12-2019

Politics and policy: Chinese money and its impact on the regulation of residential property in the West

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Published in Conveyancer and Property Lawyer, 2019 December, Volume 83, Issue 3, Pages 371-391

Politics and Policy: Chinese Money and its Impact on the Regulation of Residential Property in the West

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Introduction

The performance of housing and commercial property markets alike have a profound effect on the social and economic wellbeing of cities.[1] It is thus not uncommon for policy-makers to intervene to influence the property market, producing "household and business location decisions, property development and investment strategies all shaped directly or indirectly by a myriad of policy initiatives".[2] Indeed, the place-specific nature of real estate means that its economic value is ultimately dependent on policy processes.[3] Lord Wilson observes that the word "policy" is often imprecise and usually used loosely, and can range from an indication of an overall objective or a guiding principle or a specific action which will be taken to help reach an objective.[4] He defines policy as the "actions, objectives and pronouncements of governments … and the steps they take to implement them …".[5] Guided by this articulation, this paper discusses the policies meant to address the "emerging global trend of foreign liquidity in local property markets".[6] In particular, this paper focuses on a significant segment of this trend—the impact of Chinese nationals[7] buying property in the West[8] and what legislative response has emerged in the markets in question.

This paper's thesis argues that some of the policy reactions by the jurisdictions analysed may not have resulted because Chinese investors have been *proved* to

[*] Assistant Professor of Law, Singapore Management University, PhD (Cantab). I am grateful to Professor Adam Hofri-Winogradow for reading an earlier draft; all errors remain mine.

[1] D. Adams, C. Watkins and M. White (eds), "Examining Public Policy and Property Markets" in *Planning, Public Policy & Property Markets* (Blackwell Publishing, 2005), 3.

[2] D. Adams, C. Watkins and M. White (eds), "Examining Public Policy and Property Markets" in *Planning, Public Policy & Property Markets* (Blackwell Publishing, 2005).

[3] D. Adams, C. Watkins and M. White (eds), "Examining Public Policy and Property Markets" in *Planning, Public Policy & Property Markets* (Blackwell Publishing, 2005), 239.

[4] R. Wilson, "Policy Analysis as Policy Advice" in M. Moran, M. Rein and R. Goodin (eds), *The Oxford Handbook of Public Policy* (OUP, 2008), 153.

[5] R. Wilson, "Policy Analysis as Policy Advice" in M. Moran, M. Rein and R. Goodin (eds), *The Oxford Handbook of Public Policy* (OUP, 2008), 154.

[6] A. Bardhan and C. Kroll, "Globalization and the Real Estate Industry: Issues, Implications, Opportunities" (Sloan Industry Studies Annual Conference, Cambridge, MA, 26 April 2007) at *http://web.mit.edu/sis07/www/kroll.pdf* [Accessed 14 November 2019].

[7] Chinese nationals include not just mainland Chinese but also those from Greater China (especially Hong Kong SAR). Other Asian buyers residing outside China, as well as the Chinese diaspora in Asia (e.g. Singapore, Malaysia and other parts of Southeast Asia) also invest in the West but are not included as "Chinese buyers" for the purpose of this paper as references by governments to "Chinese buyers" typically refer to the former.

[8] The paper is limited to cities in Australia, New Zealand and Canada as these jurisdictions appear to have enacted policies that were expressly directed at moderating the effects of Chinese investing in residential real estate.

have increased residential prices to an extent affecting affordability. Some of the evidence instead suggests that such policies have been adopted to appease the feelings of the local population who *believe* that Chinese investors are the root of the problem. This is a significant enquiry because it is an issue that traverses both property rights and ethnocentrism. Singling out or blaming a particular nationality (one that is so closely linked to ethnicity)[9] for something as sensitive as housing may be controversial if there is no data or proof in support. Majoritarian belief that a certain "group" is to be blamed for a social ill is a dangerous, slippery slope. Many of the jurisdictions analysed in this paper have significant ethnic Chinese communities. While the political statements mentioned by the lawmakers roundly clarify that Chinese *nationals* cause high prices, it would be surprising if ethnic Chinese communities would be wholly unaffected if strong anti-Chinese national sentiment took root. In Australia, Rogers & Dufty-Jones have observed that the singling out of buyers of Chinese heritage can lead to cultural profiling of people of Asian appearance who buy property. They note that the labelling of Australian-Chinese (i.e. Australian citizens) as Chinese investors (i.e. foreign nationals) is a conceptual problem which "feeds parochial discourses in the public debate".[10] Similarly in Vancouver, Ley & Murphy's scholarship demonstrated that in the early 2000s the cultural profiling and misrepresentation of local Chinese communities in Vancouver's mainstream media reinforced negative stereotypes of these migrant groups in Canada.[11]

A few clarifications about the scope of the paper are in order. First, in the absence of case law, this paper relies on *Hansard* parliamentary debates, statutes, government publications and academic journals and textbooks as research material. Because the academic literature is limited, this paper also relies on secondary sources such as newspaper periodicals and commercial research publications. Collectively, I use this mosaic of information to critically analyse the implementation of housing policy in reaction to the impact Chinese money has had on residential property in the analysed jurisdictions. Secondly, I am not challenging the underlying presumption that "locals" (however so defined) should be granted the highest opportunities to buy property. Thirdly, my analysis whether the presence of Asian buyers becoming a legitimate political issue is justified or merely a convenient excuse for "political hysteria"[12] is qualitative. Where data is referred to, I explicitly rely on the quantitative analysis done by others. Fourthly, this paper is not looking at the effects of Chinese buyers in non-western jurisdictions. Foreign buyers, including Chinese investors are buying property around the globe, including in many non-Western jurisdictions. Indeed, Hong Kong SAR, Malaysia, Singapore, Thailand and the Philippines all have laws meant to limit foreign home buyers, of which Chinese investors comprise a significant segment. Indeed, "anti-Chinese" sentiment in those jurisdictions may even be more intense than those in the West. Fifthly, this paper limits itself to the effect Chinese buyers have, or are said to have, on direct investments in residential property,

[9] China is ethnically homogeneous with ~92% Han Chinese.

[10] D. Rogers and R. Dufty-Jones (eds), "21st Century Australian Housing: New Frontiers in the Asia Pacific" in *Housing in Twenty-First Century Australia: People, Practices and Policies* (Routledge, 2016), 221–236.

[11] D. Ley and P. Murphy, "Immigration in gateway cities: Sydney and Vancouver in comparative perspective" (2001) 55(3) *Progress in Planning* 119, 165.

[12] N. Miller, M. Sklarz and N. Ordway, "Japanese Purchases, Exchange Rates and Speculation in Residential Real Estate Markets" (1988) 3(3) *Journal of Real Estate Research* 39, 48.

which typically engenders far stronger sentiment than commercial property and is thus the focus of policy making vis-à-vis foreign buyers. Sixthly and finally, my focus is not on general macroprudential measures which aim to reduce speculation in property per se, but which are not specifically aimed at reducing demand from foreign buyers. While reducing demand from foreign buyers' will have the concurrent effect of reducing demand in the market in general, this paper focuses on the changes to the law which have taken place with the *expressed intent* as a response to foreign, and in particular, Chinese buyers.

Using the legislative reactions to Chinese money in six western jurisdictions: Australia (Victoria, New South Wales & Queensland), New Zealand and Canada (Ontario & British Columbia), this comparative exercise seeks to identify the policy rationale behind the law and analyse its propriety.

Chinese motivations for buying in the West and some attendant effects

There are a multitude of reasons why Chinese nationals are motivated to buy residential property in the West. Endogenous reasons could include an increase in disposable savings coupled with the lack of appealing investment opportunities at home. The continuing rise in Chinese wealth eclipses the similar trajectory enjoyed by the Japanese in the 1980s. A paper from that era explains that the rise in Japanese wealth and the strengthening of the Japanese Yen resulted in Japanese buyers motivated by the comparative value they enjoyed (per square foot of housing in Tokyo versus Honolulu) and as a result were attracted to make property purchases in Hawaii.[13] Similarly, housing prices in China have also risen significantly. Relatively speaking therefore, buying in the "West" may not be as expensive.

Exogenous reasons may include the desire to send children to study abroad, future preparations for possible immigration, attractiveness of a transparent property market, exposure to safe haven currencies and belief in the inherent strength of Western economies, as well as diversification benefits.[14] One commentator has also suggested that Canada's agreeable environment may have been a pull factor. According to the Chairman of the Asia Pacific Foundation of Canada, John Bruk, "members of China's middle class, who have lot of money to spare and who are living in overcrowded and polluted cities, are looking for a more pleasant environment for themselves or their children".[15] In the context of Australia, its low-risk business environment, educational opportunities, lifestyle and large ethnic Chinese population have been said to make the country an attractive destination for buyers from China.[16]

Foreign buyers (being foreign) will not assimilate as well as locals. Their money is made outside the country and is brought in to compete with locals for residential housing within a particular locale. Depending on the reason of the purchase, the

[13] N. Miller, M. Sklarz and N. Ordway, "Japanese Purchases, Exchange Rates and Speculation in Residential Real Estate Markets" (1988) 3(3) *Journal of Real Estate Research* 39, 40.

[14] C. Sirmans and E. Worzala, "International direct real estate investment: A review of the literature" (2003) 40(5–6) *Urban Studies* 1081, 114.

[15] J. Bruk, Canada's housing crisis: The time for study has passed, *The Globe and Mail* 8 July 2016 at *https://www.theglobeandmail.com/report-on-business/rob-commentary/canadas-housing-crisis-the-time-for-study-has-passed/article30801183/* [Accessed 14 November 2019].

[16] Foreign Acquisitions and Takeovers Act 1975 (No.92 1975).

foreign buyers may keep their properties largely empty, adding to the frustration of local residents. These are some of the postulations that may be justified in some cases but pure politics in others. For instance, Miller, Sklarz & Ordway note that Japanese buyers were singled out as the main cause of the rapid housing price appreciation in parts of Hawaii in the 1980s. Their analysis, however, rejects any causation, concluding instead that price increases were more a symptom of Hawaii's long-evolving housing shortfall: rapidly growing populations and severely restrictive land use controls were driving up average home prices long before the Japanese took an interest in Hawaii.[17] Conversely, a recent paper analysing the Vancouver residential market indicates a strong correlation between foreign ownership and unaffordability.[18]

What have host countries done?[19]

The jurisdictions discussed below have all enacted laws guided by their policy beliefs that the free market has failed and some degree of control of the local residential market is needed. Affordability is typically the policy goal cited but how this is achieved may not necessarily coincide with the *respons*e that voters may want implemented. As governments come in and out of power, differing mindsets or agendas might permeate, with sentiments amorphous and disparate. Yet the enactment of legislation is supposed to be a technical expression of this sentiment. What follows are a breakdown by jurisdiction of the measures and legislation implemented in response to Chinese buyers, and some comparative observations before concluding.

Australia

Foreign ownership of residential property in Australia has sometimes been described as an emotionally charged issue with locals pointing the fingers at foreign buyers when property prices increase in Australia's capital cities. Indeed "foreigners-make-housing-expensive" was a central economic tenet of the Abbott Government. This has been described as a political gambit designed to play to the assumed xenophobic instincts of the electorate.[20] Unfortunately, some of this "assumed xenophobia", particularly against the Chinese, appears true. In 2014, well-known Australian businessman and politician Clive Palmer said in the context of an iron ore dispute in Western Australia, "I don't mind standing up against the Chinese bastards and stopping them from (taking over)".[21] Recently, Jason Clare (Labour) recently noted the inherent tension between the importance of foreign

[17] N. Miller, M. Sklarz and N. Ordway, "Japanese Purchases, Exchange Rates and Speculation in Residential Real Estate Markets" (1988) 3(3) *Journal of Real Estate Research* 39.

[18] J. Gordon, *Vancouver's Housing Affordability Crisis: Causes, Consequences and Solutions* Centre for Public Policy Research, Simon Fraser University 2 May 2016 at *http://www.sfu.ca/mpp/centre_for_public_policy_research/cppr.html* [Accessed 14 November 2019].

[19] See Appendix for an overview of what regulatory reactions some jurisdictions have done to moderate the effects of foreign investors.

[20] C. Berg, "You can't blame foreigners for high house prices" *ABC News* 17 February 2015 at *https://www.abc.net.au/news/2015-02-17/berg-you-cant-blame-foreigners-for-high-house-prices/6125500* [Accessed 14 November 2019].

[21] P. Coorey and J. Heath, "Chinese bastards' want to take over Australia: Palmer" [2014] *Australian Financial Review* at *https://www.afr.com/news/politics/national/chinese-bastards-want-to-take-over-australia-palmer-20140819-j8vpx* [Accessed 14 November 2019].

investment and the lack of its popularity, particularly in respect of Chinese investment. Addressing the House in August 2018, the five-time Federal MP observed that Australia is a country built on foreign investment. He noted that even though China is only the overall 9th biggest foreign investor, increase in community concern was disproportionately higher compared to other inbound nations (such as the US). 72% of Australians polled in the Lowy Institute Poll 2017 agreed that "the government was allowing too much investment from China".[22] It remains to be seen whether his exhortation will be followed:

> "We've got to talk up the benefits of foreign investment, but we also can't ignore community concerns, because if we do they fester, they get worse and it makes it harder to do the things that we think are so important to create the country we want to build."[23]

As discussed below, a good majority of foreign investors in Australia are Chinese nationals. There is doubt, however, whether concerns about affordability are proportional to the actual effect Chinese investors have had on residential property in Australia. Guest & Rohde[24] find that increases in foreign investment have accounted for 20–30% of the housing prices between 2004–2014 in Melbourne and Sydney (while leading to lower prices in Brisbane and Perth). In contrast, a paper by the Australian Treasury[25] has expressed the view that the recent price growth experienced in Australia is largely *not* attributable to foreign demand. The Treasury Paper notes the research by Guest & Rohde but disagrees with its findings. The Treasury expresses the view that its research had the benefit of far more granular data (monthly FIRB approvals at the postcode level), while Guest & Rodhe's paper was limited to annual and State level data. The Treasury paper notes that foreign investors account for an increasing share of demand for residential property, with approximately 70% of FIRB approvals made by Chinese national applicants. However, it concludes that there is only a small positive relationship (less than 1%) between foreign investment approvals and residential property price growth. Additionally, the Treasury's research found that foreign demand has been successful in achieving the national policy of increasing *supply* of housing—more developers were incentivised to construct new dwellings to satisfy the increasing demand from foreigners, who are limited to buying new properties.

Chung has noted that there is very little research on the impact of buyers with Chinese backgrounds on the Australian property market, and most of the negative commentary on the Chinese was "based on media and real estate agent speculation".[26] Her research indicates that there is inconclusive evidence whether Chinese investment has resulted in higher home prices. In respect of Australia's

[22] J. Clare MP, *Ministerial Statements—Investment Statement 2018* (Hansard, House of Representatives, 20 August 2018) at *https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/66d5616d-41f7-432b-b370-a62012124e44/&sid=0194* [Accessed 14 November 2019].

[23] J. Clare MP, *Ministerial Statements—Investment Statement 2018* (Hansard, House of Representatives, 20 August 2018).

[24] R. Guest and N. Rohde, "The Contribution of Foreign Real Estate Investment to Housing Price Growth in Australian Capital Cities" (2017) 53(3) ABACUS 304.

[25] C. Wokker and J. Swieringa, "Foreign Investment and Residential Property Price Growth" (*Treasury Working Paper*, December 2016) at *https://www.rse.anu.edu.au/media/1845323/Swieringa-Paper-2017.pdf* [Accessed 14 November 2019].

[26] M. Chung, "New Research questions impact of Chinese buyers on Australian House Prices" (Deakin University media release, 18 September 2017) at *https://www.deakin.edu.au/about-deakin/media-releases/articles/new-research-questions-impact-of-chinese-buyers-on-australian-house-prices* [Accessed 14 November 2019].

Business Innovation and Investment visa program (which starts at A$1.5M worth of investment and goes up to A$15M), Chung states that 90% of applicants from that program in 2014–2015 were Chinese. She proffers the view that the rapid prominence of the Chinese in Australia may have attracted envy by some Australians who in response have made Chinese scapegoats for high housing prices.

Australia's Foreign Investment Review Board (FIRB)

From a legal perspective, the regulation of foreign[27] investment into Australian residential property is administered by the Foreign Investment Review Board (FIRB), a non-statutory body established in 1976 to advise the Federal Treasurer and the Government on foreign investment matters. Technically, the FIRB has only advisory functions and cannot make binding decisions on foreign investment for the government. Under the Foreign Acquisitions and Takeovers Act 1975 (the Act)[28]Pt 3, the Treasurer is responsible for making decisions on foreign investment policy and investment proposals. In practice though, FIRB officers are empowered to make decisions "consistent with the foreign investor framework",[29] with the FIRB being described as a "de facto part of the Treasury".[30] Policy advisers in the Central Bank believe that an increase in the level of demand for new housing will lead to an increase in housing supply.[31] In furtherance of this policy, foreign investors are prohibited from purchasing "established dwellings"[32] under s.95(4) of the Act, unless able to get an exemption certificate under s.37. In practice, virtually all foreign investors are limited to purchasing newly built or off-plan dwellings. There is data suggesting that first home buyers (Australian nationals/residents) generally purchase established rather than new dwellings.[33] This may suggest that limiting foreign buyers to new dwellings is complementary.

Even in respect of new dwellings, s.3 of the Act states that the Treasurer, in relation to a foreigner intending to acquire real estate, is entitled to:

- decide that the Commonwealth has no objection;
- impose conditions on the purchase;
- prohibit the purchase; or
- require the action to be undone (e.g. requiring the disposal of an interest that has been acquired).

In practice, the vast majority of applications for new dwellings are approved (with the condition of the application fee paid); the approach at the federal (FIRB) level is to charge an application fee which entitles the foreign investor to make

[27] A "foreign person" refers to all individuals "not ordinarily resident" in Australia (Foreign Acquisitions and Takeovers Act 1975 (No.92 1975) s.4).
[28] Foreign Acquisitions and Takeovers Act 1975 (No.92 1975).
[29] Foreign Investment Review Board, *Annual Report 2017–2018* (February 2019), 3.
[30] C. Paris, "The Super-Rich and Transnational Housing Markets: Asians Buying Australian Housing" in R. Forrest, S. Yee Koh and B. Wissink (eds), *Cities and the Super-Rich: Real Estate, Elite Practices and Urban Political Economies* (Palgrave Macmillan, 2017), 63, 71.
[31] M. Gauder, C. Houssard and D. Orsmond, "Foreign Investment in Residential Real Estate" [2014] *Reserve Bank Bulletin* 15.
[32] Defined as simply "not new dwellings" under the Foreign Acquisitions and Takeovers Act 1975 (No.92 1975) s.4.
[33] M. Gauder, C. Houssard and D. Orsmond, "Foreign Investment in Residential Real Estate" [2014] *Reserve Bank Bulletin* 16.

the investment sought. Every purchase by a foreigner requires separate FIRB approval and consequently separate fees. The Foreign Acquisitions and Takeovers Fees Imposition Act 2015[34]Pt 2 sets out the application fee applicable—the fees are commensurate to the intended value of the purchase sought, ranging from A$5700 for purchases below A$1M to A$104,100 for purchases valued between A$9–A$10M, with even higher rates applicable for properties worth more than A$10M.

While Chinese nationals are today a very significant segment of inbound foreign investors to Australia,[35] "China was an isolated communist state"[36] when FIRB was established in 1976. It should also be recalled that the meteoric growth experienced by China starting from the 1990s was also a crucial factor in Australia's own prosperity, especially through demand for minerals and other resources. The Federal Government's white paper *Australia in the Asian Century*[37] notes that the Australian economy and society have progressively become more integrated into the Asia-Pacific region. The white paper also notes that by 2025, Asia-Pacific will account for half of the world's output. The inherent policy tensions in respect of dealing with Chinese money has led to FIRB taking a fairly robust attitude towards foreign investment. For instance, Liberal MP Kelly O'Dwyer lamented in the House of Representatives that since 2006, there has not been a single prosecution against foreign investors who failed to comply with FIRB notifications.[38] The Reserve Bank has stated that "foreign investment has been a longstanding feature of Australia's housing market".[39]

It should be noted that the FIRB fees only give the foreign investor the *right* to purchase housing in Australia and foreign investors are subject to enhanced taxation at the State level as well. All six States[40] in Australia now impose additional acquisition taxes for foreign-investors. Of these, three States, and in particular their major cities—Victoria (Melbourne), New South Wales (Sydney) and Queensland (Brisbane) attract more than 90% of Chinese money coming into Australia.[41] This paper thus focuses on these three States. Tevfik & Liu note that according to Australian State government statistics in 2015–2016, 25% of new dwellings in NSW (*under FIRB foreigners are limited to buying new dwellings*) are acquired by foreigners, of which 80% are Chinese nationals. In Victoria, 16%

[34] Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (No.152 2015).

[35] China is now the second largest foreign investor source country in Australia, behind the US. However, while only 17% of US investment in Australia is in real estate, 54% of inbound Chinese capital is placed in property: Foreign Investment Review Board, *Annual Report 2017–2018* (February 2019), 1.

[36] C. Paris, "The Super-Rich and Transnational Housing Markets: Asians Buying Australian Housing" in R. Forrest, S. Yee Koh and B. Wissink (eds), *Cities and the Super-Rich: Real Estate, Elite Practices and Urban Political Economies* (Palgrave Macmillan, 2017), 63, 71.

[37] Australian commonwealth government (2012) 6.

[38] K. O'Dwyer MP, *Matters of Public Importance—Prime Minister* (Hansard, House of Representatives, 4 December 2014) at *https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/200bef5f-bafa-4738-b150-7dbac05c37e0/&sid=0147* [Accessed 14 November 2019].

[39] M. Gauder, C. Houssard and D. Orsmond, "Foreign Investment in Residential Real Estate" [2014] *Reserve Bank Bulletin* 18.

[40] Victoria: 8% pursuant to the Duties Act 2000 (w.e.f. 1 July 2019); New South Wales: 8% pursuant to the Duties Act 1997 (w.e.f. 1 July 2017); Western Australia: 7% pursuant to the Duties Act 2008 (w.e.f. 1 January 2019); South Australia: 7% pursuant to the Stamp Duties Act 1923 (w.e.f. 1 January 2018); Queensland: 7% pursuant to the Duties Act 2001 (w.e.f. 1 October 2016); and Tasmania: 3% pursuant to the Duties Act 2001 (w.e.f. 1 July 2018). Only the territories (Northern Territory and Australian Capital Territory) do not.

[41] C. Tincknell, *Duties Amendment (Additional Duty for Foreign Persons) Bill 2018 (Second Reading)*, Parliamentary Debates (WA) Hansard (20 September 2018) at *http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/48B47D6FA0BDEA2B48258313001 7613C/$file/C40%20S1%2020180920%20All.pdf* [Accessed 14 November 2019].

of new dwellings are acquired by foreigners.[42] These statistics are compelling but must be looked at in the context of the *entire* property market. For instance, in their submission to Australia's Parliament,[43] a non-profit organisation representing Australia's property developers ("NPO") said that based on FIRB and data from the Australian Bureau of Statistics, Chinese contribution of the total foreign investment in residential real estate from 2010–2013 was approximately A$5 billion per annum, in a market worth A$250 billion. The NPO expressed the view that:

> "while 2% 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."

The NPO also indicated that with American and Canadian investment in Australia at levels very close to the Chinese, the focus on Chinese investment was similarly not warranted. Thus, it should be recalled that because foreigners are legally limited to purchasing only new dwellings, a high proportion of Chinese buying such new property may not necessarily have a large impact on the larger housing market, which comprises both new dwellings and resale homes.

What follows is a brief discussion on the three States most affected by Chinese buyers—Victoria, New South Wales and Queensland. Outside these States, the impact of Chinese investors is certainly more muted. *Hansard* parliamentary debates involving the enactment of the relevant additional tax for foreigners in South Australia,[44] Tasmania and Western Australia do not single out Chinese investors as a cause for housing affordability in their respective States. The length of the sections reflect the differing degrees of research and commentary in the respective States.

Victoria

As of July 2019, Victoria has increased its additional foreign buyer's stamp duty for residential property to 8%.[45] With its base stamp duty rate of 5.5%,[46] foreigners pay 13.5% transaction tax at the State level. As mentioned above (from 2015/2016 statistics), 16% of new dwellings are acquired by foreigners. While there is no specific data what proportion of this is fuelled by Chinese buyers, there is certainly evidence that curbing Chinese investors coming into the state remains a political issue. During the legislative assembly debates on the amendment of the Duties Act, Judith Graley MP (Labour & state government) said, "if you go out and talk

[42] H. Tevfik and P. Liu, *Australian Investment Strategy: Shanghai? Shenzhen? Sydney!* (Credit Suisse Research Note, March 2017) at *https://www.businessinsider.com.au/foreign-investment-in-australian-housing-2017-3* [Accessed 14 November 2019].

[43] At the request of the House of Representatives (Standing Committee on Economics), in contribution to Parliament's *Report on Foreign Investment in Residential Real Estate* (November 2014).

[44] Notably, in South Australia's Hansard report, there were numerous comments on the impact of Chinese investment in the State, but in relation to farming or commercial real estate. See, e.g. Ann Bressington's quotation of Senator Barnaby Joyce in the South Australian Parliament: "Well, you know, it's sort of a bit like this: the Chinese have got more guns than we've got, and they've got bigger guns than we've got, and if we are going to kick their arse—excuse the language—they're going to kick ours 10 times harder". That is a very concerning statement for a senator to make, given that this was an evening where he was addressing food producers. For him to say that we are fast becoming a foreign-owned country is very disturbing. (18 July 2012) at *http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-11952* [Accessed 14 November 2019].

[45] Duties Act 2000 s.28A.

[46] Duties Act 2000 s.28, for properties more than A$960,000.

to people in the community you will hear the average Australian saying that it is a good thing to tax Chinese investors on property. That is a good thing. People support that".[47] There was no other justification offered in support of the proposed amendment of the Act. Absentee land tax has also increased to from 1.5% to 2% in Victoria.[48]

New South Wales

Like Victoria, New South Wales also imposes an 8% additional "surcharge purchaser's duty" for residential property acquired by foreigners.[49] Also similar to Victoria, NSW imposes a base transfer tax of 5.5%[50] meaning that foreigners pay 13.5% transaction tax to the NSW government. Further, with effect from 31 December 2017, the State also enhanced its "surcharge land tax" for foreign-owned residential property to 2% per annum.[51] This is markedly different from Victoria's absentee land tax[52] (which applies for unused properties regardless who owns them).

As mentioned above, the data in respect of Chinese buyers in the State appears compelling; approximately 20% of new dwellings in 2015/2016 were purchased by Chinese nationals who comprise 80% of all foreign buyers.[53] However, as explained above, this statistic may not evidence a cause of housing unaffordability as Chinese buyers *cannot* directly affect the secondary market.

It is also incongruous that a NSW legislator should refer to statistics in the country to support legislative change for addressing the problem of housing affordability *within the State*. In his speech to the Upper House of NSW in November 2017, Lou Amato (Liberal) said:

> "… in recent times the Australian housing market has seen exponential price increases far exceeding the potential of most Australians to service … Unlike our sometimes novel discussions on the cause, New Zealand has identified the main culprit without engaging in a pseudointellectual debate on the issue. The problem it seems is that foreign buyers are pushing up house prices and restricting New Zealanders' access to the market. Presently one in four properties sold in our country is being purchased by foreign buyers who consistently outbid Australians. It is obvious there is a correlation with spiralling property prices and foreign investors bidding up prices way beyond market value."[54]

As a *State* legislator, Amato should arguably have confined himself with evidence and data of the State; the parliamentarian's dramatic conclusion of an *obvious*

[47] J. Graley, *State Taxation Acts Amendment Bill*, Parliamentary Debates (Vic) Hansard (22 May 2018) 1484 at *https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Tuesday_22_May_2018_from_Book_6.pdf* [Accessed 4 November 2019].

[48] Land Tax Act 2005 Pt 3.

[49] Duties Act 1997 s.104U.

[50] Duties Act 1997 s.32 (for properties above A$1,013,000).

[51] Land Tax Act 1956 s.5A(2).

[52] Land Tax Act 2005 Pt 3.

[53] H. Tevfik and P. Liu, *Australian Investment Strategy: Shanghai? Shenzhen? Sydney!* (Credit Suisse Research Note, March 2017).

[54] L. Amato, *Housing Affordability*, Legislative Council Hansard (21 November 2017) at *https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-75074* [Accessed 14 November 2019].

correlation between "spiralling property prices and foreign investors bidding up prices way beyond market value" is also not persuasive, perhaps betraying politicisation of the housing issue. Worse, the statistic that Amato cited grossly misrepresents. In fact, one in four *new* properties were purchased by foreign buyers, with most property transactions occurring in the secondary market.

In the literature, there is at least one paper that concerns itself on public sentiment regarding the unpopularity of Chinese investors in NSW. Rogers, Wong & Nelson[55] surveyed 899 Sydney residents, looking at their perceptions of foreign and Chinese investment. They found high levels of public concern and discontent about foreign investment amongst Sydneysiders, with Chinese investors being a key target of this discontent. In the context of high housing prices in Sydney, there were widely held concerns about housing affordability. According to the researchers, survey respondents had a sophisticated understanding of what influences house prices, but overemphasised the role of foreign investment. They found a general lack of support for policy that encourages foreign investment, and a lack of confidence in how the government is regulating foreign investment. The paper found that half of the participants reported that they would not welcome Chinese foreign investment in their suburb.

Queensland

On top of its marginal transfer duty rate of 5.75%,[56] Queensland has imposed an "additional foreigner acquirer duty" of 7% under the Duties Act 2001 s.244. This means that the State imposes a total transfer tax of 12.75% on foreigners.

It is interesting to note that during the parliamentary debates regarding the imposition of the additional tax for foreign buyers, Queensland's Premier Annastacia Palaszczuk said that one of the purposes of the tax was to increase funding of the home owner's grant (from A$15,000 to A$20,000).[57] Queensland Treasurer Curtis Pitt similarly said that the tax would be to "make foreigners pay for the infrastructure and services they will use".[58] A further justification for the additional tax was simply that New South Wales and Victoria had imposed similar taxes.[59] The position of the Queensland government is thus to treat the additional foreigner acquirer duty as a wealth tax which allows the State to redistribute to first time home owners who need help.

Laudably, there has been no indication by any Queensland legislator that the purpose of the additional tax was to curtail foreign or Chinese investment so as to increase affordability. This is despite a recent newspaper report[60] indicating that

[55] D. Rogers, A. Wong and J. Nelson, "Public perceptions of Foreign and Chinese real estate investment: intercultural relations in Global Sydney" (2017) 48(4) *Australian Geographer* 437–455.

[56] Duties Act 2001 Sch.3 (for properties above A$1M).

[57] A. Palaszczuk, *Questions without notice* (Hansard, Queensland Parliamentary Debates) 3204 (31 August 2016) at *https://www.parliament.qld.gov.au/documents/hansard/2016/2016_08_31_WEEKLY.pdf* [Accessed 14 November 2019].

[58] C. Pitt, *Questions without notice* (Hansard, Queensland Parliamentary Debates) 3205 (31 August 2016) at *https://www.parliament.qld.gov.au/documents/hansard/2016/2016_08_31_WEEKLY.pdf* [Accessed 14 November 2019].

[59] A. Palaszczuk, *Questions without notice* (Hansard, Queensland Parliamentary Debates) 3845 (13 October 2016) at *https://www.parliament.qld.gov.au/documents/hansard/2016/2016_10_13_WEEKLY.pdf* [Accessed 14 November 2019].

[60] K. Silva and K. McKechnie, "Chinese property investment soars in Qld as record number of uni students enrol" *ABC News*, 25 June 2018 at *https://www.abc.net.au/news/2018-06-25/chinese-property-investment-soars-in-south-east-queensland/9905558* [Accessed 14 November 2019].

Chinese property investment have risen in tandem with a record number of students of Chinese nationality enrolling in universities in Queensland. The report notes that data from Queensland's Foreign Ownership of Land Register show that Chinese investors spent about A$1.5b on Queensland properties in 2016–17, up from $872 million two years earlier and that nearly all the money was spent on properties in the Brisbane and Gold Coast area.

New Zealand

New Zealand probably has the most austere legislative response to foreign buyers of residential property in the western world. On 15 August 2018, by a bare 63–57 majority, the newly formed labour-led Coalition Government passed the Overseas Investment Amendment Bill which bans virtually all foreign investors from purchasing residential property. Under the revised provisions, which came into force on 22 October 2018, the Overseas Investment Act 2005 Sch.1,[61] defines residential property as "sensitive land". Under cl.4 to Sch.2 of the Act, only "qualifying individuals" are permitted to acquire such properties (barring extraordinary ministerial approval). These include New Zealand nationals and permanent residents, as well as due to free trade agreement reasons, citizens and permanent residents of Australia and Singapore.[62] Residential tenancies of up to five-years are exempted from the prohibition against foreign acquisition.[63] Foreigners are also permitted to purchase up to 60% of new strata units which must be sold off-plan by developers constructing at least 20 new dwellings; foreigners are not permitted to buy already built units.[64] Somewhat similar to the position in Australia, this exception aims to increase the number of new dwellings introduced to the market. Enforcement under the Act is robust, and includes allowing the Government to issue a "notice requiring a disposal of property" to a non-qualifying person who has acquired sensitive land.[65] Interestingly, there is no stamp duty in New Zealand.

An appreciation of the politicking behind this recent amendment provides the context behind the rule change. The key event was New Zealand's 2017 general elections and a major campaign issue for all political parties was the fact of reported severe housing unaffordability in several major cities in New Zealand. While both the Labour Party (46) and New Zealand First (9) won less seats than New Zealand National (56), the former two parties succeeded in forming government in New Zealand's 120-seat house through a coalition agreement with the Green Party (8). With respect, both Labour and New Zealand First had run a tried-and-tested recipe: blame foreigners for house price rises; both parties made election promises to restrict investment by foreigners.

Labour Minister for Trade David Parker who introduced the Bill to the House, said during the first reading, "We think that it is the birthright of New Zealanders

[61] Overseas Investment Act 2005 (No.82 of 2005).

[62] Pursuant to the Overseas Investment Act 2005 (No.82 of 2005) Sch.2 cl.4 read with the Overseas Investment Regulations 2005 (SR 2005/220) r.30.

[63] Overseas Investment Act 2005 (No.82 of 2005) Sch.3 cl.3.

[64] Overseas Investment Act 2005 (No.82 of 2005) Sch.3 cl.4 read with the Overseas Investment Regulations 2005 (SR 2005/220) r.32.

[65] Overseas Investment Act 2005 (No.82 of 2005) s.41F.

to own our homes".[66] The Bill was also not saved by any hard data or evidence showing how this extreme move to ban foreigners would result in improving affordability. Instead, Parker appeared to rely on vague generalities in his endeavour to justify the new policy:

> "We know that more and more of the world's wealth is accumulating in the hands of a very small minority—less than 1 percent. We know from the Panama Papers and from Piketty's book Capital in the Twenty-First Century that many of these people pay low or no tax on their income overseas. In the face of that reality, the Government has the right and the duty to protect their local citizens from overseas accumulators of wealth impacting on the New Zealand housing market. Therefore, this bill brings residential land within the category of 'sensitive land' in the Overseas Investment Act."

Gerry Brownlee MP (New Zealand National Party (National)) countered that the data regarding foreign buyers did not justify the legislation. He pointed out that statistics from Q3'17 show that only 3% of properties were owned by foreigners, the vast majority of which are Australians (which the Act exempts).[67] Even within Auckland, data from that quarter shows that 9.8% of transfers were made to foreigners.[68] Most recent data from Q4'18 shows that only 2.3% of home transfers were made to non-residents or citizens.[69] It is also alarming that Michael Woodhouse MP (National) said that New Zealand First Party (NZ First) has expressed negativity towards "Chinese-sounding surnames"[70] in expressing their desire to slash migration and prevent foreigners from buying houses. Stories of wealthy Chinese "outbidding New Zealanders on suburban homes in Auckland" may also smack of representative bias.[71] Mercifully, the Forestry Minister Shane Jones (NZ First) was candid enough to admit that the policy change was political (rather than data-driven):

> "But this bill will pass, and I just want to remind the House: where do we get our mandate to make such a fundamental change towards property ownership in New Zealand and the numbers of non-Kiwis holding such a privilege? We fought an election on this particular issue."[72]

[66] D. Parker, *Overseas Investment Amendment Bill (First Reading)*, Hansard, 19 December 2017 at *https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20171219_20171219_16* [Accessed 14 November 2019].

[67] G. Brownlee, *Overseas Investment Amendment Bill (First Reading)*, Hansard, 19 December 2017 at *https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20171219_20171219_16* [Accessed 14 November 2019].

[68] Stats NZ, *One in 19 inner city Auckland home transfers go to overseas people* (30 October 2018) at *https://www.stats.govt.nz/news/one-in-10-inner-city-auckland-home-transfers-go-to-overseas-people* [Accessed 14 November 2019].

[69] Stats NZ, *Overseas home buyers' share relatively unchanged in December quarter* (8 February 2019) at *https://www.stats.govt.nz/news/overseas-home-buyers-share-relatively-unchanged-in-december-quarter* [Accessed 14 November 2019].

[70] M. Woodhouse, *Overseas Investment Amendment Bill (First Reading)*, Hansard, 19 December 2017 at *https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20171219_20171219_16* [Accessed 14 November 2019].

[71] N. Perry, "New Zealand bans most foreigners from buying homes" (AP, 15 August 2018) at *https://www.apnews.com/cb80e520c0e045da9e129302256dca97* [Accessed 14 November 2019].

[72] S. Jones, *Overseas Investment Amendment Bill (First Reading)*, Hansard, 19 December 2017 at *https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20171219_20171219_16* [Accessed 14 November 2019].

Even apart from the opposition, there were several quarters who found the legislative amendments ill-conceived. In December 2017, New Zealand's own Treasury released a Regulatory Impact Assessment (RIA)[73] on the intended Bill to Cabinet. The RIA observed several problems, including:

- "the nature of the [intended] benefits is unclear as it is difficult to assess the extent and nature of the behavioural responses that will result from the policy";
- "there is lack of empirical data on current levels of overseas investment in the housing market";
- "some of the design choices may be sub-optimal or have unintended consequences".

In April 2018, the International Monetary Fund (IMF) also expressed reservations about New Zealand's general ban on foreign ownership. The IMF noted that "a ban of residential real estate purchases by non-residents is unlikely to have a significant impact on housing affordability" and further, that "foreign buyers seem to have played a minor role in New Zealand's residential real estate markets recently".[74] In a radio interview relating to the report, the IMF's Mission Chief for Australia and New Zealand Thomas Helbling said that putting capital flow controls were only appropriate when they were "very large, disruptive inflows of money". Helbling also opined that "when you look at the statistic for New Zealand as a whole, and even Auckland as a whole, the role of foreign buyers is much less prominent".[75]

Canada

There are no legislative measures at the Canadian federal level restricting or controlling foreign investment in residential property. The paper's discussion on Canada focuses on the two States which have introduced measures to tax foreign buyers with additional acquisition tax; Ontario and British Columbia. While not enacted yet, Quebec has recently published draft regulation suggesting that a tax on non-resident purchasers may be imminent.[76]

David McKay, the Chief Executive of the Royal Bank of Canada has commented that foreign inflows are distorting Canada's already constrained housing market and that such investments are unproductive capital.[77] While perhaps less glaring than in Australia and New Zealand, public sentiment suggests that a good majority of these foreign buyers originate from China and Greater China. As discussed

[73] The Treasury, "Regulatory Impact Assessment: Screening Overseas Investment in Sensitive Residential Land" (11 December 2017) at *https://treasury.govt.nz/sites/default/files/2018-01/ria-tsy-srl-dec17.pdf* [Accessed 14 November 2019].

[74] IMF, *New Zealand: Staff Concluding Statement of the 2018 Article IV Mission* (17 April 2018) at *https://www.imf.org/en/News/Articles/2018/04/16/ms041618-new-zealand-staff-concluding-statement-of-the-2018-article-iv-mission* [Accessed 14 November 2019].

[75] R. Stock, *IMF not keen on proposed foreign buyer ban for houses* (Stuff, 6 July 2018) at *https://www.stuff.co.nz/business/money/105284813/imf-not-keen-on-proposed-foreign-buyer-ban-for-houses* [Accessed 14 November 2019].

[76] N. Cloutier, "Identification of non-resident purchaser's in Quebec: will a new tax follow?" (McCarthy Tetrault, 15 February 2019) at *https://www.mccarthy.ca/en/insights/blogs/lay-land/identification-non-resident-purchasers-quebec-will-new-tax-follow* [Accessed 14 November 2019].

[77] D. Alexander, *RBC chief issues warning to foreign investors in Canadian real estate* (Bloomberg, 6 March 2018) at *https://www.theglobeandmail.com/report-on-business/rbc-chief-issues-warning-to-foreign-investors-in-canadian-real-estate/article38218144/* [Accessed 14 November 2019].

below, a less common narrative that should be noted is that Canada encouraged such investments in the first place and could be a victim of its own success. Educating Canadians on this could perhaps go some way to soothe some of the anti-Sino sentiments which may have arisen in the first place.

Ontario

On 21 April 2017, the Ontario Government introduced several measures, including rent control rules, to rein in the housing market. The measures appeared most focused on the capital, Toronto, with the provincial government is also considering implementing a vacancy tax for empty homes.

Most notable of the implemented measures was the imposition of a 15% transfer tax on foreign buyers, pursuant to the Land Transfer Tax Act s.2.1.[78] As the marginal transfer tax in Ontario is 2.5%,[79] the total tax exposure for foreigners is 17.5%. Dubbed the "non-resident speculation tax", the tax applies to non-Canadian citizens and non-residents (including non-Canadian companies and taxable trusts) who purchase residential property in the Greater Golden Horseshoe Region (GGH)[80] in Southern Ontario.

The Land Transfer Tax Act s.1(1)(a) limits the application of the tax to residential land that contains up to six "single family residences". The Act defines single family residences "as a unit or proposed unit under the Condominium Act 1998 or a structure or part of a structure that is designed for occupation as the residence of a family". The provision thus looks at how many single family residences are contained on the residential land lot in question, imposing the tax on foreigners buying single dwelling (stand-alone) property as well as condominium units that contain up to six apartments. The non-resident speculation tax does not apply to the purchase of a condominium unit in a building containing seven or more dwellings.

Explaining the stated purpose behind the tax from the Government's perspective, Ontario's Minister of Finance Charles Sousa (as he was then) said that the non-resident speculation tax "is about discouraging those who are capitalising on the speculation on homes, driving up prices, creating vacant homes and crowding out families looking to buy".[81] Fellow liberal MPP[82] Yvan Baker similarly said that the policy aims to "discourage those who have never even set foot in Ontario but who are impacting a tight property market, creating vacant homes and contributing to a speculative market". Affordability was a key policy behind the legislative change; Baker also stated that the people of Ontario should be able to enter the property market without having to make undue sacrifices or taking on a huge amount of risk.[83] At least at first glance, these policy motivations appear reasonable,

[78] Land Transfer Tax Act RSO 1990 c.L.6.

[79] Pursuant to Land Transfer Tax Act RSO 1990 c.L.6 s.2(1), for properties above C$2M.

[80] The GGH region centres itself around Toronto. With a population close to 8 million people, the GGH region accounts for approximately 20% of the population of Canada and close to 60% of the population of Ontario.

[81] Ch. Sousa, *Orders of the Day—Time Allocation*, Hansard, Legislative Assembly of Ontario, Session 41:2) 31 May 2017 at *http://hansardindex.ontla.on.ca/hansardeissue/41-2/l088.htm* [Accessed 14 November 2019].

[82] Ontario's legislative assemblymen and women adopt the honorific of "members of the provincial parliament" or MPP for short.

[83] Y. Baker, *Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit)* (Hansard, Legislative Assembly of Ontario, Session 41:2) 30 May 2017 at *http://hansardindex.ontla.on.ca /hansardeissue/41-2/l087.htm* [Accessed 14 November 2019].

particularly because at the time the legislation was introduced, Toronto had experienced a 33% y-o-y increase in residential prices.[84] Closer inspection, however, suggests that there may be a disconnect between the alleged problem (foreign speculators) and the legislative changes.

The first point is that there are several cogent allegations critical of the policymaking process in respect of the non-resident speculation tax made by opposition MPPs during the legislative assembly debates. Tellingly, these allegations have all remained unrebutted,[85] even though the Speaker of the House granted airtime to Minister Charles Sousa, the main target of the criticism. During the Bill's technical briefing, then-opposition MPP Peter Fedeli (*Fedelie is Ontario's current Finance Minister, following the change of Ontario's Government from Liberal to Conservative in 2018*) reported that senior civil servants from the Ministry of Finance said there was *no hard data* why the Greater Golden Horseshoe area was established as the relevant boundary affected by the tax, instead explaining that it "was a political decision", and further that the Ministry decided to follow "the British Columbia model as we heard they did it in the greater Vancouver area".[86] When probed further on the legislative justifications, Fedeli said that the senior civil servants shared that the reason was simply that "the government felt it had to do something". Describing the legislation as an "ill-planned project", MPP Fedeli also noted the absence of a nexus between alleged policy problem and policy goal given that there was "no credible data on foreign buyers in the housing market".[87] At an earlier legislative assembly debate, Democratic MPP Peter Tabuns similarly observed that the enactment of the non-resident speculation tax by the Liberal Government was trying to score "cheap political points by talking about foreign speculators".[88] He noted that if preventing *speculation* was the policy goal, why were there no rules set in place to prevent speculation by locals. As Toronto's *The Star* noted sarcastically, "Foreign speculators be damned and banned. Domestic speculators, mind you, can carry on as before".[89]

The second point is that it is somewhat unclear why the non-resident speculation tax is limited to residential land containing up to six single family residences. In the entirety of *Hansard* proceedings concerning the Bill, this point was only mentioned once,[90] but none of the MPPs cite any reasons why the anti-speculation tax is limited to the purchase of units in a building which contains six dwellings or less. Could one reason be to limit the control of residential land lots by foreigners? Probably not; there are no laws preventing a foreign investor from purchasing all the units in say a seven-unit condominium (without any speculation

[84] Y. Baker, *Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit)* (Hansard, Legislative Assembly of Ontario, Session 41:2) 30 May 2017.

[85] Similar allegations critical of Finance Minister Charles Sousa have also been reported in Toronto's *The Star*, the newspaper with the largest circulation in Toronto. See M. Regg Cohn, "How Charles Sousa woke up from his housing hibernation: Cohn" *The Star* 21 April 2017 at *https://www.thestar.com/news/queenspark/2017/04/21/how-charles-sousa-woke-up-from-his-housing-hibernation-cohn.html* [Accessed 14 November 2019].

[86] V. Fedeli, *Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit)* (Hansard, Legislative Assembly of Ontario, Session 41:2) 30 May 2017 at *http://hansardindex.ontla.on.ca/hansardeissue/41-2/l087.htm* [Accessed 14 November 2019].

[87] V. Fedeli, *Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit)* (Hansard, Legislative Assembly of Ontario, Session 41:2) 30 May 2017.

[88] P. Tabuns, *Housing Policy* (Hansard, Legislative Assembly of Ontario, Session 41:2) 3 May 2017 at *http://hansardindex.ontla.on.ca/hansardeissue/41-2/l076.htm* [Accessed 14 November 2019].

[89] M. Regg Cohn, "How Charles Sousa woke up from his housing hibernation: Cohn" *The Star* 21 April 2017.

[90] Y. Baker, *Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit)* (Hansard, Legislative Assembly of Ontario, Session 41:2) 30 May 2017.

tax involved). Perhaps a better justification would be to encourage developers from building apartment buildings with more than 6 dwellings – this serves the twin purpose of increasing the supply of housing units while also making such projects more attractive to foreign investors. Under Ontario's Condominium Act 1998 s.82.1,[91] a wholly owned or vastly majority-owned foreign condominium building can be collectively redeveloped or sold by an 80% (as opposed to unanimous) majority consent.[92] In a comparative paper including Canada and Australia, I had previously made suggestions how the collective sale process of strata buildings could be improved.[93] If increase in number of residential dwellings is a policy goal, then one further amendment to the Ontario Act could be to introduce a requirement to increase the number of dwellings following a collective sale. Currently there is no requirement for this in all jurisdictions that allow a strata sale by majority,[94] despite the fact that many of these jurisdictions have a housing supply issue.

One of the key criticisms about the way Ontario has dealt with the foreign buyers tax is the paucity of data; this is reflected in the way the legislators endeavoured to explain the tax in the provincial parliament. While it is known that Toronto is very popular with Chinese buyers, it is not possible to conclude what relationship if any, this has had on the enactment of the non-resident speculation tax. Troublingly, the Canadian Broadcasting Corporation (CBC) recently reported that the Ontario government has stopped publishing statistics on foreign buyers tax on residential property, with the Finance Minister unable to explain why this is the case.[95]

British Columbia

With an average house price to average annual income ratio of approximately 12, Vancouver has been described as one of the least affordable places to live in the developed world. This has resulted in ordinary residents of Vancouver, particularly young workers, being forced to live far away from the metropolitan area. Gordon notes that debt levels of first time buyers have surged while at the same time communities are weakened by empty or under-used dwellings owned by non-nationals.[96] Gordon's paper presents a comprehensive and persuasive report which argues that Chinese investment is the primary reason for housing unaffordability in Vancouver. In reaching this conclusion, he accounts and excludes other possible reasons as the primary cause—low interest rates, desirability and strength of the Vancouver economy, zoning and geographical limitations and

[91] Condominium Act 1998 SO 1998 c.19.

[92] This particular section allowing for a collective sale by 80% majority is legislated for but not in force yet, pending proclamation by the Lieutenant Governor.

[93] E. Ti, "Collective Best Interests in Strata Collective sales" [December 2019 forthcoming] *Australian Law Journal* at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3436526* [Accessed 14 November 2019].

[94] In the context of Sydney, Sherry has expressed concern that there is no guarantee that the redeveloped site would actually produce more homes as developers of luxury apartments may wish to reduce rather than increase density. See C. Sherry, "Strata law overhaul a step too far" *The Sydney Morning Herald* 23 August 2015 at *https://www.smh.com.au/opinion/strata-law-overhaul-a-step-too-far-20150823-gj5mz5.html* [Accessed 14 November 2019].

[95] M. Crawley, "Ontario's foreign buyers tax figures are now a mystery—and the finance minister says he doesn't know why" *CBC News* 13 May 2019 at *https://www.cbc.ca/news/canada/toronto/doug-ford-ontario-foreign-buyers-tax-real-estate-statistic-1.5131759* [Accessed 14 November 2019].

[96] J. Gordon, *Vancouver's Housing Affordability Crisis: Causes, Consequences and Solutions* Centre for Public Policy Research, Simon Fraser University 2 May 2016.

insufficient social housing.[97] Elsewhere, Rose has also excluded the constrained supply of housing units hypothesis as the cause of unaffordability; his research similarly indicates that foreign speculators are driving prices up.[98] While these findings are persuasive, it is interesting to note that Canada may have been a victim of its own success; Chinese investors were initially encouraged to invest in Canadian cities.

Mike de Jong, then Finance Minister of British Columbia shared in July 2016 that more than 90% of foreign buyers are Chinese or Greater Chinese nationals.[99] Similarly, the evidence presented by Ley also indicates that almost all of Vancouver's foreign investors are from Greater China (i.e. Hong Kong SAR),[100] and that this stemmed from a series of "business immigration programs" starting as early as 1978 established by the Canadian Government to encourage investment in the country. Canada's "investor stream"[101] initiated in 1986 by the Mulroney Government appears to have been at least partially opportunistic. The anticipated return of Hong Kong to China in 1997 created uncertainties among many of the wealthy in Hong Kong and the investment scheme allowing for migration captured a sizeable segment of this group. These investor schemes no doubt snowballed over the years, and it would be surprising if the presence of the early Chinese investors did not encourage further Chinese settlement and investment in Canada. Indeed since 2002, more than 60,000 millionaire migrants and their family members have settled in Vancouver.[102]

Notwithstanding that the Canadian governments' own policies probably precipitated housing unaffordability in its cities, regulatory measures to curb these effects have been introduced. In February 2018, the Government of British Columbia issued a Whitepaper listing a 30-point plan for housing affordability.[103] In August 2016, the Government had earlier imposed an additional tax of 15% on residential property transfers to foreign nationals.[104] Effective 21 February 2018, the Whitepaper led to this tax being increased to 20% for certain core central areas in Vancouver.[105] With a basic marginal transfer tax of 2%,[106] this means that foreigners buying residential property in British Columbia will have total transfer tax liability of 17% or 22%. Another legislative reaction to curb foreign investment

[97] J. Gordon, *Vancouver's Housing Affordability Crisis: Causes, Consequences and Solutions* Centre for Public Policy Research, Simon Fraser University 2 May 2016.

[98] J. Rose, "The Housing Supply Myth" (*Working Paper*, 24 November 2017) at *https://www.kpu.ca/sites/default/files/The%20Housing%20Supply%20Myth%20Report%20John%20Rose.pdf* [Accessed 14 November 2019].

[99] J. Bruk, Canada's housing crisis: The time for study has passed, *The Globe and Mail* 8 July 2016.

[100] D. Ley, "Global China and the making of Vancouver's residential property market" (2017) 17(1) *International Journal of Housing Policy* 15–34.

[101] Under this scheme, foreigners were granted residency in exchange for giving the Canadian Government a five-year interest free loan of C$400,000, as well as having a net worth above C$800,000.

[102] I. Young, "Foreign home buyers in Vancouver hit with HK-style 15pc tax, but millionaire migrants will be exempt" (SCMP, 26 July 2016) at *https://www.scmp.com/print/news/world/united-states-canada/article/1994773/foreign-home-buyers-vancouver-hit-hk-style-15pc-tax* [Accessed 14 November 2019].

[103] BC Government, *Homes for BC, A 30-point plan for Housing Affordability in British Columbia* (February 2018) at *https://www.bcbudget.gov.bc.ca/2018/homesbc/2018_homes_for_bc.pdf* [Accessed 14 November 2019].

[104] Property Transfer Tax Act (RSBC 1996) (Cap 378) s.2.01 adopts the definition of "foreign national" as stated in the Immigration and Refugee Protection Act SC 2001 c.27 s.2(1) which states that "foreign national means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person". This 15% additional tax was imposed for transfers within the Metro Vancouver Regional District comprising most of the city.

[105] Property Transfer Tax Act (RSBC 1996) (Cap 378) (the Act) s.2.02. Pursuant to s.3 of the Act, transfer taxes to Canadian nationals or permanent residents are no more than 3% of the property's value (1% of the first C$200,000, 2% for the next C$1.8M and 3% for amounts in excess of C$2M).

[106] Property Transfer Tax Act (RSBC 1996) (Cap 378) s.3.01.

was the introduction of a vacancy tax[107] via the Vancouver Charter read with the Vacancy Tax (Empty Homes Tax) Bylaw 11674.[108] The rule requires Vancouver city home owners to file an annual declaration on the occupancy status of their residential home—owners who fail to file or declare a home empty pay a vacancy tax of 1%[109] of the property's assessed taxable value.

Have these legislative reactions been successful in achieving their stated policy aim of achieving housing affordability? A preliminary assessment would suggest at least some success in this respect. In July 2017, a year after the 15% additional property transfer tax was imposed, the Real Estate Board of Greater Vancouver reported that price growth declined while volume of sales dropped across all segments of the housing market.[110]

In Vancouver, the additional transfer tax applied to transfers to "foreign nationals" excludes permanent residents of Canada, regardless of nationality. The policy has thus been criticised by focusing on whether a buyer was foreign or non-resident instead of whether the money came from overseas, thus downplaying the impact of foreign capital.[111] There are perhaps two ways this policy be tweaked. First, as Gordon has suggested, the emphasis should be on limiting the impact of foreign *capital* brought into Canada by permanent residents, i.e. the additional transfer tax should also apply to such buyers. This could limit the possibility of foreign buyers using permanent residents as the registered owners to hold the property on trust for them. A second possibility would be to adopt a more restrictive definition of a "local", being limited to Canadian citizens only.

Regulation and property rights

Globalisation has led to foreign liquidity playing an increasingly important role in shaping property markets.[112] In all cities, housing scarcity can be a sensitive policy issue when local residents feel outpriced. The tension between attracting capital to a city and its affordability is one which all major cities have to grapple with. The effects of legislation meant to curb foreign investment and thereby increase affordability are, like all policy tools, not always easy to measure, and a robust, long-term quantitative analysis is needed at a city-level to examine the cost-benefits of a policy, including excluding spuriousness. While politicians may be quick to claim credit when changes in law or policy result in lower prices and hence "affordability", unintended ancillary effects must also be considered to avoid only superficial analysis. Apart from Vancouver the rest of the jurisdictions surveyed in this paper do not show a robust, data-driven relationship to justify the policy of enacting additional acquisition tax for foreigners. The emotive and sometimes dramatic language used by lawmakers suggests that in general, politics

[107] Vancouver Charter (SBC 1953) (Cap 55) Pt XXX. Under r.2.3, Bylaw, a property is deemed vacant if it is left unoccupied for six months during the vacancy reference period.

[108] See *https://bylaws.vancouver.ca/11674c.PDF* [Accessed 14 November 2019].

[109] Bylaw r.2.4. Failure to pay the 1% vacancy tax attracts a 5% penalty: Bylaw r.2.7.

[110] A year following the introduction of the 15% additional property transfer tax, Vancouver's composite benchmark of house prices still rose 8.7% but volume declined by 8.2% y-o-y.

[111] I. Young, "Foreign home buyers in Vancouver hit with HK-style 15pc tax, but millionaire migrants will be exempt" (SCMP, 26 July 2016).

[112] L. Wen-Chi, "Foreign liquidity to real estate market: Ripple effect and housing price dynamics" (2015) 52(1) *Urban Studies* 138, 154.

has trumped good policy making. Perhaps one exception is Queensland, which acknowledged that the purpose of its tax is to help first-time homebuyers.

Of course, politicians may not necessarily routinely make sound policy and legislative changes based on hard data. Where property is concerned however, perhaps one should expect, if not hope, for very cogent reasons when rights are affected. It should be recognised that any change in policy affecting the transfer of property amounts to a certain extent, imposition of *property* itself. From an economic perspective, property is a bundle of rights, though all governments impose regulations limiting what can be done to or on land.[113] Notwithstanding, as property tax rates increase, the logical conclusion is that regulation shades into appropriation of property at a certain point. Sometimes governments realise this and have to make reversals of policy. For instance, Sri Lanka imposed in 2004, a 100% tax on foreigners buying property in the country, citing fears of foreigners buying up prime beachfront hotels and bungalows. In 2011, on the basis to "promote foreign investment and tourism", the tax was scrapped.[114] No doubt, the imposition of punitive transfer taxes distorts the free market. Property prices are determined by the interaction of supply and demand in the market, with the price mechanism operating to return supply and demand to a state of equilibrium.[115] Ball, Lizieri and MacGregor find that, for equilibrium to be feasible, "buyers and sellers must be able to use the full available information when making their decisions and operate according to the arguments of their demand and supply schedules".[116] As Rapaczynski notes, the biggest threat to private property rights is often the State itself.[117]

Conclusion

From a macroeconomic perspective, the policy responses by the jurisdictions surveyed do not appear unreasonable: China is the largest international property investor in the world, having grown about 25-fold from 2010–2017 alone. This paper however *does not* argue that Chinese investors are never the cause of housing affordability issues. The point made is that if a particular nationality is specifically highlighted by a country's lawmakers to justify the enactment of a law, there ought to be specific data or evidence to back this up.

In four out of six of the surveyed jurisdictions (Victoria, New South Wales, New Zealand and Toronto), comments by parliamentarians suggest that it is the mere *belief* that Chinese investors affect housing affordability that precipitated legislative change, despite no or even opposing data shown. Unhelpful, sensational headlines such as "Country is at risk of becoming the 24th province of China"[118]

[113] E. Ti, "Compensating regulation of land: UK and Singapore compared" (2019) 11(2) *Journal of Property, Planning and Environmental Law* 135–50.

[114] B. Sirimanna, "100% land sale tax for foreigners to be scrapped" *Business Times* 18 September 2011 at *http://www.sundaytimes.lk/110918/BusinessTimes/bt01.html* [Accessed 14 November 2019].

[115] D. Adams, N. Dunse and M. White, "Conceptualising State-Market Relations in Land and Property: The Mainstream Contribution of Neo-Classical and Welfare Economics" in D. Adams, C. Watkins and M. White (eds), *Planning, Public Policy & Property Markets* (Blackwell Publishing, 2005), 19.

[116] M. Ball, C. Lizieri and B. MacGregor, *The Economics of Commercial Property Markets* (Routledge, 1998), 63.

[117] A. Rapaczynski, "The Roles of the State and the Market in Establishing Property Rights" (1996) 10(2) *Journal of Economic Perspectives* 87, 92.

[118] A. Carey, "Fears one million Aussie homes could soon be owned by foreign buyers" news.com.au 16 February 2019 at *https://www.news.com.au/finance/real-estate/buying/fears-one-million-aussie-homes-could-soon-be-owned-by-foreign-buyers/news-story/c50a4112bab4f3ed8fae27277f313f54* [Accessed 14 November 2019].

are seen in major newspapers, often times with limited analysis on whether the underlying causal relationship is shown.

Housing policy is deeply complex, and this paper does not suggest that jurisdictions should not have the liberty to impose enhanced taxation on foreigners. Indeed, it is conceded that foreign buyers (including the Chinese) may leave their investment homes empty and unused homes certainly do not benefit a city's flourishing. A vacancy tax that applies uniformly to all owners but has a greater effect on foreign buyers appears to be more palatable than one that specifically targets foreigners. Respectfully, I would suggest that regulations targeting foreigners should be minimally backed by data. Local residents concerned about Chinese buyers should not be advised to "simply get over it"[119]—advice which implicitly assumes that Chinese buyers have in the first place, been the cause of housing unaffordability. As an Australian MP wisely observed, allowing anti-foreigner sentiment to fester has the potential to disintegrate social fabric.[120] *Hansard* records of the State of Victoria state that the only purpose of the additional transfer tax on foreigners is to fund help-to-buy housing policies. This is far healthier than politicians who permit, or worse, encourage beliefs relating to Chinese buyers which is not positively borne out by the data.

Appendix

Jurisdiction	**Details of Measure**	**Year**
Australia (Federal)	Annual vacancy tax (A$5000)	2017
	FIRB application + fees	
	Foreigners limited to buying new homes	
Victoria	8% foreigner stamp duty	2019
	2% Absentee land tax	2018
New South Wales	8% foreigner stamp duty + 2% annual foreign owner land tax	2017
Queensland	7% additional foreigner acquirer duty	2018
South Australia	7% foreigner ownership surcharge	2018
Tasmania	3% foreign investor duty surcharge	2018
Western Australia	7% foreign buyer's duty	2019
New Zealand (Country wide)	Foreign nationals (excepting NZ permanent residents, Australian citizens & PRs and Singapore citizens & PRs) are not permitted to buy residential real estate, exception is off-plan condominiums with more than 20 units	August 2018
British Columbia	15% foreigner transfer tax in most parts of + 20% foreigner transfer tax in core central parts	2017/2018

[119] B. Brook, "Get over it: Bob Carr's advice to prospective homeowners concerned about Chinese buyers" news.com.au 5 July 2019 at *https://www.news.com.au/finance/economy/get-over-it-bob-carrs-advice-to-prospective-homeowners-concerned-about-chinese-buyers/news-story/b9f053eb0bd99e20412a2b628133bb87* [Accessed 14 November 2019].

[120] J. Clare MP, *Ministerial Statements—Investment Statement 2018* (Hansard, House of Representatives, 20 August 2018) at *https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/66d5616d-41f7-432b-b370-a62012124e44/&sid=0194* [Accessed 14 November 2019].

Jurisdiction	**Details of Measure**	**Year**
Ontario	1% vacancy tax 15% foreigner transfer tax applicable to dwellings purchased within the Greater Golden Horseshoe on residential land containing 1-6 single residential homes	2017