



This chapter discusses the approach to compliance by FIRB agencies and the work underway to provide strengthened assurance that foreign persons are meeting their obligations, including education and stakeholder engagement, audits and investigations, and the imposition of penalties under the *Foreign Acquisitions and Takeovers Act 1975* (the Act).

Compliance approach

Compliance activities support the integrity of the foreign investment framework by providing strengthened assurance that foreign persons are meeting their obligations while minimising the regulatory burden on investors.

Treasury is responsible for compliance and enforcement activities in relation to business, agricultural, and some commercial land investments, while the ATO is responsible for compliance and enforcement activities in relation to residential real estate and some commercial land investments.

In undertaking compliance work, FIRB agencies use a risk-based approach. We aim to achieve a balance between providing assurance, detecting and remedying non-compliance, and limiting the impact on foreign persons who are doing the right thing.

Compliance activities undertaken by FIRB agencies include:

- identifying and analysing compliance risks, such as failing to notify or failing to meet the conditions imposed on an investment;
- compliance assurance activities, such as compliance audits;
- analysis of data and trends, such as monitoring shareholding activities and property sales for ownership changes; and
- formal investigations.

Foreign investment compliance and enforcement activities are also supported by other regulatory regimes and specialist advice from other entities, including Australian Government regulatory agencies as required. Also, some conditions require the foreign person subject to the conditions to engage professional auditors to audit their compliance with their conditions.

In 2017-18, FIRB agencies supported the Australian National Audit Office in the completion of a performance review into the *Management of foreign investment compliance obligations for residential real estate*. The final report, tabled in June 2018, was largely positive about the processes implemented by the ATO to manage compliance. There are additional improvements being made as a result of the report. Further information on the report, and the work underway to address the recommendations, is included at page 17.

Education and promotion

The Board and FIRB agencies undertake numerous activities to educate and provide information to individuals and organisations affected directly and indirectly by the foreign investment framework to ensure foreign persons and related parties understand and meet their foreign investment obligations.

During 2017–18, education activities undertaken by FIRB agencies included:

- regular meetings with key stakeholders;
- presentations at industry forums and seminars;
- publishing of guidance material on the FIRB’s website; and
- responding to written enquiries and phone calls to the FIRB agency hotlines.

Specific activities designed to assist foreign persons to understand and meet new obligations introduced during 2017–18 were also undertaken by the ATO. This work has included live webinars and face-to-face visits with foreign investment advisers on the introduction of the Water Entitlements Register and vacancy fees for residential property.

Further information on the Board's engagement activities are available in Chapter Two: The Foreign Investment Framework and in Regulator Performance Framework (RPF) reports.¹⁶

Penalties and enforcement powers

The foreign investment laws include criminal and civil penalties for non-compliance. These apply to a range of breaches in the legislation, including failing to notify investments which fall within relevant screening thresholds, or not complying with conditions on investments or an order made by the Treasurer. The Treasurer may also order a foreign person to dispose of interests in assets, land or securities, in cases of serious and / or deliberate non-compliance. Other penalties can also be applied to third parties who knowingly assist foreign persons to breach the rules.¹⁷

Additional civil penalties can apply to residential land acquisitions, including requiring a foreign person to forfeit capital gains made on divestment of a property and infringement notices for less significant breaches of the Act, including in circumstances where:

- the foreign person makes a full disclosure of the breach before it is detected;
- a breach occurs, and approval would have been granted had the foreign person given prior notice; or
- the foreign person has inadvertently breached a condition of an existing foreign investment approval, but would have received approval had they applied to vary the condition.

These provisions are designed to deter non-compliance and support the integrity of the foreign investment framework.

Treasury compliance activities in 2017–18

In September 2017, the Treasury announced enhanced compliance arrangements for applications screened by Treasury. Since then, work has been underway to build a compliance framework to systematise compliance work under the Act.

Treasury has undertaken compliance risk analysis work and established clearer enforcement processes. This work has guided the development of a compliance assurance program, which includes compliance audits.

In 2017-18, Treasury piloted a compliance audit program. The audit targets were identified through the application of the compliance risk framework and consideration of the national

¹⁶ Available on the FIRB website.

¹⁷ This refers to both the Act and other applicable legislation.

interest, and to test implementation of policy and systems. The pilot, which included eleven compliance audits covering over \$25 billion of proposed investment, is now complete. Treasury has now established an annual audit program against the compliance risk framework. The audit program was complemented by other compliance activities, such as reviews of identified compliance risk areas.

These activities have demonstrated that foreign investors are largely meeting their obligations and, to date, have not identified compliance issues warranting enforcement action. Treasury continues to work with foreign investors to ensure they can meet their compliance obligations.

Treasury has also strengthened its systems for handling and recording compliance activity, including establishing clearer enforcement policies and guidance, and building compliance information into its new case management system (see page 20 for more details on the related new FIRB Application Portal).

With the ATO, the Treasury has established the Cross-Agency Foreign Investment Compliance Forum. The Forum met twice in 2017-18, bringing together senior representatives of all agencies that have a role in supporting compliance with the Act. The strategic conversations enabled by the Forum will support the continuing strengthening of the compliance system that underpins the Act.

Strengthening future compliance

FIRB agencies continue to make improvements to foreign investment compliance activities, to balance supporting the integrity of the foreign investment framework with not imposing unnecessary regulatory burden on investors.

Treasury is using information generated by the work to implement enhanced compliance arrangements to drive further improvements to foreign investment processes, including the use and development of conditions imposed on investors to mitigate risks to the national interest.

Work is also underway to better understand areas of compliance risk and apply system information and market intelligence to improve monitoring of foreign investment compliance, including monitoring investors who fail to apply.

For the ATO, process enhancements underway include the implementation of the recommendations of the Australian National Audit Office (ANAO) report, *Management of compliance with foreign investment obligations for residential real estate*, tabled in June 2018 (see Chapter Two: The Foreign Investment Framework).

The ATO is also compiling an overarching compliance and enforcement strategy document and implementing outstanding data matching rules to aid the detection of key compliance risks.

Residential real estate compliance activities

Since December 2015, the ATO has been responsible for managing residential real estate applications and associated compliance work. In April 2017, the ATO assumed several additional responsibilities, including the screening of applications and compliance work for non-sensitive commercial real estate and corporate reorganisation cases.

The data reported in this section is based on residential real estate compliance investigations undertaken by the ATO from 1 July 2017 to 30 June 2018.

During 2017–18, 1,710 cases¹⁸ were identified for investigation (up from 1,669 cases in 2016–17). Of these, 1,404 investigations were completed (1,409 in 2016–17), which identified 600 properties that were in breach of Australia’s foreign investment rules (up from 549) (see Table 4.1).

Table 4.1: Residential real estate compliance investigations in 2016–17 and 2017–18

Investigations	2016-17	2017-18
	No.	No.
Identified	1,669	1,710
Completed	1,409	1,404
Properties in breach	549	600

Outcomes of 2017–18 residential property investigations

Compliance investigations considered a broad range of residential property acquisitions and identified varying severity of breaches. Identified breaches included:

- failure to seek approval before the purchase of a property;
- failure to sell an established property once the owner’s temporary resident visa expired;
- temporary resident visa holders owning more than one established property;
- Australian companies and trusts controlled by foreign persons owning established properties;
- failure to comply with the conditions of an approval, such as not adhering to the requirement to use a property as a principal place of residence, renting out a dwelling or failing to commence construction or redevelopment of the property within specified timeframes; and
- failure to undertake certain actions within a specified period.

¹⁸ This figure includes 260 new cases that were identified in 2016–17 but carried forward into 2017–18 to be actioned.

Where a breach was identified, outcomes included divestment, retrospective approval and variation of conditions. As outlined in the below table, over a fifth of identified breaches resulted in a divestment outcome. As a percentage of the total number of breaches, this was an increase of four percentage points from 2016-17 (see Table 4.2 for further details on these outcomes). In most circumstances (approximately 72 per cent of outcomes), an infringement notice, which imposes a financial penalty on a foreign person, was applied to breaches even if the application was subsequently given approval or conditions of approval changed. Infringement notice data is reported in Table 4.5

Table 4.2: Outcomes of residential real estate investigations that identified breaches in 2016–17 to 2017–18

Compliance outcome	2016–17		2017–18	
	No.	Percentage	No.	Percentage
Divestment (a)	96	17.4	131	21.8
Retrospective approval (b)	133	24.2	102	17.0
Change of conditions (c)	93	16.9	177	29.5
Retrospective approval during FIRB consideration (d)	227	41.3	190	31.7
Total outcomes	549	100.0	600	100.0

- (a) Refers to situations where a foreign person has voluntarily disposed of a property following a breach, including during an investigation, and where a formal disposal order was issued under the Act.
- (b) Refers to situations where approval is provided after the property has been purchased. Retrospective approval may be given when the foreign person failed to seek foreign investment approval but would have received approval had they submitted an application before acquiring the property. Retrospective applications remain liable to pay the relevant application fee and an infringement notice.
- (c) Refers to situations where conditional approval has previously been provided but the foreign person is not able to comply with their conditions and they are subsequently varied. For example, where an application had development conditions imposed and these were not able to be met due to delays in local government approval, and so the development conditions may be varied to extend the time permitted. Where appropriate, an infringement notice is also issued in these situations for failure to comply with conditions.
- (d) Refers to situations where a foreign person is seeking approval to acquire an interest in property and it is identified during the foreign investment screening process that they had already acquired an interest in the property in question. Where appropriate, an infringement notice is also issued in these situations for failure to seek approval before acquiring an interest in the property.

Notes: Retrospective approval and retrospective approval during FIRB consideration numbers are also included in the residential approvals numbers in Chapter Three: Applications Data.

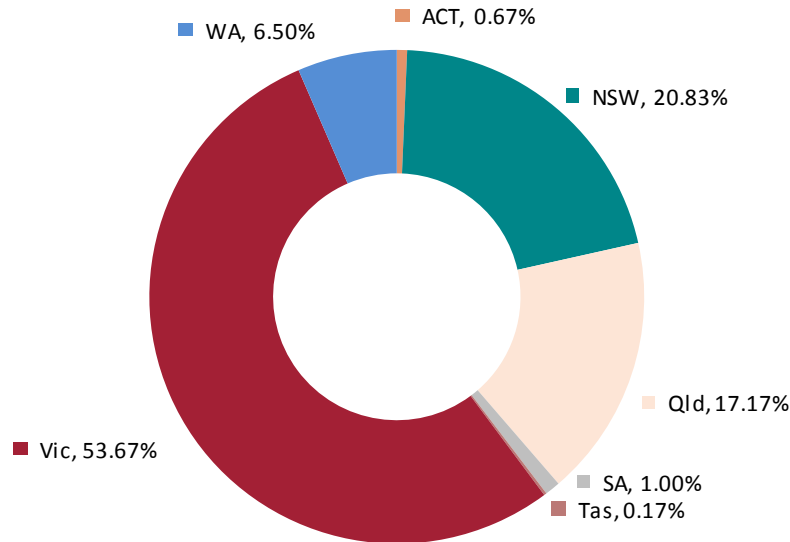
Change of conditions numbers are also included in the residential variation numbers in Chapter Three: Applications Data.

Percentage totals may not add due to rounding.

Breaches by location

More than half the breaches identified by compliance investigations related to residential property in Victoria, while 20 per cent related to property in New South Wales.

Chart 4.1 shows the geographic distribution of properties that were found to be in breach of the foreign investment rules in 2017–18.

Chart 4.1: Location of residential real estate breaches identified in 2017–18

Note: This Chart does not add to 100 per cent due to rounding.
No properties were found in breach in the Northern Territory. The Northern Territory had only a proportionately small number of residential real estate approvals for the period.

Investigations by source

The ATO identifies properties for investigation using a range of sources including community information, data matching and self-disclosures (see Table 4.3).

Table 4.3: Source of residential real estate cases in 2016–17 to 2017–18

Source of case (a)	2016–17		2017–18	
	No.	Percentage	No.	Percentage
Community information	349	20.9	256	15.0
Data matching	1,093	65.5	1,090	63.7
Self-disclosure	100	6.0	288	16.8
Other referrals	127	7.6	76	4.4
Total received (b)	1,669	100.0	1,710	100.0

(a) Community information are cases for which information was received from the community. Data matching are cases which were identified using ATO data matching sources. Other referrals cases are collected through internal ATO referrals (includes cases escalated to litigation) and referrals received from other government agencies or media reports.

(b) The total number of received cases includes new cases identified in the prior financial year which remained open at the end of that financial year. In 2016–17 there were 554 cases carried forward from 2015–16 and in 2017–18 there were 260 cases carried forward from 2016–17.

Notes: Percentage totals may not add due to rounding.

ATO data matching analysis is an increasingly important source of information used in compliance investigations. Data matching made up over 63 per cent of the 1,710 cases identified for investigation in 2017–18. Although information received from the community is a source of intelligence for the ATO, only a small proportion of investigations arising from

community information actually involved a breach of the Act. In most cases, the owners of the properties reported by community members were found to be Australian citizens or permanent residents and were therefore exempt from the Act.

Table 4.4: Outcomes of completed residential real estate investigations in 2016–17 to 2017–18, by source

Source	2016–17		2017–18	
	No. of completed investigations	No. of breaches	No. of completed investigations	No. of breaches
Community information	303	34	228	37
Data matching	929	430	866	370
Self-disclosure	79	74	249	175
Other referrals	98	11	61	18
Total	1,409	549	1,404	600

Note: The number of completed investigations and the number of breaches are not directly comparable. The number of breaches is reported by residential property and the number of completed investigations by case. There may be multiple properties involved in a case or multiple cases per property in the event of joint owners.

Infringement notices

There are two levels of infringement notices which impose different financial penalties on a foreign person. A tier 1 infringement notice may be issued where a foreign person notifies of a breach before an infringement notice is issued, while in cases where the ATO identifies a breach as a result of compliance activity, a tier 2 infringement may be issued.

Table 4.5: Infringement notices issued in relation to residential real estate, 2016–17 to 2017–18

Penalty type	2016–17		2017–18	
	No.	Total value \$	No.	Total value \$
Tier 1 infringement	349	924,540	347	1,001,080
Tier 2 infringement	68	820,800	82	1,175,400
Total	417	1,745,340	429	2,176,480

Notes: Tier 1 infringement notices are issued where the breach is self-disclosed.
Tier 2 infringement notices are issued where the breach is identified by the ATO's compliance activity.
The infringement notice regime was introduced on 1 December 2015. Infringement notices cannot be issued for breaches that occurred prior 1 December 2015, even if the breach was detected after that date.