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## UDIA Submission to the Strengthening Australia's Foreign Investment Framework Options Paper

The Urban Development Institute of Australia (UDIA) welcomes the opportunity to provide this submission to the Treasury's foreign investment framework options paper. UDIA is the peak body representing the interests of the development industry around Australia, acting on behalf of over two thousand members across the country, from a wide variety of fields and professions.

UDIA made a submission to the 2014 House of Representatives inquiry into Foreign Investment in Residential Real Estate, outlining the importance of foreign investment as a key driver of economic growth, jobs, and new housing supply. UDIA broadly supported the inquiry's findings, which reiterated the importance of foreign investment and supported the existing policy, whilst noting the lack of available data on foreign investment, and problems with monitoring and enforcement.

Whilst recognising that enforcement of the existing foreign investment framework needs to be strengthened to reduce incidences of non compliance and improve community confidence in the regime, UDIA believes that foreign investors and other individuals who abide by the policy should not be unduly disadvantaged. In this regard, UDIA has a number of concerns with the proposals put forth in the options paper.

### There should be no application fee for new residential dwellings

The Government's overriding policy in relation to foreign investment in residential real estate is to increase Australia's housing stock, with foreign investors generally entitled to acquire new dwellings. Any applications for new dwellings are therefore routine from a compliance perspective, and unlike existing dwellings, do not require ongoing monitoring.

Potentially, a different fee should apply to foreign investment applications that do not relate to new residential property (e.g. existing residential dwelling or other forms of real estate), to reflect their higher compliance and enforcement costs. Australia's development industry is a productive sector

of the economy, and developers of new residential dwellings should not be subsidising compliance and enforcement in other real estate sectors.

**UDIA believes that there should be no application fee for new residential dwellings - Australia's development industry should not subsidise compliance and enforcement activities around existing residential dwellings and other forms of real estate.**

#### Proposed fees on foreign investment Applications are too high

The House Economics Committee report on foreign investment recommended introducing a modest application fee of \$1500 to allow the Government to recover the costs of administering the foreign investment regime. UDIA recognises that Government incurs substantial costs in administering its foreign investment policy, and believes that the introduction of a modest fee, which reflects the direct costs of administering the foreign investment framework, could be an appropriate change - but only if it is paid for by foreign investors.

UDIA has major concerns with the fee structure proposed by the options paper, which includes a fee of up to \$5000 for properties valued under \$1 million, with properties equal to or greater than \$1 million in value subject to a fee of up to \$10,000, with the fee increasing by up to \$10,000 for every additional \$1 million in property value. UDIA believes that this fee structure is excessive, and may pose a real and substantial disincentive to foreign investors.

Additionally, UDIA believes that the proposed fee structure is unlikely to be reflective of the true costs borne by the Government in administering the foreign investment regime. The House Economics Committee report references analysis by the Parliamentary Budget Office, suggesting that a \$1,500 per application fee would be appropriate. This is far less than the fees proposed by the options paper.

It is also unclear why the cost of administering an application should be positively correlated to the value of the property, as suggested by the fee regime.

If the fees charged are not reflective of the Government's administrative costs, then the introduction of those fees is essentially just a new tax on foreign investment. This would be both inconsistent with the Government's foreign investment policy, and likely to damage economic growth, jobs in the construction industry, and new housing supply.

**UDIA believes that if the Government introduces an application fee, the application fee should reflect the true costs of administration, and not be more than \$1,500 - otherwise it may unduly discourage legitimate foreign investment.**

#### Off the Plan Application Fee

UDIA has additional concerns about the proposal to levy developers seeking an advanced off-the-plan certificate with an application fee based on the number of dwellings sold to foreign investors. For a given project, it is unclear how developers would determine ahead of time how many properties will be sold to foreign investors. Depending on the timing of the fee and sales, the proposed changes could result in developers carrying a large fee liability at significant cost, which could make off-the-plan certificates unattractive.

**UDIA believes application fees for off-the-plan certificates must be paid directly by foreign investors and not by Australian developers.**

### Penalty Regime

The options paper proposes introducing a civil penalty regime to supplement the existing penalty regime, including extended accessorial liability for third parties.

UDIA has concerns around the application of either civil or criminal penalties to third parties who are not aware that they are assisting a foreign investor in contravening the foreign investment regime, particularly where that third party may not be able to determine if an individual is a foreign investor or not. In such a case, the burden of responsibility for ensuring compliance could be shifted to unknowing third parties.

**UDIA believes that both the civil and criminal penalty regimes should be very clear that penalties for third parties apply only where the third party has actually known that they were assisting a foreign investor to breach the rules.** Third parties that unknowingly or accidentally assist foreign investors to breach the rules should not be liable under either penalty regime.

### Conclusion

UDIA thanks the Treasury for the opportunity to provide this submission in response to the foreign investment framework options paper. UDIA would welcome the opportunity to discuss any aspect of this submission in greater detail. For further information, please contact UDIA National on 02 6230 0255 or at [udia@udia.com.au](mailto:udia@udia.com.au).