



**Australian Government**  
**Foreign Investment Review Board**

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## **REGULATOR PERFORMANCE FRAMEWORK**

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# **Administration of Australia's Foreign Investment Framework**

**REPORT 2018-19**

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# INTRODUCTION

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In 2014, the Australian Government established the Regulator Performance Framework (RPF) to encourage Commonwealth regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change within regulators.

Under the RPF, regulators must undertake an annual self-assessment of their performance using the following six key outcomes-based performance indicators (KPIs).

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in dealing with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

## INTRODUCTION TO AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK

Australia's Foreign Investment Framework (the framework) encompasses the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and supporting legislation and regulations. Under these, foreign investment applications are assessed on a case-by-case basis according to whether or not they are contrary to the national interest. Applications are generally approved as the Government aims to maximise investment flows, without compromising the national interest. Where a proposal raises national interest concerns, the Treasurer may:

- approve the application with conditions;
- block the proposal; or
- require a foreign person to dispose of real estate or share interests, or terminate an arrangement, if an unapproved transaction has already been completed and is contrary to the national interest.

The Act also contains a range of compliance powers.

The Foreign Investment Division (FID) in the Department of the Treasury (the Treasury), the Australian Taxation Office (ATO) and the Foreign Investment Review Board (FIRB) have the primary responsibility to examine foreign investment applications and provide advice on national interest considerations. Treasury and the ATO are collectively referred to in this report as 'FIRB agencies'.<sup>1</sup>

The Treasury is primarily responsible for the day-to-day administration of the framework in relation to business, agricultural land and sensitive or complex commercial real estate investments. The Treasury is

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<sup>1</sup> Information on the FIRB and FIRB agency operational costs for a financial year is included in the FIRB Annual Report for the financial year. For more information on the FIRB and the framework see [www.firb.gov.au](http://www.firb.gov.au).

also responsible for providing advice on Australia's foreign investment policy and progressing legislative changes where required.

The ATO administers foreign investment for residential real estate, as well as non-sensitive commercial real estate (vacant and non-vacant) and corporate reorganisations, and the development and maintenance of foreign ownership registers.<sup>2</sup> It is also responsible for the collection of all foreign investment application fees.

The FIRB is a non-statutory advisory body. Its role is to:

- examine proposed investments that are subject to the Act and make recommendations to the Treasurer and other Treasury portfolio ministers on the national interest implications;
- provide advice on the operation of the framework and related matters;
- foster awareness and understanding, both in Australia and abroad, of Australia's foreign investment policy;
- provide guidance to foreign persons and their representatives or agents on the operation of the framework; and
- monitor and ensure compliance with the framework.

FIRB agencies consult with Australian Government departments, state and territory government departments, national security agencies and other authorities with responsibilities relevant to proposed investments. Advice and comments provided by these consultation partners are important in assessing the implications of proposed investments and, in particular, determining whether they raise any national interest issues.

## ASSESSING PERFORMANCE

This report is a self-assessment of the administration of the framework against the RPF and assesses activities against the six KPIs for the 2018-19 financial year. This report does not seek to address all aspects of regulator performance. The RPF requires that a self-assessment report is externally validated through an approved stakeholder mechanism prior to its release and publication. The Foreign Investment Committee of the Law Council of Australia (the Law Council) is the stakeholder mechanism that externally validates the self-assessment for the framework. The Law Council was consulted on this report.

## METRICS TO SUPPORT ASSESSMENT

In 2015, FIRB agencies agreed to a set of 'measures of good regulatory performance' to operationalise the six RPF KPIs. The measures identify several actions that FIRB agencies anticipated would deliver the RPF KPIs. FIRB agencies assess the achievement of these measures using 'activity-based evidence and metrics'.<sup>3</sup>

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<sup>2</sup> To provide greater transparency of foreign ownership in Australia, the Government has established agricultural land and water entitlements foreign ownership registers. These are discussed further in section 5.3 of this report. The foreign ownership of Australian media interests register administered by the Australian Communications and Media Authority provides an electronic, publicly available register of foreign owners of media assets.

<sup>3</sup> The measures of good performance, and corresponding evidence metrics, were published on the FIRB website in 2015 and are at: <https://firb.gov.au/about-firb/regulator-performance-framework>.

The 2018-19 self-assessment draws on quantitative and qualitative information to evaluate performance against the KPIs. The quantitative information includes feedback received in Treasury's 2018-19 Foreign Investment Stakeholder Survey (stakeholder survey) and consultation records ([Appendix A and B respectively](#)).<sup>4</sup> Qualitative information includes ongoing feedback obtained from investors, their advisers and other stakeholders throughout the year. It also encompasses feedback obtained through the stakeholder survey.

The stakeholder survey was sent to 326 primary contacts for foreign investment applications that Treasury received for the 2018-19 financial year. Eighteen responses were received. Each quantitative question in the survey was assessed on a five point scale, centred on a neutral response. In addition, there were questions that offered respondents the opportunity to comment on aspects of FIRB agencies' performance. Survey respondents were offered a follow-up discussion about their regulatory experience interfacing with the framework.

As a result of the low survey response rate, it is acknowledged that references to the survey outcomes in this report may not necessarily represent the views of a broad cross section of stakeholders and they should be viewed with this in mind. Improving the response rate in the stakeholder survey is a priority area for 2019-20.

## OVERALL ASSESSMENT

While the overall assessment in this report is that the KPIs were met during 2018-19, a number of issues have been raised by stakeholders regarding the administration of the foreign investment framework which require attention over the coming reporting periods. Case processing times continue to be a key concern as well as the process for agreeing and finalising conditions which are designed to mitigate national interest concerns. Stakeholders have also raised the need for appropriate resourcing and support for staff in FIRB agencies to ensure they are equipped to manage the complexity of the foreign investment framework.

These issues will be key priorities for FIRB agencies in 2019-20. In particular, key priorities will be:

- reviewing Treasury's business processes and implementing more systematic arrangements to case processing;
- improving processes for applying conditions;
- enhancing avenues for formal and informal engagement, including stakeholder feedback, and increasing survey response rates; and
- continuing to build cross agency understanding of national interest risks in key sectors of the economy.

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<sup>4</sup> For other statistics and data on the administration of the framework, including applications considered and compliance data, see the FIRB Annual Report.

This work will build on the priorities identified in the 2017-18 RPF self-assessment. These are outlined below, as well as comments on actions against each item. Work is still required in the areas noted below to embed improvements to how FIRB agencies undertake their activities.

Priority for 2017-18	Action taken
Improving the timeliness of advice and application processing times.	<ul style="list-style-type: none"> <li>Treasury has been working with consultation partners to achieve more consistency in the conditions imposed on applications. This is expected to help reduce the time required to agree on and draft conditions, thereby helping to reduce application processing times.</li> </ul>
Encouraging early engagement with FIRB agencies.	<ul style="list-style-type: none"> <li>A range of meetings were held with both vendors and potential investors prior to any sales or application process commencing. This assisted in building an understanding of upcoming transactions and identifying any possible national interest considerations.</li> </ul>
Enhancing compliance capability.	<ul style="list-style-type: none"> <li>Treasury increased resources dedicated to the compliance function and has invested in the development and implementation of strengthened compliance assurance.</li> <li>Treasury has engaged with investors and other stakeholders to enhance compliance capability. For example, a cross agency compliance forum attended by 15 consultation partners was held in November 2018.</li> </ul>
Working with stakeholders to balance commercial deadlines against the robust review of applications under the framework.	<ul style="list-style-type: none"> <li>Treasury liaised closely with investors and their advisers so there was a good understanding of the likely timeframes for completion of applications. To facilitate the process, Treasury engaged with Government agencies to build a strong understanding of the foreign investment system and press the importance of receiving timely comments on applications.</li> </ul>
Developing customer service standards for the handling of phone and written enquiries against which to assess our performance.	<ul style="list-style-type: none"> <li>Treasury undertook analysis of written enquiries and embedded processes to manage telephone enquiries.</li> </ul>
Liaising with consultation partners to improve their understanding of the framework and assist them in providing advice in a timely manner on applications relevant to their areas of responsibility and expertise.	<ul style="list-style-type: none"> <li>The Cross Agency Compliance Forum is a key engagement activity with consultation partners to lift an understanding of compliance frameworks and approaches.</li> <li>Treasury held the Foreign Investment Insights Day on 15 May 2019, attended by colleagues from around 20 consultation partners.</li> <li>In April and May 2019, Treasury met with all state and territory consultation partners to discuss ways to better streamline inputs to FIRB processes and to better understand the pressures they are under.</li> <li>Senior level meetings of consultation partners and other Australian Government representatives were held monthly.</li> </ul>

# SELF-ASSESSMENT OF PERFORMANCE

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## KPI 1 – REGULATORS DO NOT UNNECESSARILY IMPEDE THE EFFICIENT OPERATION OF FOREIGN INVESTORS

Measures of good regulatory performance
1.1 Demonstrate an understanding of the operating environment of the industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector
1.2 Minimise the potential for unintended negative impacts of regulatory activities on foreign investors
1.3 Implement continuous improvement strategies to reduce the costs of compliance for foreign investors

### SELF-ASSESSMENT

#### *1.1 Understanding of the operating environment and emerging issues*

Understanding the operating environment through year-round stakeholder engagement was a significant focus of 2018-19. Treasury convened 317 events in 2018-19 with a broad range of stakeholders, including investors and their advisers. The ATO conducted eight stakeholder events. These facilitated direct discussions on industry sectors and emerging issues both in Australia and abroad. A summary of FIRB agencies' stakeholder engagement activities can be found at Appendix B.

Engagement with investors and their advisers provides FIRB agencies with a deeper understanding of the global business environment and commercial drivers of mergers and acquisitions. It also allows FIRB agencies to explain Australia's framework, including the process for making an application, the approach to national interest considerations, the use of conditions and possible timing considerations, particularly where a transaction relates to assets in sensitive sectors such as critical infrastructure.

In 2018-19, Treasury's Foreign Investment Division continued to build its representation in the Sydney office, which currently stands at eight staff. This presence in Australia's commercial hub has allowed closer and more regular engagement with the private sector.

Treasury has also undertaken a number of in-depth market analyses of specific industries to inform its consideration of foreign investment applications.

In the 2019-20 Budget, handed down in April 2019, Treasury and other Australian Government agencies were funded to undertake work to identify and assess national interest issues (particularly national security risks) arising from foreign investment at the sectoral level. This work will build an understanding of the current state of, and emerging issues in, critical sectors of the economy.

With specific reference to the introduction of the vacancy fee in 2017, the ATO continued to refine its information for affected foreign investors through its website and communication with clients. In addition, the ATO conducted 40 one-to-one sessions with stakeholders and intermediaries to explain the vacancy fee initiative, using fact sheets in English and Chinese, in order to minimise the potential for unintended negative impacts of regulatory activities on foreign investors.

## ***1.2 Minimising the potential negative impact of regulatory activities***

A number of respondents to the stakeholder survey provided feedback on the importance of applications being processed within statutory timeframes. Processing times varied depending on the application type and, for real estate applications, the type of land proposed to be acquired. Data for 2018-19 indicates that the median application processing time for Treasury was 45 days. This outcome generally reflects sensitive or significant applications which require in-depth analysis and the need to be informed by expert input from consultation partners. For the ATO, the 2018-19 median application processing time was nine days for residential applications and 23 days for non-sensitive commercial applications.

FIRB agencies work closely with consultation partners to foster mutual understanding of the framework, details of transactions, emerging issues and timing imperatives. Continued work on increasing the certainty of conditions in, for example, healthcare, data and governance has assisted in more timely completion of complex applications.

83 per cent of survey respondents said the quality of interactions with FIRB agencies during the application process, including the impact on the need to meet commercial deadlines, was excellent or good. They did however note that there were a number of issues which impacted on case processing times, including the negotiation of conditions which often resulted in the extension of the statutory deadline, in some cases multiple times.

## ***1.3 Implementing continuous improvement strategies to reduce cost of compliance***

FIRB agencies are committed to continuous improvement and responding to feedback from stakeholders. For example, following feedback regarding the difficulties in lodging applications, in July 2018, a new Application Portal (the portal)<sup>5</sup> went live. This is a web-interface system that enables the electronic submission of applications for foreign investment. Enhancements to the portal allow applicants to save partially completed applications, add multiple contacts and submit a proposal covering multiple actions under one agreement as one application. These enhancements were made to simplify the submission process and increase visibility and management of applications.

In April and May 2019, Treasury convened its Insights Day and held face to face meetings with all state and territory consultation partners. These were opportunities to build knowledge about the framework, convey investor views about its administration and discuss ways to better streamline inputs to FIRB processes. Treasury officers also met with a range of industry peak bodies and law firms to receive feedback on FIRB processes and how Treasury can perform its role more effectively.

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<sup>5</sup> Treasury developed Reference Guides on these topics have been developed and are available at <https://firb.gov.au/guidance-resources>.

## KPI 2 – COMMUNICATION WITH FOREIGN INVESTORS IS CLEAR, TARGETED AND EFFECTIVE

Measures of good regulatory performance
2.1 Provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience
2.2 Consider the impact on foreign investors and engage with industry groups and representatives of the affected stakeholders before changing policies, practices or service standards
2.3 Provide decisions and advice in a timely manner, clearly articulating expectations

### SELF-ASSESSMENT

#### *2.1 Provision of guidance and information*

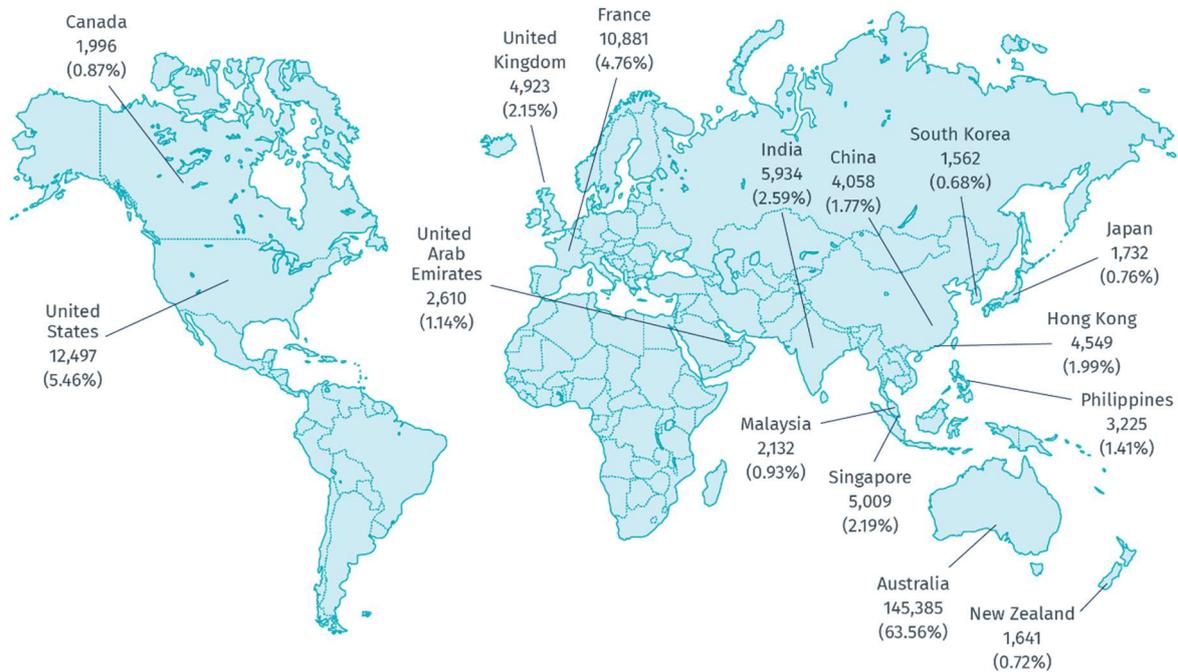
In 2018-19, 228,727 people accessed the FIRB website. To assist foreign investors to comply with their obligations under the framework, updates to the FIRB website are made regularly to ensure public information is clear, relevant and transparent. This included publishing information regarding how applications would be treated during the caretaker period following the announcement of the May 2019 Federal Election. Information was also published on the website regarding changes to foreign investment application fees for the coming financial year.

89 per cent of 2018-19 stakeholder survey respondents indicated they were satisfied with the guidance communicated on the FIRB website.

In addition to using the website as a key vehicle to convey information and guidance to current and prospective investors, Treasury harnesses Austrade, Australian diplomatic missions and international Treasury posts to disseminate information and facilitate direct interactions with investors. Treasury also has a number of regular publications which provide updated information including: Australia's Foreign Investment Policy statement, guidance material, legislation and supporting materials, the FIRB Annual Report, ministerial media releases and FIRB website subscriber updates.

The ATO uses webinars to convey key information to investors. During the year the ATO conducted three webinars on the vacancy fee, which were published on ATO Live and attended by 1,285 individuals. A further webinar targeted to developers using New Dwelling Exemption Certificates for foreign purchasers was conducted with 76 attendees.

**Figure 1: Top 15 countries by number of users accessing the FIRB website in 2018-19<sup>6</sup>**



Source: FIRB website statistics 2018-19

**2.2 Consider impact on investors and engage with industry groups and stakeholders before changing policies, practices or standards**

Only limited changes were made to policies, practices or standards in the reporting period. In September 2018, the Government announced it had revised its guidance on how it applies the Australian opportunity policy. This revision was made following consultations by Treasury with a number of key stakeholders.

For the ATO, the Foreign Investment Program Stakeholder Group develops and maintains ongoing relationships with business and industry representatives to obtain feedback on the ATO’s administration of the foreign investment reforms. Meeting bi-annually, the group use their specialist knowledge and experience to help build a clearer and mutual understanding of the foreign investment system as administered by the ATO.

The ATO conducted presentations throughout the year to conveyancer bodies, tertiary education institutions, law firms and The Tax Institute and attended Property Expos. These sessions provided

<sup>6</sup> This diagram shows the top 15 sources of website users by country based on known IP addresses and accounts for 90.98 per cent of total users. A ‘user’ for the purposes of this diagram is a first time user during the period. There were 228,277 such users from 209 countries during 2018-19. Location is allocated based on the recorded IP address. However, 0.24 per cent of IP locations were unknown (these have not been excluded from the above total user number). China excludes Special Administrative Regions and Taiwan. The FIRB website includes users who are subsequently directed to foreign investment specific content on the ATO website.

guidance and information on the ATO's administration of the vacancy fee and approach to conducting compliance in the residential real estate sector.

### ***2.3 Decisions communicated in a timely manner***

Decisions under the Act must be communicated to the applicant no later than 10 days after the decision was made. In 2018-19, decisions were communicated within this stipulated timeframe.

As noted in relation to KPI1, there can be delays in processing applications particularly in relation to sensitive matters. Application processing times will continue to be a key area of focus going forward.

## KPI 3 – ACTIONS UNDERTAKEN BY REGULATORS ARE PROPORTIONATE TO THE REGULATORY RISK BEING MANAGED

Measures of good regulatory performance
3.1 Apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions. Recognise the compliance record of foreign investors
3.2 Consider all available and relevant data on compliance

### SELF-ASSESSMENT

#### *3.1 Risk based approach to compliance obligations, engagement and enforcement actions*

Treasury is responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and commercial land proposals. In 2018-19 Treasury increased its compliance capability to seven staff. The ATO is responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and some commercial land proposals.

Foreign investment applications are assessed according to whether or not they are contrary to the national interest. Where national interest concerns are identified, conditions may be applied to mitigate those concerns and allow the investment to proceed.

Treasury works closely with consultation partners to tailor conditions so that they are proportionate and designed to mitigate the identified risks. Applicants and their agents are given an opportunity to comment on any conditions prior to them being recommended. Feedback in the stakeholder survey regarding the use of conditions varied. Some respondents queried whether conditions were in fact necessary given that tax legislation and/or the *Corporations Act 2001* contains obligations which could address identified risks. Others questioned whether there was clarity on the purpose and intent of conditions.

More broadly, the introduction of an annual rolling audit program in 2017 has been integral to enhancing Treasury's approach to compliance. In undertaking compliance audits, Treasury uses a risk-based approach to audit target selection. This approach considers issues such as the nature of conditions imposed on an investment proposal, the impact of non-compliance on the national interest and indicators of potential non-compliance. The results of the audit program have indicated that investors are generally meeting their obligations. In instances where investors have been found to be non-compliant or partially compliant, Treasury works with them to bring them into compliance. Stakeholder feedback raised that the external audit process could be improved if auditors had greater familiarity with the application process and the intent of conditions against which they are assessing compliance. As the audit process matures, auditors will develop greater familiarity with conditions and their intent. In addition, Treasury is focusing on improving the wording of conditions to ensure they are clear on their face and is working with auditors to ensure they understand the background and intent of conditions. Treasury will convene annual audit round tables to address issues such as these.

The Act provides a number of powers to enforce the foreign investment rules, including criminal and civil penalties for non-compliance. Penalties may be applied for breaches of the Act, including where a foreign person fails to notify investments that fall within screening thresholds, or breaches of a condition imposed on an investment. Penalties under the Act are designed to deter non-compliance, support the integrity of the framework, and ensure the national interest is safeguarded. In general, Treasury will work with foreign

investors to achieve compliance in cases where non-compliance is inadvertent, self-reported by the foreign investor, the breach is administrative, and the investor is willing to remediate the breach as quickly as possible. Treasury's focus continues to be on encouraging and assisting investor compliance.

The ATO adopts a similar approach to compliance and will work with individuals in the first instance to help them understand their obligations and influence their behaviour. The ATO utilises a number of strategies in line with its compliance strategy, from education letters to infringement notices and disposal notices as appropriate to the level of non-compliance and circumstances of the foreign investor.

### *3.2 Consider all available and relevant data on compliance*

Treasury's compliance efforts seek to harness information from a range of sources. This includes drawing on information and specialist advice obtained through consultation partners, including Commonwealth regulators and state and territory agency counterparts. Treasury is also increasingly using information and data gained through its market intelligence activities to assess and consider compliance by investors with their obligations.

The ATO has a data matching program which utilises a range of information from across the ATO, government agencies and states/territories.

## KPI 4 – COMPLIANCE AND MONITORING APPROACHES ARE STREAMLINED AND COORDINATED

Measures of good regulatory performance
4.1 Utilise existing information to limit the reliance on requests made to foreign investors and share the information among other regulators, where possible
4.2 Base monitoring and inspection approaches on risk and where possible, takes into account the circumstance and operational needs of foreign investors

### SELF-ASSESSMENT

#### *4.1 Limit the requests made to foreign investors by sharing information among regulators*

Treasury is currently exploring arrangements with other government agencies for greater information sharing to reduce the need to make separate requests on investors. This includes working with agencies such as the ATO and Australian Federal Police on a case-by-case basis to obtain and share information that is relevant to a review of suspected breaches of conditions. These initiatives are progressed within the parameters of the current protected disclosure provisions under the Act which limit the circumstances in which information can be shared with other parties.

In addition, Treasury has worked with consultation partners to define roles and responsibilities in relation to compliance action under the Act. This has ensured that where Treasury is the lead agency, it initiates and coordinates the action and interface with investors so as to reduce the demands placed on them.

More broadly, from the beginning of 2018, Treasury has been convening bi-annual Cross Agency Compliance Forums, with one held in November 2018. The Forum is attended by consultation partners such as the Departments of Home Affairs and Defence, the ATO, ASIC, Austrac, ACCC and other key agencies. The Forum is an opportunity to discuss best practice compliance approaches, improve the sharing of information and identify other sources of market intelligence and how to build greater collaboration to support compliance activities.

The ATO continues to increase its use of state and territory data regarding foreign investors in the residential real estate sector and continues to increase its data matching capacity.

#### *4.2 Base monitoring takes into account the circumstance of foreign investors*

Treasury compliance activities aim to provide assurance that investors are meeting their obligations, and detect and remedy non-compliance. At the same time, they aim to limit the impact on investors and support them to do the right thing. To this end, Treasury will work with investors regarding their compliance with the conditions, including providing general advice on steps needed to comply with their obligations. This includes working with investors in particular circumstances to agree remediation action plans where non-compliance has been identified.

As part of compliance audits, Treasury works with investors to ensure that any conditions imposed remain relevant, can be complied with and meet their original intention of mitigating identified national interest risks. In the event that there has been a change in circumstances, it is possible that conditions can be varied (in defined circumstances) or removed if they cease to be applicable.

In 2018-19, the ATO developed a Foreign Investment Compliance and Enforcement Strategy to provide ATO staff with a framework to promote consistent decision making that can be tailored to a client's

circumstances and compliance behaviour. The ATO's compliance approach focuses on voluntary compliance by 'making it easy to comply, and hard not to'. For example, recognising the infancy of the vacancy fee program, the ATO used reminders to help foreign investors understand their obligations to lodge an annual vacancy fee return.

## KPI 5 – REGULATORS ARE OPEN AND TRANSPARENT IN THEIR DEALINGS WITH FOREIGN INVESTORS

Measures of good regulatory performance
5.1 Ensure information on risk-based frameworks is publicly available in a format which is clear, understandable and accessible where possible
5.2 Be open and responsive to requests from foreign investors regarding the operation of the regulatory framework, and approaches implemented by regulators
5.3 Ensure performance measurement results are published to ensure accountability to the public

### SELF-ASSESSMENT

#### *5.1 Ensure information on risk-based frameworks is publicly available*

The FIRB website is the central access point for information on the framework. It has a broad range of information to support foreign investment enquiries and applications, including:

- a link to the FIRB online application portal;
- general information on the FIRB, its role and the regulatory arrangements in which it operates;
- guidance and information for foreign investors and their advisers;
- information on Treasury's risk based approach to compliance; and
- reports on past performance.

Alerts provide updates to website subscribers on any changes to regulatory requirements and to the website.

In 2018-19, the FIRB website continued to be the main vehicle to convey information to foreign investors. During 2018-19, interest in the FIRB website was strong with 228,727 people accessing the site. Interest in the foreign investment pages on the ATO website was also strong. In total, there were 133,047 unique user page views of ATO mainstream or in-language English content and 7,010 unique views of Chinese language pages.

Notwithstanding the breadth and complexity of the framework, feedback from stakeholders on the information contained on the FIRB website has been generally positive. 89 per cent of stakeholder survey respondents indicated they were satisfied with the content on the FIRB website. However, respondents noted that while the Guidance Notes provide valuable assistance in preparing FIRB applications, the Guidance Notes and website can be unclear for stakeholders who are unfamiliar with the FIRB system.

FIRB agencies continue to work with stakeholders to improve the information on the websites. Regular review of Guidance Notes from feedback, including trends from FIRB written and phone enquiries, are published on the FIRB website to ensure stakeholders understand the regulatory process.

#### *5.2 Openness and responsiveness to requests from investors*

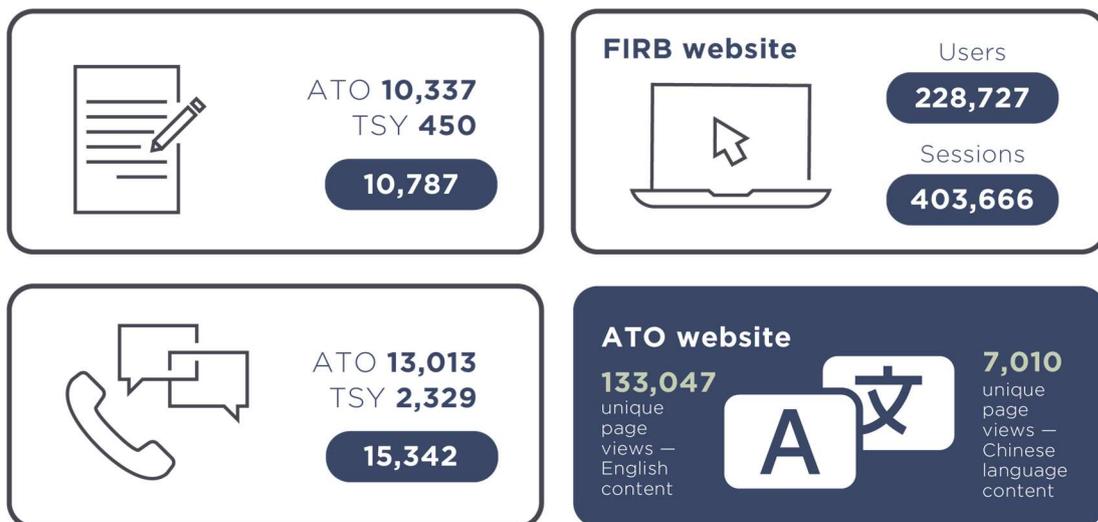
FIRB agencies regularly respond to requests from foreign investors and their advisers regarding the framework and its application. A portion of FIRB website users are directed from the FIRB website to foreign investment specific content on the ATO website.

FIRB agencies aim to consider and respond to stakeholder requests as they arise. FIRB agencies use several mechanisms to field questions from the general public, foreign investors and advisers, such as an enquiries phone line and dedicated enquiries and compliance email addresses. In 2018-19, Treasury handled 2,329 calls on its foreign investment telephone enquiry line and responded to over 450 written enquiries. Written enquiries are up from 342 in 2017-18, an increase of 31.5 per cent over the year. The increase may be attributed to telephone enquiries being directed to [FIRBEnquiries@treasury.gov.au](mailto:FIRBEnquiries@treasury.gov.au) or [FIRBCompliance@treasury.gov.au](mailto:FIRBCompliance@treasury.gov.au) where possible.

To improve how enquiries are handled, Treasury undertakes an analysis of enquiries and prepares statistical analysis of written enquiries as a way of tracking service performance. This includes collating information on the number of enquiries, response times and the nature of enquiries received. Standard responses to recurring enquiries have been prepared. In terms of telephone enquiries, experienced staff are required to log on to the enquiries line to provide general advice to callers, drawing on these standard responses and Guidance Notes.

In 2018-19, the ATO answered 13,013 phone enquiries and 426 website enquiries via [ato.gov.au](http://ato.gov.au) ‘Ask Alex’ – the ATO’s virtual assistant. The ATO answered 10,337 email enquiries including 420 emails regarding compliance obligations; 7,133 emails regarding residential real estate applications; 26 emails concerning commercial applications; 855 emails concerning the vacancy fee; 1,888 concerning land registrations including agricultural, residential real estate and water entitlements; and 15 general enquiries about communication products.

**Figure 2: Foreign Investment Enquiries**



Source: FIRB Phone, Email and Website statistics 2018-19<sup>7</sup>

### 5.3 Publication of performance measurement results to ensure accountability to the public

FIRB agencies have two key public documents. The FIRB Annual Report is the mechanism for reporting on foreign investment applications, approvals and compliance. This RPF report is the mechanism for reporting FIRB agencies’ performance measurement results to the public. Each report is published annually.

<sup>7</sup> For FIRB website statistics, a ‘user’ is a first time user during 2018-19 and a ‘session’ is a period of time that a user is on the site. If a user is inactive for 30 minutes or more, future activity is counted as a new session(s). Otherwise, ongoing activity by the same user is counted as one session.

In 2018-19, FIRB agencies continued their commitment to increased transparency of information regarding foreign ownership in the agriculture and water asset sectors. In December 2018, the Treasurer released the third annual report of the Foreign Ownership of Agricultural Land Register and in March 2019, the first report of the Register of Foreign Ownership of Water Entitlements was released.

## KPI 6 – REGULATORS ACTIVELY CONTRIBUTE TO THE CONTINUOUS IMPROVEMENT OF REGULATORY FRAMEWORKS

Measures of good regulatory performance
6.1 Establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework
6.2 Engage stakeholders in the development of options to reduce compliance costs
6.3 Regularly share feedback from stakeholders and performance information with policy departments or agencies and across the Division and other areas in Treasury to improve the operation of the regulatory framework and administrative processes

### SELF-ASSESSMENT

#### *6.1 Collaborative relationships with stakeholders that promote trust and improve efficiency*

As noted in other parts of this report, stakeholder engagement is a key priority for the FIRB and FIRB agencies. In addition to the meetings with current and prospective investors and their advisers, FIRB members and Treasury staff attended a number of international meetings with government and private sector representatives including in the United Arab Emirates, the United States, Tokyo, Paris, London, Brussels and Berlin.

In addition, members of the FIRB undertook outreach activities with investors, their representatives and representatives of particular industry sectors. These were scheduled to coincide with monthly Board meetings.

The Chair of the FIRB, David Irvine AO, also held a number of high level meetings with investors and representatives from consultation agencies, and delivered a number of presentations and speeches, including the keynote address at the Annual Infrastructure Investors' Forum.

Treasury hosted monthly strategic foreign investments discussions attended by senior representatives from across the Australian Government and consultation partners. Treasury worked with agencies on secondments, including with the ATO, the Inspector-General of Taxation and the Critical Infrastructure Centre (CIC).

#### *6.2 Engaging stakeholders to develop options to reduce compliance costs*

In addition to ongoing consultations with current and proposed investors and their advisers, Treasury met with the Law Council a number of times to discuss issues of concern regarding the administration of the framework.

Treasury has been working with consultation partners to achieve more consistency in the conditions imposed on applications. This is expected to reduce the time required to draft and agree on conditions, and ensure they are appropriate and proportionate to the identified risk, thereby minimising compliance costs to the extent possible.

#### *6.3 Sharing feedback with stakeholders and performance information with departments*

Feedback obtained by FIRB agencies on the operation and administration of the framework is shared on an ongoing basis with consultation partners in regular discussions and in more formal settings such as through regularly scheduled meetings with senior Australian Government representatives.

# APPENDIX A – STAKEHOLDER SURVEY FEEDBACK

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The FIRB continues to actively engage with stakeholders and Australian businesses to provide information on the operation of the framework. Below is a summary of survey responses against each specific topic covered by the stakeholder survey. It is not meant to be a comprehensive summary of all responses received.

## **Timeliness of the foreign investment application review process**

Survey respondents reported some types of applications were completed very quickly while other applications required requests for extensions. 45 per cent of survey respondents found the application review process ‘extremely timely’ or ‘very timely’ and another 33 per cent of survey respondents found the application review process ‘timely’. The remainder of the respondents found the process ‘not so timely’ or ‘not timely at all’. Survey respondents provided feedback that the statutory deadlines are often extended. While survey respondents felt that FIRB agencies explained why delays occur, survey respondents are still concerned about these delays.

## **Quality of interaction with government officials**

Survey respondents found FIRB agency staff considerate and that they use their best endeavours to achieve decisions by commercial deadlines. 82 per cent of survey respondents said their interaction with government officials was ‘excellent’ or ‘good’. 6 per cent said their interaction was ‘satisfactory’ and 6 per cent did not answer the question.

## **Clarity and effectiveness of communication**

Survey respondents reported communication from case officer staff was clear and effective. Applicants generally felt well informed throughout the process. Case officers were responsive and courteous with their customer service. Respondents found the team professional, polite and helpful. Some applicants noted that while communications were clear, they were given short notice to respond to requests. 83 per cent of survey respondents reported that they were ‘very satisfied’ or ‘somewhat satisfied’ with the clarity and effectiveness of communication from FIRB agency staff.

## **Transparency of decisions made in relation to applications**

Stakeholders felt that Treasury employees were good at asking questions in relation to the application and explaining decisions. Stakeholders thought there could be more clarity on wording of decisions and the decision making process. Stakeholders felt that FIRB agencies could improve their communication about the approach to applying conditions, particularly the rationale for proposed conditions. 94 per cent of survey respondents were ‘very satisfied’ or ‘somewhat satisfied’ with the transparency of decisions made in relation to applications. 6 per cent did not answer the survey question.

## **Accessibility of officials to discuss foreign investment**

Survey respondents found Treasury officials very proactive during the application process and receptive towards feedback about the foreign investment regime. 67 per cent of respondents found officials ‘extremely accessible’ or ‘very accessible’. 33 per cent of respondents found officials ‘somewhat accessible’.

### **Conditions imposed on proposals were proportionate to the risks being managed**

Stakeholders considered standard tax conditions imposed were reasonable. Feedback regarding conditions other than tax conditions varied. Comments included whether issues raised in the conditions could be addressed through other mechanisms such as tax legislation or the *Corporations Act 2001*. Others questioned whether there was clarity on the purpose and intent of conditions. 67 per cent of survey respondents were 'very satisfied' or 'somewhat satisfied' that the conditions imposed on proposals were proportionate to the risks being managed. 17 per cent were 'neither satisfied nor dissatisfied'.

### **Clarity and effectiveness of guidance communicated on the FIRB website**

The guidance notes available online provide valuable assistance in preparing FIRB applications. 89 per cent of survey respondents were either 'very satisfied' or 'somewhat satisfied' with the guidance on the FIRB website. 11 per cent were 'somewhat dissatisfied'. Some survey respondents reported that the guidance notes and the website can be unclear for stakeholders who are not familiar with the FIRB system. Other feedback included the guidance notes can be too general and stakeholders need to seek further clarification.

### **Clarity and effectiveness of foreign investment advice communicated through other means**

Survey respondents found they got clear and helpful advice via both email and phone. Survey respondents would welcome further opportunities to contact FIRB agency staff for advice before starting the application process. 72 per cent of survey respondents were 'very' or 'somewhat' satisfied with the clarity and effectiveness of advice communicated through phone and email. 28 per cent were 'neither satisfied nor dissatisfied'.

### **Treasury's receptiveness to feedback on foreign investment issues**

Survey respondents feel that the ongoing communication they receive is important to ensure issues with the legislation are resolved or at least able to be progressed. 44 per cent of survey respondents found Treasury 'extremely receptive' or 'very receptive' to feedback. 6 per cent found Treasury 'somewhat' receptive. 44 per cent did not give feedback on receptiveness.

## APPENDIX B – STAKEHOLDER ENGAGEMENT

Figure 3: Treasury’s Foreign Investment Stakeholder Engagement Metrics for 2018-19

Metric (KPI number)	2017-18			2018-19		
	ATO Residential real-estate	Treasury Non residential	Total	ATO Residential real-estate	Treasury Non residential	Total
FIRB information sessions (1 & 2)	5	65	<b>70</b>	40	15	<b>55</b>
Interdepartmental committees (IDCs) (4 & 6)	1	35	<b>36</b>		41	
Stakeholder engagement events (1, 2, 4 & 6) <sup>1</sup>	25	388	<b>413</b>	8	317	<b>325</b>
Phone calls handled on the FIRB Enquiries Line (5) <sup>2</sup>	18,717	2,812	<b>21,529</b>	13,013	2,329	<b>15,342</b>

Notes: 1. This comprises the metrics of other government consultation (KPI no. 1, 2, 4 & 6) and industry consultation (KPI no. 1, 2 & 6).

2. Does not include calls made directly to case officers or during the course of an application review.