Affairs

Wednesday, 25 June 2014—Canberra

Australian Bureau of Statistics

Mr Paul Mahoney, Assistant Statistician, International and Government Finance Accounts Branch

Mr Peter Bradbury, Director, Balance of Payments and International Investment Statistics

Friday, 27 June 2014—Sydney

Reserve Bank of Australia

Dr Christopher Kent, Assistant Governor, Economic Group

Dr David Orsmond, Deputy Head, Economic Analysis Department

RP Data

Mr Graham Mirabito, Chief Executive Officer

Mr Craig Mackenzie, Executive General Manager, Commercial

Mr Tim Lawless, Director, Research

Private Capacity

Dr Adrian Lee

Dr Lorenzo Casavecchia

Curtis Associates

Mr Christopher Curtis, Managing Director

Meriton Group

Mr Harry Triguboff, Managing Director

Mr James Sialepis, National Sales Director

CBRE

Mr Justin Brown, Chairman, CBRE Residential

Australian Bankers' Association

Mr Steven Munchenberg, Chief Executive Officer

Friday, 29 August 2014—Canberra

Department of Immigration and Border Protection

Mr Garry Fleming, First Assistant Secretary

Mr David Wilden, Assistant Secretary, Skilled Migration Policy Branch

First National Real Estate

Mr Raymond Ellis, Chief Executive

Mr Stewart Bunn, National Communications Manager

McGrath Estate Agents

Mr John McGrath, Chief Executive Officer

Mr Davey Hong, Head of China Desk

CLSA Australia

Mr John Kim, Head of Australia Property

Mr Andrew Johnston, Senior Analyst

UBS Australia

Mr Scott Haslem, Chief Economist

The Treasury

Mr Jonathan Rollings, General Manager, Foreign Investment and Trade Policy Division

Mr John Hill, Manager, Foreign Investment and Trade Policy Division

Mr Brenton Goldsworthy, Principal Adviser, Macroeconomic and Conditions Division

Foreign Investment Review Board

Mr Brian Wilson, Chairman

Wednesday, 24 September 2014—Canberra

Credit Suisse

Mr Hasan Tevfik, Research Analyst, Equity Strategy

C

Appendix C – Parliamentary Budget Office Costings for a proposed FIRB application fee (Part 1 and Part 2)

Part 1: Per application

Parliament of Australia
Parliamentary Budget Office

COSTING – OUTSIDE THE CARETAKER PERIOD

Name of proposal to be costed:	Foreign Investment Review Board application fees
Summary of proposal:	The proposal would impose a fee on foreign investors (including temporary residents and including trusts, companies or funds) applying to the Foreign Investment Review Board for approval to purchase residential property in Australia (of all types, including new and existing housing, off the plan, and residential land). Three application fee options are proposed: 1. $500, or 2. $1,000, or 3. $1,500 per approved application. The proposal would have effect from 1 July 2015.
Person/party requesting costing:	Kelly O'Dwyer MP, Member for Higgins, Victoria
Date costing request received:	8 September 2014
Date costing completed:	16 September 2014
Did the applicant request the costing be confidential?	Yes
Expiry date for the costing:	Release of the next economic and fiscal outlook report

Costing overview

The Foreign Investment Review Board (the Board), with secretariat support from the Foreign Investment and Trade Policy Division (the Division) within the Department of the Treasury, examines proposed investments that fall within scope of Australia's Foreign Investment Policy and the *Foreign Acquisitions and Takeovers Act 1975* and make recommendations to the Treasurer. This includes examining applications for foreign investment in residential real estate in Australia. Residential real estate includes developed land and land for development for residential purposes. In 2012-13, total Board expenses were $257,501 and the total expenses of the Division were $4.0 million.

Currently there is no fee associated with the application process above, although penalties may apply if a foreign investor purchases a property without approval. The proposal would impose a fee for approved applications seeking foreign investment in residential real estate in Australia.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

Option 1: $500 approved application fee

Option 1 would be expected to increase the underlying cash balance by $33.5 million and increase the fiscal balance by $34.6 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $34.8 million. On a fiscal balance basis, this reflects an increase in revenue of $35.9 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 1: Financial implications - Option 1 - $500 approved application fee (outturn prices)[(a)]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	10.4	11.8	12.3	33.5
Fiscal balance ($m)	-1.0	11.4	11.9	12.3	34.6

Option 2: $1,000 approved application fee

Option 2 would be expected to increase the underlying cash balance by $68.4 million and increase the fiscal balance by $70.5 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $69.7 million. On a fiscal balance basis, this reflects an increase in revenue of $71.8 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 2: Financial implications - Option 2 - $1,000 approved application fee (outturn prices)[(a)]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	21.0	23.7	24.7	68.4
Fiscal balance ($m)	-1.0	22.9	23.8	24.8	70.5

Option 3: $1,500 approved application fee

Option 3 would be expected to increase the underlying cash balance by $103.3 million and increase the fiscal balance by $106.4 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $104.6 million. On a fiscal balance basis, this reflects an increase in revenue of $107.7 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 3: Financial implications - Option 3 - $1,500 approved application fee (outturn prices)[(a)]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	31.5	35.7	37.1	103.3
Fiscal balance ($m)	-1.0	34.4	35.8	37.2	106.4

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

General commentary

Each proposal would be expected to have an ongoing impact that extends beyond the forward estimates period.

The differences between the fiscal and underlying cash balance impact of the proposals are due to the timing differences in relation to the fee revenue. The fiscal balance impact occurs in the year in which the application fee is raised, the cash impact occurs in the year in which the payment is received.

Under all options, increased departmental costs are expected to be small and include the costs of IT system changes and ongoing costs associated with collecting the application fee. For each option a detailed breakdown of the costing components to 2024-25 are included at Attachment A.

This costing is considered to be of a medium reliability, as it is based on actual approval data.

The estimates in this costing would be affected by changes in major variables, including future foreign investment in residential real estate in Australia, alternative investment options in Australia and around the world and movements in the exchange rates for investment funds sourced from overseas.

This costing advice is valid until the release of the next economic and fiscal outlook report.

Key assumptions

- For all options, it has been assumed that there would be no behavioural impact from the imposition of an application fee given the small cost of the proposed fee relative to the cost of purchasing residential real estate.
- The Parliamentary Budget Office has not estimated how the fee revenue would be spent, for example, it has not estimated what it would cost for the Board and the Division to conduct investigations of non-compliance with current policy and relevant legislation.
- This costing has been completed on a standalone basis and does not include any interactions with other related revenue raising or expenditure proposals that may be implemented in conjunction with this proposal.
- One application can contain more than one residential property for purchase approval. This costing has been estimated based on approved applications, rather than per residential property approved.
- It has been assumed that application fees would only be collected by the Division upon approval.
- It has been assumed that the level of the application fee is not indexed.

Methodology

Based on approvals data for the incomplete 2013-14 year to date, the PBO estimated that there would be around 21,000 proposals for foreign investment in residential real estate in 2013-14, with this number forming the basis for projecting the number of approvals subject to the proposal in this minute.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

A profile of approvals over the 2014-15 Budget estimates period was estimated based on the historical number of approved applications for foreign investment in residential real estate and historical growth rates of housing finance commitments. Next, the application fee was applied to the estimated profile of approvals to obtain the estimated revenue impact for each of the options under the proposal.

Departmental expenses were estimated based on amounts allocated to the Australian Securities and Investments Commission and Australian Taxation Office for measures with similar administrative complexity.

The modelling also takes account of the timing of fee collections and results are rounded to the nearest $100,000.

Data sources

- Department of the Treasury, 2012-13 Annual Report of the Foreign Investment Review Board (28 February 2014)
- Department of the Treasury, Submission to the Inquiry into Foreign Investment in Residential Real Estate (23 May 2014)
- Australian Bureau of Statistics, Housing Finance, Australia, June 2014, Catalogue Number 5609.0, Canberra

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

ATTACHMENT A: FOREIGN INVESTMENT REVIEW BOARD APPLICATION FEES – BREAKDOWN OF COSTINGS

The tables below provide a breakdown of the costing options to 2024-25 for an application fee on approved foreign investment in residential real estate.

Table A1: Impact on fiscal balance – Option 1 - $500 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	11.5	12.0	12.4	35.9	12.9	13.4	14.0	14.5	15.1	15.7	16.4	137.9
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**11.4**	**11.9**	**12.3**	**34.6**	**12.8**	**13.3**	**13.9**	**14.4**	**15.0**	**15.6**	**16.3**	**135.9**

Table A2: Impact on fiscal balance – Option 2 - $1,000 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	23.0	23.9	24.9	71.8	25.8	26.9	28.0	29.1	30.3	31.5	32.8	276.2
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**22.9**	**23.8**	**24.8**	**70.5**	**25.7**	**26.8**	**27.9**	**29.0**	**30.2**	**31.4**	**32.7**	**274.2**

Table A3: Impact on fiscal balance – Option 3 - $1,500 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	34.5	35.9	37.3	107.7	38.8	40.3	41.9	43.6	45.4	47.2	49.2	414.1
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**34.4**	**35.8**	**37.2**	**106.4**	**38.7**	**40.2**	**41.8**	**43.5**	**45.3**	**47.1**	**49.1**	**412.1**

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

(b) Revenue estimates between options are broadly proportional to the fee, differences relate to rounding.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

Table A4: Impact on underlying cash balance – Option 1 - $500 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	10.5	11.9	12.4	34.8	12.9	13.4	13.9	14.5	15.1	15.7	16.3	136.6
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**10.4**	**11.8**	**12.3**	**33.5**	**12.8**	**13.3**	**13.8**	**14.4**	**15.0**	**15.6**	**16.2**	**134.6**

Table A5: Impact on underlying cash balance – Option 2 - $1,000 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	21.1	23.8	24.8	69.7	25.8	26.8	27.9	29.0	30.2	31.4	32.7	273.5
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**21.0**	**23.7**	**24.7**	**68.4**	**25.7**	**26.7**	**27.8**	**28.9**	**30.1**	**31.3**	**32.6**	**271.5**

Table A6: Impact on underlying cash balance – Option 3 - $1,500 approved application fee from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	31.6	35.8	37.2	104.6	38.6	40.2	41.8	43.5	45.2	47.1	49.0	410.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**31.5**	**35.7**	**37.1**	**103.3**	**38.5**	**40.1**	**41.7**	**43.4**	**45.1**	**47.0**	**48.9**	**408.0**

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

(b) Revenue estimates between options are broadly proportional to the fee, differences relate to rounding and timing.

Part 2: Per property

Parliament of Australia
Parliamentary Budget Office

COSTING – OUTSIDE THE CARETAKER PERIOD

Name of proposal to be costed:	Foreign Investment Review Board application fee per residential property
Summary of proposal:	The proposal would impose a fee on foreign investors (including temporary residents and including trusts, companies or funds) applying to the Foreign Investment Review Board for approval to purchase residential property in Australia (of all types, including new and existing housing, off the plan, and residential land). Three application fee options are proposed: 1. $500, or 2. $1,000, or 3. $1,500 per approved residential real estate property. The proposal would have effect from 1 July 2015.
Person/party requesting costing:	Kelly O'Dwyer MP, Member for Higgins, Victoria
Date costing request received:	18 September 2014
Date costing completed:	3 October 2014
Did the applicant request the costing be confidential?	Yes
Agencies from which information was obtained:	Department of the Treasury
Expiry date for the costing:	Release of the next economic and fiscal outlook report

Costing overview

The Foreign Investment Review Board (the Board), with secretariat support from the Foreign Investment and Trade Policy Division (the Division) within the Department of the Treasury, examines proposed investments that fall within scope of Australia's Foreign Investment Policy and the *Foreign Acquisitions and Takeovers Act 1975* and make recommendations to the Treasurer. This includes examining applications for foreign investment in residential real estate in Australia. Residential real estate includes developed land and land for development for residential purposes. In 2012-13, total Board expenses were $257,501 and the total expenses of the Division were $4.0 million.

Currently there is no fee associated with the application process above, although penalties may apply if a foreign investor purchases a property without approval. The proposal would impose a fee for each residential property that has been approved for purchase by a foreign investor.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

Option 1: $500 application fee per approved residential property

Option 1 would be expected to increase the underlying cash balance by $50.7 million and increase the fiscal balance by $51.7 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $52 million. On a fiscal balance basis, this reflects an increase in revenue of $53 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 1: Financial implications - Option 1 - $500 fee (outturn prices)[a]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	15.9	17.9	17.9	50.7
Fiscal balance ($m)	-1.0	16.9	17.9	17.9	51.7

Option 2: $1,000 application fee per approved residential property

Option 2 would be expected to increase the underlying cash balance by $102.7 million and increase the fiscal balance by $105.7 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $104 million. On a fiscal balance basis, this reflects an increase in revenue of $107 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 2: Financial implications - Option 2 - $1,000 fee (outturn prices)[a]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	30.9	35.9	36.9	102.7
Fiscal balance ($m)	-1.0	33.9	35.9	36.9	105.7

Option 3: $1,500 application fee per approved residential property

Option 3 would be expected to increase the underlying cash balance by $153.7 million and increase the fiscal balance by $158.7 million over the 2014-15 Budget forward estimates period. On an underlying cash balance basis, this reflects an increase in receipts of $155 million. On a fiscal balance basis, this reflects an increase in revenue of $160 million. This costing includes increased departmental expenses totalling $1.3 million over this period.

Table 3: Financial implications - Option 3 - $1,500 fee (outturn prices)[a]

Impact on	2014-15	2015-16	2016-17	2017-18	Total
Underlying cash balance ($m)	-1.0	46.9	52.9	54.9	153.7
Fiscal balance ($m)	-1.0	50.9	53.9	54.9	158.7

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

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General commentary

Each proposal would be expected to have an ongoing impact that extends beyond the forward estimates period.

The differences between the fiscal and underlying cash balance impact of the proposals are due to the timing differences in relation to the fee revenue. The fiscal balance impact occurs in the year in which the application fee is raised, the cash impact occurs in the year in which the payment is received.

Under all options, increased departmental costs are expected to be small and include the costs of IT system changes and ongoing costs associated with collecting the application fee. For each option a detailed breakdown of the costing components to 2024-25 are included at Attachment A.

This costing is considered to be of a low to medium reliability, as an assumption was required to estimate the number of residential properties which would be sold to foreign investors by developers. Currently when developers apply to the Board for approval to sell residential properties off-the-plan to foreign investors, the application does not require developers to specify an exact number of the residential properties expected to be sold to foreign investors.

The estimates in this costing would be affected by changes in major variables, including future foreign investment in residential real estate in Australia, alternative investment options in Australia and around the world and movements in the exchange rates for investment funds sourced from overseas.

This costing advice is valid until the release of the next economic and fiscal outlook report.

Key assumptions

- For all options, it has been assumed that there would be no behavioural impact from the imposition of an application fee given the small cost of the proposed fee relative to the cost of purchasing residential real estate.
- The Parliamentary Budget Office has not estimated how the fee revenue would be spent, for example, it has not estimated what it would cost for the Board and the Division to conduct investigations of non-compliance with current policy and relevant legislation.
- This costing has been completed on a standalone basis and does not include any interactions with other related revenue raising or expenditure proposals that may be implemented in conjunction with this proposal.
- This costing has been estimated based on approvals per residential property rather than per application. One application can contain more than one residential property for purchase approval.
- It has been assumed that application fees would only be collected by the Division upon approval.
- It has been assumed that the level of the application fee is not indexed.
- The PBO has assumed the proportion of residential properties expected to be sold to foreign investors by developers and that the proposed fee would only apply to these properties.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

Methodology

Based on approvals data for the incomplete 2013-14 year to date, the PBO estimates that there would be around 32,000 properties approved for foreign investment in 2013-14[1], with this number forming the basis for projecting the number of residential property approvals subject to the proposal. Projections were based on historical growth rates of housing finance commitments.

Next, the application fee was applied to the estimated profile of residential properties approved for purchase by foreign persons to obtain the estimated revenue impact for each of the options under the proposal.

Departmental expenses were estimated based on amounts allocated to the Australian Securities and Investments Commission and Australian Taxation Office for measures with similar administrative complexity.

The modelling also takes account of the timing of fee collections and results are rounded to the nearest $1 million, departmental expenses have been rounded to the nearest $100,000.

Data sources

- The number and value of foreign residential investment applications was provided by Treasury.
- Department of the Treasury, Submission to the Inquiry into Foreign Investment in Residential Real Estate (23 May 2014)
- Australian Bureau of Statistics, Housing Finance, Australia, June 2014, Catalogue Number 5609.0, Canberra

[1] On average, there are approximately 1.5 properties per application.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

ATTACHMENT A: FOREIGN INVESTMENT REVIEW BOARD APPLICATION FEES – BREAKDOWN OF COSTINGS

The tables below provide a breakdown of the costing options to 2024-25 for an application fee per property approved for foreign investment.

Table A1: Impact on fiscal balance – Option 1: $500 application fee per approved residential property from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	17.0	18.0	18.0	53.0	19.0	20.0	20.0	21.0	22.0	22.0	23.0	200.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**16.9**	**17.9**	**17.9**	**51.7**	**18.9**	**19.9**	**19.9**	**20.9**	**21.9**	**21.9**	**22.9**	**198.0**

Table A2: Impact on fiscal balance – Option 2: $1,000 application fee per approved residential property from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	34.0	36.0	37.0	107.0	38.0	39.0	41.0	42.0	43.0	45.0	46.0	401.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**33.9**	**35.9**	**36.9**	**105.7**	**37.9**	**38.9**	**40.9**	**41.9**	**42.9**	**44.9**	**45.9**	**399.0**

Table A3: Impact on fiscal balance – Option 3: $1,500 application fee per approved residential property from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Revenue[(b)]	0.0	51.0	54.0	55.0	160.0	57.0	59.0	61.0	63.0	65.0	67.0	69.0	601.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**50.9**	**53.9**	**54.9**	**158.7**	**56.9**	**58.9**	**60.9**	**62.9**	**64.9**	**66.9**	**68.9**	**599.0**

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

(b) Revenue estimates between options are broadly proportional to the fee, differences relate to rounding.

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Table A4: Impact on underlying cash balance – Option 1: $500 application fee per approved residential property from 1 July 2015 (outturn prices) [(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	16.0	18.0	18.0	52.0	19.0	20.0	20.0	21.0	22.0	22.0	23.0	199.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**15.9**	**17.9**	**17.9**	**50.7**	**18.9**	**19.9**	**19.9**	**20.9**	**21.9**	**21.9**	**22.9**	**197.0**

Table A5: Impact on underlying cash balance – Option 2 - $1,000 application fee per approved residential property from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	31.0	36.0	37.0	104.0	38.0	39.0	40.0	42.0	43.0	44.0	46.0	396.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**30.9**	**35.9**	**36.9**	**102.7**	**37.9**	**38.9**	**39.9**	**41.9**	**42.9**	**43.9**	**45.9**	**394.0**

Table A6: Impact on underlying cash balance – Option 3 - $1,500 application fee per approved residential property from 1 July 2015 (outturn prices)[(a)]

($m)	2014-15	2015-16	2016-17	2017-18	Total to 2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total to 2024-25
Impact on Receipts[(b)]	0.0	47.0	53.0	55.0	155.0	57.0	59.0	61.0	63.0	65.0	67.0	69.0	596.0
Departmental Expenses	1.0	0.1	0.1	0.1	1.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1	2.0
Total impact	**-1.0**	**46.9**	**52.9**	**54.9**	**153.7**	**56.9**	**58.9**	**60.9**	**62.9**	**64.9**	**66.9**	**68.9**	**594.0**

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A negative number for the underlying cash balance indicates a decrease in revenue or an increase in expenses or net capital investment in cash terms.

(b) Revenue estimates between options are broadly proportional to the fee, differences relate to rounding and timing.

D

Appendix D – Parliamentary Budget Office Costings for a proposed additional stamp duty on foreign purchases

Parliament of Australia
Parliamentary Budget Office

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Name of proposal:	**Stamp duty on foreign investment in housing**
Summary of proposal:	This proposal would apply a stamp duty to purchases of all types of residential property by non-resident and temporary resident foreign investors. The proposal has four stamp duty options: • 5 per cent • 10 per cent • 15 per cent, and • 20 per cent, of the property purchase price. The proposal includes two options for collection of the stamp duty: • stamp duty would be collected and retained by the States, and • stamp duty would be collected by the Commonwealth and paid to the States. The proposal would take effect from 1 July 2015.
Person/party requesting costing:	Kelly O'Dwyer MP, Member for Higgins, Victoria
Date costing request received:	1 September 2014
Date costing completed:	26 September 2014
Did the applicant request the costing be confidential?	Yes
Agencies from which information was obtained:	Department of the Treasury Australian Taxation Office
Expiry date for the costing:	Release of the next economic and fiscal outlook report

Costing Overview

Because stamp duty revenue being collected under this proposal is either collected and retained by the States or is collected by the Commonwealth and paid to the States (less collection costs), the stamp duty would have no direct net impact on the Commonwealth budget. The proposal would, however, be expected to have flow on impacts in the property market that would impact on Goods and Services Tax (GST) and capital gains tax (CGT). The GST impact would have no net impact on the Commonwealth budget as GST revenues are paid to the States. This means that, under both

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collection options, the only net impact on the Commonwealth budget would arise through lower capital gains tax (CGT) revenue.

Foreign investors, particularly those who invest purely for financial return, would be expected to be highly sensitive to the introduction of a Commonwealth Government stamp duty as the stamp duty would reduce the potential financial return from investing in Australian residential property relative to alternative investment opportunities[1]. Foreign investors would be expected to respond by switching some part of their investments to other lower cost jurisdictions or to other Australian assets. This means that the introduction of the foreign investor stamp duty would be expected to reduce the number of residences purchased by foreign investors and this effect has been included in the estimate of stamp duty revenue from the proposal in this costing.

A reduction in the number of residences purchased by foreign investors would be expected to have a flow on effect to the broader Australian housing market. The decrease in foreign demand could result in lower domestic prices than would otherwise be the case, a reduction in the amount of housing sold (including both turnover of existing housing and supply of new housing) or a combination of both these impacts. In turn, this would reduce the tax base for the Commonwealth's capital gains tax (CGT) and goods and services tax (GST) receipts as well as reducing the base for existing state and territory stamp duty revenue.

The PBO has included estimates of the impact that this proposal would have on Commonwealth CGT and on GST revenue and related payments to the states and territories in this costing. The impact that the proposal would have on state and territory stamp duty revenues has not been included.

The financial implications of applying an additional Commonwealth Government stamp duty to purchases of Australian residential property by foreign investors under the various options specified is included at Attachment A.

This costing is sensitive to the PBO's assumptions about foreign investor behaviour. The PBO has undertaken a sensitivity analysis that shows how the estimated foreign investor stamp duty revenue may vary when different assumptions about how foreign investors respond to the proposal are used. This sensitivity analysis is included at Attachment B.

All options within this proposal would have an ongoing impact that extends beyond the forward estimates period.

This costing is considered to be of very low reliability as it is based on a number of significant assumptions (detailed below) and is based on incomplete high level foreign investment application data that was obtained from the Foreign Investment Review Board (FIRB) because actual data on foreign investment in Australian housing is not available.

This costing advice is valid until the release of the next economic and fiscal outlook report

[1] Both Singapore and Hong Kong have recently introduced similar stamp duties on investment by foreign investors in residential housing, both at the rate of 15 per cent, with the objective of reducing foreign demand for the housing stock in those countries and reducing housing prices. In both cases it appears too soon for a proper evaluation of the impact of these measures, but reports indicate that these stamp duties have significantly dampened foreign investment in residential housing.

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Methodology

The revenue gain for this proposal was estimated by calculating the impact of imposing a stamp duty payable by non-resident investors on residential property purchase transactions at the selected stamp duty rate. The impact includes a reduction in the number of foreign investor purchases that could be expected to occur as a result of imposing the stamp duty.

The impacts on Commonwealth CGT and GST revenues were estimated based on the estimated impact on the value of transactions included in the respective tax bases, multiplied by the respective effective tax rates on the transactions.

All estimates have been rounded to the nearest $10 million. Departmental expense estimates have been rounded to the nearest $1 million.

Key assumptions

Assumptions detailed in the costing request:

- All options under this proposal would have effect from 1 July 2015.
- The proposal would apply to all types of residential property including new and existing housing, and off the plan and residential land purchases.
- The proposal would apply to non-resident individuals, companies, trusts and investment funds. The proposal would also apply to temporary residents.
- The policy would be announced at the time of implementation. This means that foreign investors would not have sufficient time to respond to the announcement by bringing forward the timing of their purchases to avoid paying the stamp duty.
- This costing has been completed on a stand-alone basis and does not include any interactions with other related revenue raising or expenditure proposals that may be implemented in conjunction with this proposal.

The PBO has made the following assumptions regarding this advice:

Foreign investment base data assumptions

This costing is based on the number of non-resident purchases that the PBO has derived from the number of FIRB applications that were made in 2012-13.

- In the absence of firm data the PBO has assumed that two-thirds of approved FIRB applications result in purchases.
- All purchases by foreign investors are in capital cities. Average prices paid in the housing market are based on a weighted average of capital city prices. Prices are weighted by the amount of foreign investment in each state and territory.

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- Foreign investment is assumed to account for five per cent of *established* dwelling purchases and 35 per cent of *new* dwelling purchases in the section of the market where foreign buyers are active[1].
  - Based on FIRB data foreign buyers are expected to be active in the top 40-50 per cent of the market (by price) and primarily in Sydney and Melbourne.
- The foreign investor stamp duty would apply to the GST inclusive price of the properties that are subject to the GST.
- If the foreign investor stamp duty were collected by the Commonwealth then it would be paid to the States under similar arrangements as apply to the GST.

Foreign investor behavioural assumptions

The behavioural response of foreign investors to the imposition of an additional stamp duty on property purchases is dependent on both the stamp duty rate and whether the property is an existing property or a new property.

- For options with relatively higher stamp duty rates the relative size of the behavioural response is assumed to be larger.
  - This is because higher stamp duty rates further reduce potential foreign investor returns by applying a larger tax wedge between the foreign investor price and the domestic market price for the property.
- Foreign investors have a greater behavioural response to imposing a stamp duty on new property compared to existing property.
  - Foreign investment rules mean that existing dwellings can only be purchased by temporary residents who intend to live in the residence and as such, these buyers are expected to be less sensitive to price changes than other foreign investors.
  - Foreign investors who are not temporary residents are restricted to investing in new dwellings and because they are not resident in Australia, are more likely to be investing in property for purely financial gain. The higher elasticity for new dwellings and vacant land recognises the greater responsiveness of non-resident investors to an increase in the cost of investing in Australia.

Foreign investor timing assumptions

- Foreign investors are assumed to become liable for and pay stamp duty on the settlement date for the property. This means that there is no difference between the underlying cash and fiscal impact of this costing.
- Estimated annual stamp duty revenue is assumed to be evenly distributed throughout the year.

[1] These assumptions are based on figures from Treasury's submission to the Inquiry into Non-resident Investment in Residential Real Estate and from the Reserve Bank of Australia's paper *Non-resident Investment in Residential Real Estate*

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Assumptions related to the broader housing market

- The broader Australian housing market is assumed to respond to the reduction in foreign investor demand both through a combination of reduced prices and a reduction in the amount of housing available for sale.
- A lower turnover value of housing (whether from lower than otherwise house prices, fewer house sales or a combination of these) in the broader Australian capital city market would reduce revenue from other Commonwealth taxes. Impacts for CGT and GST have been included in the modelling using several basic timing and realisation assumptions.
  - The average marginal tax rate that would apply to these other tax impacts is assumed to be 33 percent for individuals and trusts (less the CGT discount on capital gains) and 30 per cent for companies.
  - The PBO has not included any estimates of the flow on effects of changes in rental income or rental related deductions to personal or company taxable income as these are highly uncertain.
- The PBO has not included the impact of State revenue changes. Therefore, the estimates in this costing do not include flow-on impacts to state and territory based stamp duty revenue that arise because of the changes in the broader Australian housing market prices in response to this proposal. These impacts may be significant.
- The non-resident stamp duty rate would apply to the property purchase price excluding the State based stamp duty.
- The PBO has not modelled any broader second-round economic effects resulting from the reduction in foreign investment from this proposal.

Administration assumptions

The proposal includes 2 options for collection of the stamp duty 1) stamp duty would be collected and retained by the States, and 2) stamp duty would be collected by Commonwealth and paid to the States. Under the second of these options the PBO assumes that the cost to the Commonwealth of administering the tax would be directly funded from the tax revenue (the same arrangement as the GST). The revenue implications of the collection methods are expected to be the same. Only the departmental costs of implementing the proposal differ.

- For options where the Commonwealth would collect the stamp duty on behalf of the states, the PBO has estimated departmental expenses to be $5 million per annum from 2015-16. This is based on the cost of implementing other large-scale tax proposals with no pre-existing related departmental infrastructure.
- For options where the States collect the stamp duty, state and territory departmental costs have not been included in this costing. This reflects the fact that the states and territories have existing stamp duties and the administrative mechanisms to collect them.

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Data sources

- The number and value of foreign residential investment applications was provided by Treasury.
- Department of the Treasury, Submission to the Inquiry into Non-resident Investment in Residential Real Estate (23 May 2014)
- Reserve Bank of Australia, Non-resident Investment in Residential Real Estate, Bulletin, June Quarter 2014
- Australian Bureau of Statistics, Housing Finance, Australia, June 2014, Catalogue Number 5609.0, Canberra
- Australian Bureau of Statistics, Residential Property Price Indexes: Eight Capital Cities, June 2014, Catalogue Number 6416.0.

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ATTACHMENT A: ESTIMATED IMPACTS FOR EACH OPTION

Table A1 presents detailed financial implications for each stamp duty rate option assuming the tax is collected by the Commonwealth. For the option where the stamp duty is collected directly by the states and territories and retained, the only Commonwealth financial impact would be the CGT revenue shown.

Table A1: Stamp duty revenue with a commencement date of 1 July 2015 – $ million (outturn prices)[(a)]

Impact on underlying cash and fiscal balances	2014-15	2015-16	2016-17	2017-18	Total
Stamp duty at 5 per cent					
Foreign investor stamp duty	-	820	880	920	2,620
CGT revenue	-	-30	-30	-30	-90
GST revenue	-	-140	-150	-160	-450
Total revenue impact	-	**650**	**700**	**730**	**2,080**
Administration costs	-	-5	-5	-5	-15
Stamp duty paid to the States	-	-815	-875	-915	-2,605
GST expense to States	-	140	150	160	450
Net impact of the proposal	-	**-30**	**-30**	**-30**	**-90**
Stamp duty at 10 per cent					
Foreign investor stamp duty	-	1,490	1,590	1,670	4,750
CGT revenue	-	-60	-60	-60	-180
GST revenue	-	-270	-290	-320	-880
Total revenue impact	-	1,160	1,240	1,290	3,690
Administration costs	-	-5	-5	-5	-15
Stamp duty paid to the States	-	-1,485	-1,585	-1,665	-4,735
GST expense to States	-	270	290	320	880
Net impact of the proposal	-	**-60**	**-60**	**-60**	**-180**

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Impact on underlying cash and fiscal balances	2014-15	2015-16	2016-17	2017-18	Total
Stamp duty at 15 per cent					
Foreign investor stamp duty	-	1,190	1,280	1,350	3,820
CGT revenue	-	-260	-270	-270	-800
GST revenue	-	-790	-860	-920	-2,570
Total revenue impact	-	**140**	**150**	**160**	**450**
Administration costs	-	-5	-5	-5	-15
Stamp duty paid to the States	-	-1,185	-1,275	-1,345	-3,805
GST expense to States	-	790	860	920	2,570
Net impact of the proposal	-	**-260**	**-270**	**-270**	**-800**
Stamp duty at 20 per cent					
Foreign investor stamp duty	-	940	990	1,040	2,970
CGT revenue	-	-350	-360	-370	-1,080
GST revenue	-	-1,050	-1,140	-1,220	-3,410
Total revenue impact	-	**-460**	**-510**	**-550**	**-1,520**
Administration costs	-	-5	-5	-5	-15
Stamp duty paid to the States	-	-935	-985	-1,035	-2,955
GST expense to States	-	1,050	1,140	1,220	3,410
Net impact of the proposal	-	**-350**	**-360**	**-370**	**-1,080**

(a) A positive number for the underlying cash and fiscal balances indicates an increase in receipts/revenue or a decrease in payments/expenditure. A negative number for the underlying cash and fiscal balance indicates a decrease in receipts/revenue or an increase in payments/expenditure.

POLICY COSTING – OUTSIDE THE CARETAKER PERIOD

ATTACHMENT B: SENSITIVITY OF STAMP DUTY REVENUE TO BEHAVIOURAL ASSUMPTIONS

Table B1 presents a sensitivity analysis of possible behavioural responses by foreign investors for each stamp duty rate option. The numbers indicate the sensitivity of gross non-resident stamp duty receipts (excluding GST and CGT impacts) to different foreign investor elasticity assumptions.

Table B1: Sensitivity of stamp duty revenue to behavioural assumptions – $ million (outturn prices)[(a)]

Impact on underlying cash and fiscal balances	2014-15	2015-16	2016-17	2017-18	Total
Stamp duty at 5 per cent					
No behavioural change	-	890	960	1,010	2,860
10% decrease in demand elasticity	-	830	890	930	2,650
Assumption used in costing	**-**	**820**	**880**	**920**	**2,620**
10% increase in demand elasticity	-	810	860	920	2,590
Stamp duty at 10 per cent					
No behavioural change	-	1,780	1,920	2,020	5,720
10% decrease in demand elasticity	-	1,510	1,630	1,710	4,850
Assumption used in costing	**-**	**1,490**	**1,590**	**1,670**	**4,750**
10% increase in demand elasticity	-	1,450	1,560	1,640	4,650
Stamp duty at 15 per cent					
No behavioural change	-	2,670	2,870	3,030	8,570
10% decrease in demand elasticity	-	1,340	1,440	1,520	4,300
Assumption used in costing	**-**	**1,190**	**1,280**	**1,350**	**3,820**
10% increase in demand elasticity	-	1,050	1,120	1,180	3,350
Stamp duty at 20 per cent					
No behavioural change	-	3,560	3,830	4,050	11,440
10% decrease in demand elasticity	-	1,200	1,280	1,350	3,830
Assumption used in costing	**-**	**940**	**990**	**1,040**	**2,970**
10% increase in demand elasticity	-	670	710	740	2,120

(a) A positive number for the underlying cash and fiscal balances indicates an increase in receipts/revenue