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20 March 2015

**BY EMAIL: [foreigninvestmentconsultation@treasury.gov.au](mailto:foreigninvestmentconsultation@treasury.gov.au)**

The Manager  
International Investment and Trade Unit  
Foreign Investment and Trade Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam

**FIRB SUBMISSION FOR CONSULTATION PAPER**

I submit that the queries raised by me with Ms O'Dwyer MP should be answered because there are items of importance for the development of laws in respect of foreign ownership.

The standing of the States in respect of ownership of real estate requires the respectful position from the Federal Government for the information to be disseminated to State Government, particularly when economies for the State are at risk and harm from the Federal Policy.

Please see the unanswered material attached.

Yours faithfully,  
John Punch





# Short Punch & Greatorix

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1 December 2014

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**BY EMAIL:** [kelly.odwyer.mp@aph.gov.au](mailto:kelly.odwyer.mp@aph.gov.au)

Ms K O'Dwyer MP  
Federal Member for Higgins  
Suite 1/1343 Malvern Road  
MALVERN VIC 3144

Dear Ms O'Dwyer

## **FIRB FRAMEWORK APPLYING TO RESIDENTIAL REAL ESTATE**

I am in practice as a lawyer with my brother Martin Punch and I have been very interested to read of your report tabled in Parliament and the important work you have completed in conducting the enquiry into the FIRB framework as it applies to residential real estate.

There are 2 particular concerns arising from your work and Report that I raise. They are:

1. What particularly interests me as a lawyer is the constitutional power of the Federal Government to make laws imposing a prohibition on a parties right to acquire real estate situate within a State of Australia, when it is the jurisdiction of a State Government to determine who may own its real estate.

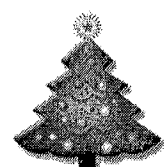
I can understand the ability for the Federal Government to have that control in relation to the land of a federal territory under its jurisdiction, but I cannot understand how the Federal Government can have that right when it conflicts with a State Government's right to control the ownership of the lands within its jurisdictional boundaries.

Constitutionally, the Federal Government has the power to legislate in respect of corporations (hence the Foreign Takeovers Act as it was initially produced) but I have difficulty with the concept of it legislating (by amending an Act about companies) as if it was a State Government controlling who may or may not own land within its sovereignty.

Your report in items 2.3 to 2.7 clearly expresses the law but does not show any constitutional head of power, as given by the States to the Federal Government under the Constitution, nor any other means for the Federal Government to have the power to so legislate.



The Partners and Staff wish to extend to you the compliments of the season.  
Our office will be closed from 12 noon on Wednesday 24 December 2014 and will reopen at  
8.30am on Monday 5 January 2015.



This area has intrigued me for some time and hence my raising it with you in the light of your study and Report.

Is it not important to consider the parameters of the Federal Government's ability to legislate in this area?

I would very much appreciate receiving any information from you in this area.

I particularly note that your Report contains a criticism of the Foreign Investment Review Board in not prosecuting cases where there may have been a breach of the law. It is therefore important for the Federal Government to consider in advance, what the position at law might be if a person challenged the constitutional power for the Federal Government to legislate the various sections of the Act that relate to acquisition of urban land, whose ownership is controlled by State government laws, and allow it to be transferred to an owner.

2. I have a genuine interest in the application of the law, and the practical arrangements that could be included in the FIRB policy, to actually encourage further investment into strata titled accommodation units needed by the tourism industry in Queensland and particularly the Gold Coast.

I am a current and founding board member of Gold Coast Tourism, which is the regional tourism organisation for the Gold Coast area.

In that capacity some years ago I addressed issues in a meeting in Canberra held with former Treasurer, the Hon. Peter Costello, relating to foreign investors providing capital in the form of ownership of tourist accommodation units provided through strata title. On the Gold Coast, we view strata titled apartments in our managed buildings as the equivalent of commercial real estate holdings, because they accommodate hundreds of thousands of tourists. The FIRB views them as urban land dwellings.

In Queensland particularly, we have a successful "blend" of ownership and management, which allows residents and tourists the ability to live permanently or as tourists in purpose built resort style apartment buildings and a need for capital investment into our existing buildings.

Unfortunately, the guidelines blanket the exclusion of foreign acquisition of such tourism utilities when they are second hand, because these apartments are viewed without recognition for their importance to the tourism industry i.e. they are seen only as residential accommodation for ordinary Australians rather than what they really are, part of our tourism infrastructure.

I therefore strongly propose that a new item be added to the guidelines to allow foreign capital to be allowed to be so invested, in this type of quasi residential tourism real estate, as it will greatly enhance our tourism industry.

Whilst the guidelines do recognise a need for a free market for Integrated Resorts, they fail badly when it comes to other tourism precincts.

Ms K O'Dwyer MP  
Federal Member for Higgins

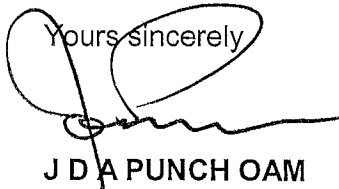
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In reality, investment in an existing tourism accommodation unit in Surfers Paradise is as (or more) integral to foreign investment in Australia than an investment in a dwelling in an integrated resort.

I shall be happy to assist with such guidelines if you are interested in using my knowledge and experience.

Yours sincerely



**J D A PUNCH OAM**

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