



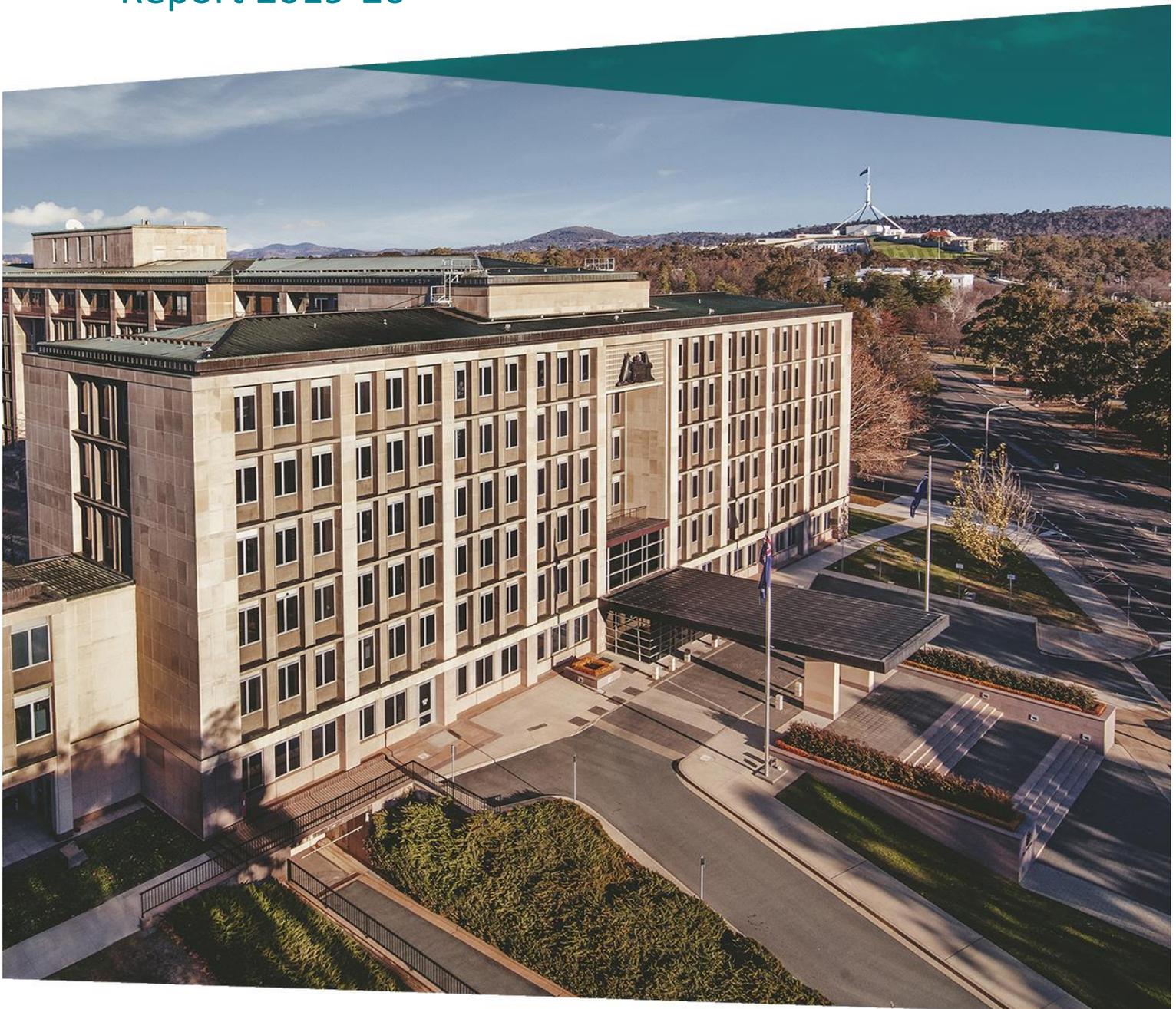
Australian Government
The Treasury

TSY/AU

REGULATOR PERFORMANCE FRAMEWORK

Administration of Australia's Foreign Investment Framework

Report 2019-20



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Australia's Foreign Investment Framework

Introduction

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. The Foreign Investment Division in the Department of the Treasury (the Treasury) is responsible for the day-to-day administration of the framework in relation to business, agricultural land and sensitive or complex commercial real estate investments and undertaking compliance activities in relation to these matters. It is also responsible for providing advice on Australia's foreign investment policy and progressing legislative changes.

The ATO is responsible for administering the framework in relation to 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.¹ It is also responsible for the collection of all foreign investment application fees.

The Foreign Investment Review Board (FIRB) is a non-statutory advisory body which:

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

The Treasury and the ATO 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 concerns.

¹ To provide greater transparency of foreign ownership in Australia, the Government has established agricultural land and water entitlement foreign ownership registers. 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.

In the current reporting period, Treasury and the ATO managed significant changes to the foreign investment framework resulting from the introduction of the temporary zero dollar threshold (ZDT) on 29 March 2020. ZDT was introduced to protect Australia's national interest in light of the economic implications arising from COVID-19. The impacts on the administration of the framework are addressed under relevant key performance indicators (KPIs) in the body of this report.

Preliminary data indicates that for cases processed by Treasury, around 2,419 applications were received from January to October 2020, more than the 1,280 applications received in the equivalent period last year. Preliminary data indicates that 1,462 would have been received even without ZDT screening. Further information on application numbers will be available in the 2019-2020 FIRB Annual Report.

Assessing Regulator Performance

Methodology

This report is prepared by Treasury and the ATO as a self-assessment of performance against the six Regulator Performance Framework 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.

The Foreign Investment Committee of the Law Council of Australia (the Law Council) externally validates the self-assessment for the framework. In December 2020, the Law Council was consulted on this report and feedback received is reflected under relevant KPIs.

The 2019-20 self-assessment draws on quantitative and qualitative information to evaluate performance against the KPIs, which includes observations made by Treasury and ATO management on the administration of the system, and feedback received in the 2019-20 Foreign Investment Stakeholder Questionnaire (questionnaire) and from investors on compliance related activities. Further detail on the questionnaire is in Appendix A.

Overall assessment

Summary of Performance 2019-20

The overall assessment in this report is that the KPIs were met during 2019-20. Further to this assessment stakeholders have proposed improvements to the administration of the framework, related to both the pre and post ZDT environment, which require a continued focus in the next reporting period. These matters are raised in the body of this report and include:

- continued efforts to improve application processing times;
- working with regulators to streamline requests made on investors;
- continuing to build understanding of commercial practices and legislative requirements, and ensuring that guidance is available to promote consistency of approach in administering the Act;
- improving internal processes to facilitate handover of matters between action officers and effective record keeping;
- building the utility of assistance provided through the FIRB enquiry line and email; and
- further standardising the process for applying conditions and monitoring condition outcomes.

Self-Assessment of Performance

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 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

In 2019-20, stakeholder engagement was an important mechanism for Treasury and the ATO to deepen its understanding of the foreign investment operating environment and facilitate discussions on industry sectors and emerging issues both in Australia and abroad. For Treasury, over 500 stakeholder meetings were convened. The ATO conducted 24 stakeholder events.

These meetings included consultations from the end of March 2020 with business groups (including the Business Council of Australia), individual investors (including sovereign wealth funds), the Law Council, the ATO's Foreign Investment Stakeholder Group² and State and Territory representatives to discuss the ZDT and increase awareness of the expanded foreign investment obligations amongst foreign investors not ordinarily subject to the framework. These consultations enabled Treasury and the ATO to understand the impacts of the temporary measures and ensure guidance materials addressed issues of concern to stakeholders.

A summary of Treasury's and the ATO's stakeholder engagement activities can be found at Appendix B.

Treasury continued to work closely with consultation partners across government to foster a mutual understanding of the framework. Treasury met monthly with representatives from consultation agencies and increased the frequency of meetings following the introduction of the ZDT. These meetings were an opportunity for Treasury to share feedback and insights received from stakeholders and for consultation partners to share information on developments in their areas of responsibility.

² The ATO's Foreign Investment Stakeholder Group comprises representatives from the real estate industry, legal community and banking sector. The membership to the Foreign Investment Stakeholder Group can be found on the ATO website: <https://www.ato.gov.au/General/Consultation/Consultation-groups/Stakeholder-relationship-groups/Foreign-Investment-Stakeholder-Group/>.

In the context of the administration and preparation of annual statistical reports of the registers of foreign ownership of agricultural land and water entitlements, the ATO undertook extensive consultations with the Department of Agriculture, Water and the Environment as well as the Bureau of Meteorology and State based water authorities. These consultations have assisted in building an understanding of foreign ownership trends in relation to agricultural land and water entitlements and ensure that the content of the reports meet audience needs.

In conjunction with the consultation partners across government, including the Critical Infrastructure Centre and the Australian Security Intelligence Organisation (ASIO), Treasury stepped up its analysis of key sectors of the economy in order to develop a detailed understanding of national interest issues, particularly national security risks, which could arise from foreign investment.

Feedback received in the questionnaire indicated that 67 per cent of respondents agreed or strongly agreed that Treasury and ATO officials had an understanding of their industry, organisation and operating environment. Feedback received in discussions with the Law Council indicated that there would be benefit in examining ways to build the commercial expertise of Treasury staff so that they have a deeper understanding of commercial players, their operations and financing structures.

1.2 Minimise the potential for unintended negative impacts of regulatory activities on foreign investors

Application processing times have been a key concern of investors in recent years and continued to be a priority for Treasury and the ATO. Between 1 July 2019 to 31 March 2020, an average of 29 applications per week were received by Treasury. In the period between 1 April 2020 to 30 June 2020, this increased to an average of 55 per week. This increase impacted processing times.

Data indicates that the median application processing time for Treasury was 48 days in 2019-2020, compared to 41 days in 2018-19.³ For the portion of the reporting period affected by the introduction of the ZDT (that is, 29 March to 30 June 2020), the data indicates that the median case processing time for Treasury increased to 51 days. Since that time, case processing times have fallen and for the first quarter of financial year 2020-21, data indicates that the median processing time was 46 days. This compares to 40 days for the equivalent July – September quarter for 2019-20.

For the ATO, the median application processing time was 10 days for residential applications (9 days in 2018-19) and 25 days for non-sensitive commercial applications (23 days in 2018-19).

At the time the ZDT was introduced, the Government announced that Treasury would work with applicants to extend the statutory timeframes for decision making from 30 days to up to six months, in anticipation that extra time may be needed to screen the expected increase in the number of applications coming into the system. The case processing times noted above demonstrate that the majority of cases have been processed much more quickly than six months.

To facilitate the processing of cases in the ZDT environment, Treasury introduced arrangements to triage cases on the basis of commercial deadlines and risk profile, prioritising investments that protect and support Australian businesses and Australian jobs. In a number of instances, applications were processed in very short periods of time to respond to commercial pressures faced by businesses and investors during the crisis.

In addition, recruitment of additional staff in Treasury helped manage the case load in the reporting period. In January 2020 there were 68 ongoing and non-ongoing staff in Treasury. By October 2020 there were 197 staff in total in Treasury comprising of 114 ongoing and non-ongoing staff and 83 surge staff. Staff allocated to case processing increased fourfold in the 2020 calendar year.

³ Note that the median application processing time from the 2018-19 RPF report was reported as 45 days. This has been subsequently revised due to a methodology change to align with statutory deadlines.

The timeliness of application processing continued to be raised by stakeholders in the reporting period, with stakeholders noting the uncertainty that delays create for investors. Stakeholders noted that consultation partner processes often extended the timeline for application processing and suggested there would be benefit in exploring how these processes could be made more efficient. Steps have already been taken to standardise the process between Treasury and consultation partners. Treasury will continue to look for ways to streamline consultation processes although this can be difficult particularly where applications raise complex national security or national interest issues.

While over half of questionnaire respondents agreed or strongly agreed that their application had been dealt with efficiently, feedback was received regarding the impact of delays in processing non-urgent applications particularly since the temporary measures were announced. Stakeholders did, however, note that Treasury and ATO officials were transparent about progress and prioritisation of cases.

1.3 Implement continuous improvement strategies to reduce the costs of compliance for foreign investors

Treasury and ATO staff have looked to implement continuous improvement strategies with a view to reducing compliance costs.

In 2019-20, the Bevington Group reviewed Treasury's foreign investment-related business operations and processes. It made a number of recommendations across four streams of work: people, process, technology and data/reporting. In response:

- A comprehensive staff capability analysis was undertaken which led to changes in recruitment strategies and the development of a learning and development program to ensure current and new staff had the technical capabilities to perform their roles as case or compliance officers. This has helped ensure that when staff interface with applicants and their advisers, they are better equipped to deal with the breadth and complexity of matters. In light of feedback from stakeholders, the training program will be updated to ensure it contains modules which will help to further build expertise in the administration of the Act and understanding of commercial practices.
- Processes have been further standardised and additional guidance rolled out to staff to improve the handling of cases through the application process and ensure the more efficient management of cases by case officers. Processes will continue to be enhanced over time to ensure seamless transition of cases between case officers. Changes to record keeping arrangements are expected to facilitate retrieval of information held in Treasury on individual cases.
- Changes have been made to the online application portal to reduce the risk of error in key data fields by improving the display of information to investors and their representatives. This is designed to reduce the need for follow up with investors to clarify key details of their application.

In response to the ZDT, Treasury reviewed its internal structure and processes to deal with an anticipated increase in applications. This helped to ensure that urgent applications and those that supported Australian businesses and jobs were prioritised.

The ATO has a number of targeted strategies to prevent non-compliance with various foreign investment residential real estate obligations. Activities typically involve a mixture of education, communication, and awareness campaigns focusing on different elements of the foreign investment regime, aiming to drive higher levels of voluntary compliance by ensuring that foreign persons and their advisers are fully informed about their obligations and understand how to comply.

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 Provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience

Communication with the regulated community remains a priority for Treasury and the ATO.

Direct outreach to stakeholders is a key mechanism by which up-to-date information about the foreign investment framework is made available. This has included consultations with:

- the Law Council and state-based Law Societies, as well as conveyancing institutes and property-related stakeholders in each state;
- the ATO’s Foreign Investment Stakeholder Group;
- direct messaging to intermediaries known to represent foreign investment clients;
- messaging through the ATO’s Tax Professional newsroom and the Business bulletin reaching an audience of 37,500 subscribers; and
- social media messaging through Treasury and ATO networks.

The FIRB website is also an important channel to ensure clear, relevant and timely information is available to the public. In the reporting period, the website was updated to provide information to investors and their advisers on the administration of the system, including the ZDT. This included new and updated Guidance Notes, information on the proposed legislative reform package and guidance on investors’ compliance obligations. As was the case in previous years, the website was updated to reflect changes in application fees for the financial year.

The ATO’s website complements information on the FIRB website. During the year, the ATO responded to user feedback and updated and restructured its foreign investment-related web content. These changes were designed to improve navigation and simplify language to enhance the client experience.

Treasury continued to work with Austrade, Australian diplomatic missions and international Treasury posts to disseminate information and facilitate direct interactions with investors. Regular publications also provide information on Australia’s foreign investment framework.

Feedback received through the questionnaire indicated that 61 per cent of respondents thought that advice provided by Treasury and ATO staff was current, clear, accessible and concise.

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

On 29 March 2020, the Government introduced the ZDT to ensure it had sufficient scrutiny of proposed foreign investments at a time when the COVID-19 pandemic was putting intense pressure on the Australian economy and businesses. Following the announcement of the ZDT, Treasury and the ATO consulted extensively with a broad suite of stakeholders including investors, lawyers and business groups. Treasury and the ATO also harnessed the FIRB website and social media to ensure there was an understanding of the changes that were made. Guidance material on the ZDT was released following the announcement and was subsequently updated to address issues raised by stakeholders.

On 5 June 2020, the Government announced major reforms to the FATA and associated regulations. Prior to the announcement, Treasury engaged closely with a range of government agencies. On announcement, Treasury released a summary booklet outlining the proposal for each reform measure and commenced targeted consultation on the proposed reforms to inform, and help shape, the exposure draft legislation and regulations released beyond this reporting period.

During these targeted consultations, Treasury engaged with around 750 stakeholders. The reach of the consultation was broad, including around 85 agencies and organisations such as peak bodies and advisory groups, legal and financial services, state and territory governments, domestic industries and foreign governments and investors. Public consultations on the exposure draft legislation and regulations were also conducted beyond this reporting period.

In relation to activities relevant to the ATO, the ATO attended a Property Expo in October 2019 and provided guidance and information on the ATO's administration of the foreign investment framework and approach to conducting compliance in the residential real estate sector.

Following feedback received at the ATO's Foreign Investment Stakeholder Group, the validity period for residential real estate exemption certificates was extended from six to 12 months in November 2019. An email campaign was undertaken in November 2019 to over 2,000 intermediaries advising them of the extension and further communications issued through the ATO Tax Professional newsroom and Business bulletin.

With specific reference to near new dwelling exemption certificate law changes enacted in December 2019, the ATO developed a webinar targeting near new dwelling exemption certificate holders to explain the impact of the new law and how to report fees. Web content, guidance materials and correspondence were reviewed and updated.

Stakeholders have been positive about the level of engagement with 89 per cent of questionnaire respondents agreeing or strongly agreeing that there is active engagement by both Treasury and the ATO.

2.3 Provide decisions and advice in a timely manner, clearly articulating expectations

No objection notifications issued (decisions) under the Act must be communicated to the applicant no later than 10 days after the decision was made. In 2019-20, with three exceptions decisions were communicated within this stipulated timeframe. Where the decision was communicated after the 10 day notice period, no foreign person suffered detriment due to this administrative error. Treasury has since put in place processes, including clearer management oversight, updated processing guidelines and quality assurance monitoring, to ensure that decisions are communicated within the legislative notice period. Treasury also communicates with potential applicants and investors through the FIRB enquiries line which is covered in 5.2 (openness and responsiveness to requests from investors).

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 Apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions. Recognise the compliance record of foreign investors

Treasury is responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and commercial land proposals. The ATO is responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and some commercial land proposals.

In August 2019, published the Compliance Policy Framework Statement (the statement), which provides an overview of the compliance framework, roles and responsibilities, and Treasury’s approach to compliance and enforcement activities. The statement outlines that Treasury’s compliance efforts are focused on areas of risk to the national interest and aim to achieve a balance between providing assurance, detecting and remedying non-compliance while limiting the impact on foreign investors and supporting them to do the right thing. The statement also notes that, in the first instance, Treasury’s approach is to provide support and education to foreign investors to assist them to meet their compliance obligations.

Treasury has strengthened its processes with consultation partners to ensure that conditions imposed in relation to proposed investments are proportionate to the risks they seek to mitigate. Where risks to the national interest are identified, conditions may be applied to mitigate those concerns and allow the investment to proceed.

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. Each year, the ATO undertakes a review of the global environment and risk drivers affecting non-compliance, and changes are made to the compliance treatment strategies as necessary.

The ATO uses a number of strategies in line with its Compliance Enforcement Strategy. These range from education letters and reminder notifications to infringement notices and disposal notices as appropriate, having regard to the level of non-compliance and circumstances of the foreign investor.

ATO foreign investment approval letters provide information to investors about how to register on the Land and Water registers as well as how to comply with vacancy fees. The ATO also works closely with developers who hold new dwelling and near new dwelling exemption certificates to ensure compliance with 6 monthly reporting and payment obligations.

The reforms to the foreign investment framework announced on 5 June 2020 include measures to strengthen Treasury's and the ATO's compliance and enforcement powers. The proposed measures provide a broader suite of powers available and will improve the ability of Treasury and the ATO to tailor their responses depending on the nature of the breach. The proposed powers will allow the Government to pursue early and effective action to remedy a breach of foreign investment conditions. Proposed measures also include higher civil and criminal penalties to ensure they act as an effective deterrent.

3.2 Consider all available and relevant data on compliance

As noted in the 2018-19 Regulator Performance Framework report, 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 sourced through its market intelligence activities to monitor and assess compliance by investors with their obligations. Following the introduction of the ZDT, Treasury has refocused efforts to proactively identify investors that were required to notify investments under the new thresholds but have not done so. This included working with the ATO to develop a systematic approach to identifying data sources that will facilitate the detection of non-compliance, such as market intelligence databases, drawing on the resources of other Commonwealth agencies and using open source material such as media reports and information available through public registers. To this end, Treasury has implemented a program of testing of third party software and databases to support proactive surveillance. Responses to suspected non-compliance as a result of these activities are developed on a case-by-case basis in line with the Compliance Policy Framework Statement.

The ATO continues to increase its data matching capability. The ATO utilises a variety of databases for the purposes of regulating foreign investors in the residential real estate sector including the vacancy fee and administering the Land and Water registers. Such databases include state and territory land title records, and immigration, Australian Securities and Investment Commission (ASIC) and AUSTRAC records.

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 Utilise existing information to limit the reliance on requests made to foreign investors and share the information among other regulators, where possible

The circumstances in which Treasury and the ATO can share information are limited by the protected information disclosure provisions of FATA. Within these constraints, Treasury and the ATO continue to work with other government agencies on information sharing arrangements that will reduce the need for agencies to make separate requests to investors. Where suspected non-compliance is identified, case-by-case arrangements are put in place by Treasury and the ATO to obtain and share information across agencies and with other agencies including the Australian Federal Police, the Department of Home Affairs, AUSTRAC, state and territory government agencies and local councils as needed.

Treasury and the ATO continue to work with consultation partners to define roles and responsibilities in relation to compliance action under the FATA. This has ensured that where Treasury is the lead agency, it initiates and coordinates the action and interface with investors so as to avoid multiple requests being made of them.

More broadly, since 2018, Treasury has been convening Cross Agency Compliance Forums. The Forums provide an opportunity to discuss best practice compliance approaches, improve the sharing of information, identify sources of market intelligence, and build greater collaboration across agencies to support compliance activities. The Forum is attended by consultation partners including the Departments of Home Affairs and Defence, the ATO, ASIC, AUSTRAC and the Australian Competition and Consumer Commission (ACCC).

When asked whether the Treasury and the ATO streamline requests for information, 28 per cent of questionnaire respondents agreed or strongly agreed and 44 per cent were neutral. Feedback indicated that requests for information were generally streamlined and seemed appropriate with regard to the circumstances, with some respondents expressing the view that there was an opportunity to streamline requests at an operational level.

In response to this feedback, Treasury proposes to work with investors and their advisers to understand the circumstances where they feel there are duplicative requests being made by regulators. Treasury will engage with the Law Council on this issue and harness the Cross Agency Compliance Forum to identify opportunities for further streamlining.

4.2 Base monitoring and inspection approaches on risk and where possible, takes into account the circumstance and operational needs of foreign investors

Reflecting the case-by-case nature of the foreign investment framework, when recommending conditions be imposed on a no objections notification, Treasury and the ATO will consider the circumstances of the investor and the risks to national interests which the conditions are designed to mitigate. More generally, Treasury's and the ATO's compliance work is tailored to the circumstances of individual investors. Treasury and the ATO will work with 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 and the ATO's compliance activity may include putting in place a Remediation Action Plan which is monitored to ensure investors are completing and reporting on their remediation milestones.

The Treasury-led compliance audit program is now in its third year. Treasury uses a risk-based approach to audit target selection which 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.

To ensure the foreign investment framework keeps pace with emerging risks and global developments, ongoing monitoring of compliance is required. To that end, a reporting obligation has applied to all conditional no objection notifications since October 2019. Reporting obligations vary depending on the level of risk identified in relation to the particular investment.

The ATO compliance audit program is now in its fifth year. The ATO also adopts a risk-based approach to residential compliance work and focuses efforts on areas of risk to the national interest. The aim is to achieve a balance between providing assurance that investors are complying with their obligations and detecting and remedying non-compliance, while encouraging and supporting foreign investors to do the right thing.

During the peak of the pandemic the ATO prioritised its resources to ensure screening foreign investment applications arising from the zero dollar threshold continued without significant disruption. The ATO also took into account the unique circumstances of the pandemic which may have prevented foreign investors from complying with their obligations in the usual timely way, for example, due to travel restrictions. Careful consideration was also given to fee waiver and withdrawal requests when it was evident that investors were unable to comply as a direct result of the COVID-19 situation.

Following the publication of both reports on the Register of Foreign Ownership of Water and Register of Agricultural Land as at 30 June 2019, the ATO wrote directly to registrants advising them of the publication, and provided information on how to comply with obligations to update registration details if their situation changed. Further promotional compliance communications were issued to over 2,000 intermediaries representing foreign investors, State Law Societies, Australian Institute of Conveyancers, the ATO Foreign Investment Stakeholder Group, the Australia Business China Council and other relevant associations.

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 in a format which is clear, understandable and accessible where possible

The FIRB website is the central access point for information on the foreign investment framework. In 2019-20, the FIRB website continued to be the main vehicle to convey information to foreign investors. There were over 1.3 million page views.⁴ The FIRB website has a broad range of information to support foreign investment enquiries and applications, including:

- a link to the FIRB online application portal;
- updates on the temporary measures and the reform package;
- 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. During 2019-20, Treasury provided information to subscribers about the ZDT, and about scheduled outages of the website and portal.

A portion of FIRB website users are directed from the FIRB website to specific content on the ATO website.

The ATO website has a broad range of information to support foreign investment enquiries and compliance obligations regarding residential real estate applications, land and water registration, and vacancy fees. This also includes instructions on how to complete a FIRB application, complete a land registration and lodge a vacancy fee form. Foreign investment pages on the ATO website show a total of 98,960 page views. During the 2019-20 reporting period, a web content review was undertaken to enhance navigation and improve content.

⁴ Due to website updates in October 2019, advanced website analytics were unavailable for the full reporting period.

Feedback through the questionnaire indicated that 66 per cent of respondents agreed or strongly agreed that they have access to the information they need to effectively navigate the foreign investment approval processes. Respondents commented that the information available is generally very helpful but there are areas of ambiguity that could be addressed further in FIRB guidance.

The guidance notes are under review in light of the legislative reform package. Treasury and the ATO will look to address concerns regarding ambiguity in this process.

5.2 Be open and responsive to requests from foreign investors regarding the operation of the regulatory framework, and approaches implemented by regulators

Treasury and the ATO regularly respond to requests from foreign investors and their advisers regarding the framework and its application.

In 2019-20, Treasury handled 3,830 calls on its foreign investment telephone enquiry line (2,329 calls in 2018-19) and responded to over 827 email enquiries (450 enquiries in 2018-19). Following the introduction of the ZDT, both telephone and email enquiries increased significantly: telephone enquiries increased from around 6 per day to around 25 per day, while written enquiries increased from around 1 per day to 4 per day. For the 2019-20 financial year, the majority of written enquiries were responded to within ten days. The median written response time was 4 days.

To improve how enquiries are handled, Treasury prepares statistical analyses of phone and email enquiries as a way of tracking service performance.

Standard responses to recurring enquiries have been improved and updated, and training delivered to enable more Treasury staff to provide guidance and advice over the telephone.

The ATO handles enquiries that relate to residential and non-sensitive screening, vacancy fees, agricultural land and water entitlements registers, and associated compliance activity. In 2019-20, the ATO answered 16,887 phone enquiries and 1,805 website enquiries via ato.gov.au 'Ask Alex' – the ATO's virtual assistant. The ATO answered 12,360 email enquiries including 8,048 emails regarding residential real estate applications; 60 emails concerning commercial applications; 2,713 emails concerning the vacancy fee; 1,019 concerning land registrations including agricultural, residential real estate and water entitlements; 283 emails regarding compliance obligations; and 237 law and policy related enquiries.

Standard responses have been prepared by the ATO which are tailored to answer queries from applicants. The majority of queries are responded to within 24 hours, except where questions are of a more complex legal or technical nature requiring further information or detailed consideration. The ATO analyses these interactions to inform development of communication products to enhance the client experience.

When asked whether Treasury and ATO respond quickly to requests for information in relation to foreign investment issues, 56 per cent of questionnaire respondents agreed or strongly agreed. Most respondents commented that their experience in this area was positive. However respondents indicated there have been some delays since the introduction of the ZDT.

While feedback on responsiveness was generally positive, there appeared less satisfaction amongst stakeholders that email and telephone enquiries resolved their issues satisfactorily. While there is a sense that a large proportion of respondents to the questionnaire may not have had cause to use these enquiry channels, only a small percentage either strongly agreed or agreed that officials were able to resolve their issues (see Appendix A). To obtain more granular and real time feedback on this, Treasury has implemented a survey tool for its email enquiries and is doing the same for the FIRB enquiry line. It is hoped that this will provide a greater level of information about how best to assist those who are accessing these mechanisms.

5.3 Ensure performance measurement results are published to ensure accountability to the public

The FIRB Annual Report is a key mechanism for reporting on foreign investment applications, approvals and compliance. This RPF report is the main vehicle by which Treasury and the ATO report on performance.

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 Establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework

In the reporting period, Treasury and the ATO continued to build relationships with stakeholders. Meetings with investors and advisers referenced in other sections of this report have been essential in cementing cooperative and collaborative relationships, and providing an avenue through which stakeholders can provide feedback on the foreign investment framework and its administration.

The Chair of the FIRB, Mr David Irvine AO, and senior Treasury officials have engaged with a broad suite of stakeholders to reinforce relationships and ensure there is a healthy dialogue with the regulated community. Mr Irvine delivered a number of speeches, including to the Australia China Business Council NSW and the Sino-Australian Investment and Financing Forum. These provided a forum in which to outline the key features of the foreign investment framework and the Government's approach to its administration. Senior Treasury officials engaged with the Australia China Business Council, the Asia Society and the OECD. FIRB members have also met with investors, business groups and legal representatives.

Foreign investment issues meetings are held on a monthly basis. These meetings are chaired by the First Assistant Secretary of the Foreign Investment Division of Treasury and attended by senior officials from government departments. These meetings are an opportunity to consider key foreign investment matters and forge strong relationships with those agencies most closely involved in the administration of the foreign investment screening process.

Continued engagement with international counterparts including through multilateral forums such as the OECD and extensive bilateral engagements have helped to understand broader international developments and how Australia's screening regime compares on a global basis.

The ATO convenes a Foreign Investment Stakeholder Group to maintain and harness relationships with key stakeholders and provide the opportunity for business and industry to provide feedback, opinions and ideas on the Foreign Investment Program of work being undertaken by the ATO. Treasury representatives regularly attend meetings of the Stakeholder Group to provide updates on policy and law reform matters.

6.2 Engage stakeholders in the development of options to reduce compliance costs

In addition to ongoing consultations with current and proposed investors and their advisers, Treasury staff met with the Law Council a number of times to discuss administration of the framework, including the impact of the framework on their clients. These meetings were an opportunity to understand the views of stakeholders and explore how particular concerns can be addressed.

In feedback received from investors, key compliance costs reported included legal and professional services fees, information technology costs, and labour and administrative costs. As a way of helping contain compliance costs, in November 2019, Treasury hosted the inaugural foreign investment compliance forum for audit firms and auditors to discuss independent audit conditions imposed on foreign investment no objection notifications. This provided an opportunity to clarify the role of auditors and expectations placed on them when undertaking independent audits to assess an investor's compliance with conditions.

Feedback from stakeholders in the questionnaire indicated that 33 per cent of respondents agreed or strongly agreed that conditions are clear, assisting applicants to meet their compliance obligations. In response, Treasury is reviewing the wording of the most commonly used conditions to improve clarity and developing additional guidance materials to support investor understanding of compliance obligations. In addition, Treasury is further standardising the process for developing, applying and monitoring compliance with conditions.

Treasury has been working with consultation partners to achieve greater consistency in the use of conditions imposed on applications. This is expected to reduce the time required to settle conditions, and ensure they are appropriate and proportionate to the identified risk.

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

Treasury and the ATO continued to share feedback from the regulated community with consultation partners in regular discussions, including in regularly scheduled meetings with senior Australian Government representatives.

Appendix A – Stakeholder questionnaire

The FIRB continues to actively engage with stakeholders to provide information on the operation of the framework. Below is a summary of the 2019-20 Foreign Investment Stakeholder Questionnaire responses against each question covered. It is not meant to be a comprehensive summary of all responses received.

Each question was assessed on a five point scale, centred on a neutral response. Respondents could provide written feedback against each question. There were 18 responses out of approximately 30 recipients. The questionnaire was sent to the Law Council's Foreign Investment Committee and the ATO Foreign Investment Stakeholder Forum for distribution to their members.

The Foreign Investment Application Process

Stakeholders have access to the information they need to effectively navigate the foreign investment approval process

When asked whether they have access to the information they need to effectively navigate the foreign investment approval processes, 66 per cent of questionnaire respondents agreed or strongly agreed. 6 per cent were neutral and 11 per cent felt the statement was not relevant to them. Respondents commented that the information available is generally very helpful but there are areas of ambiguity that could be addressed further in FIRB guidance.

Applications are dealt with efficiently

When asked whether their application had been dealt with efficiently, 56 per cent of questionnaire respondents agreed or strongly agreed. 17 per cent were neutral and 17 per cent felt the statement was not relevant to them. Respondents commented that there have been some delays in processing non-urgent applications since the temporary measures were announced on 29 March 2020. However stakeholders noted that Treasury and ATO officials adapted to these changes and there has been good transparency and prioritisation.

Treasury/ATO kept applicants up to date about the status of their application

When asked whether Treasury and ATO officials kept them up to date about the status of their application, 72 per cent of questionnaire respondents agreed or strongly agreed. 11 per cent were neutral and 17 per cent felt the statement was not relevant to them. Respondents commented that for the most part officials were helpful and communicated regularly on the status of applications.

Advice provided by officials was current, clear, accessible and concise

When asked whether advice provided by Treasury and ATO staff was current, clear, accessible and concise, 61 per cent of questionnaire respondents agreed or strongly agreed. 17 per cent were neutral and 22 per cent felt the statement was not relevant to them. Respondents noted that the legislation is complex but indicated there is a willingness from staff to answer the questions put to them.

Conditions attached to no objections notifications are clear, assisting applicants to meet their compliance obligations

When asked whether conditions are clear, assisting applicants to meet their compliance obligations, 33 per cent of questionnaire respondents agreed or strongly agreed that conditions are clear, assisting applicants to meet their compliance obligations. 17 per cent were neutral and 28 per cent felt the statement was not relevant to them. Respondents understand the policy settings underpinning conditions, but in some cases practical issues arise when working out how to comply.

Foreign Investment Policy Communication

Treasury and the ATO actively engage with stakeholders in regards to foreign investment policy matters

When asked whether Treasury and ATO actively engage with stakeholders in regards to foreign investment policy matters, 89 per cent of questionnaire respondents agreed or strongly agreed. 5.5 per cent were neutral and 5.5 per cent felt the statement was not relevant to them. Respondents felt officials had good and regular dialogue with relevant industry and professional organisations, and Treasury and ATO stakeholder groups were very helpful.

Treasury/ATO officials display an understanding of my industry, organisation and operating environment

When asked whether Treasury and ATO officials display an understanding of their industry, organisation and operating environment, 67 per cent of questionnaire respondents agreed or strongly agreed. 22 per cent were neutral and 5.5 per cent felt the statement was not relevant to them. Respondents generally felt officials were willing to listen and engage in this area. Most felt that officials understood the commercial considerations of their clients.

Treasury/ATO seek to streamline requests for information

When asked whether Treasury and ATO streamline requests for information, 28 per cent of questionnaire respondents agreed or strongly agreed. 44 per cent were neutral and 11 per cent felt the statement was not relevant to them. Feedback from investors reflected that requests for information were generally streamlined, and seemed appropriate with regard to the circumstances, with some expressing the view that there is opportunity to streamline requests at an operational level.

Treasury/ATO responded quickly to my requests for information in relation to foreign investment issues

When asked whether Treasury and ATO respond quickly to requests for information in relation to foreign investment issues, 56 per cent of questionnaire respondents agreed or strongly agreed. 33 per cent were neutral and 11 per cent felt the statement was not relevant to them. Most respondents commented that their experience in this area was positive. However there have been some delays since the introduction of the temporary measures on 29 March 2020.

Information provided in FIRB guidance notes on the firb.gov.au website was helpful

When asked whether the information provided in FIRB guidance notes on the firb.gov.au website was helpful, 89 per cent of questionnaire respondents agreed or strongly agreed. 11 per cent disagreed. Most respondents commented that the guidance notes are a good source of information, but that there is room to improve consistency across guidance sources.

Foreign Investment Phone and Email Enquiries

When I call the FIRB enquiry line, Treasury officials are able to resolve my issue

When asked whether FIRB enquiry line officials were able to resolve their issue, 6 per cent of questionnaire respondents agreed or strongly agreed. 39 per cent were neutral and 44 per cent felt the statement was not relevant to them. Most respondents had long term engagement with Treasury's Foreign Investment Division and would contact their relevant case officer directly. Treasury intends to implement an end of call survey to capture feedback about the FIRB enquiry line.

When I email FIRBenquiries@treasury.gov.au, Treasury officials are able to resolve my issue

When asked whether FIRBenquiries@treasury.gov.au officials were able to resolve their issue, 28 per cent of questionnaire respondents agreed or strongly agreed. 33 per cent were neutral and 39 per cent felt the statement was not relevant to them. On 3 August 2020, Treasury added a 1 minute feedback survey at the end of email enquiry replies.

When I call the ATO enquiry line in regards to foreign investment issues, ATO officials are able to resolve my issue

When asked whether ATO enquiry line officials were able to resolve their issue, 11 per cent of questionnaire respondents agreed or strongly agreed. 22 per cent were neutral and 56 per cent felt the statement was not relevant to them. Most respondents have not needed to call the ATO enquiry line.

When I email the relevant ATO foreign investment email enquiry line ATO officials are able to resolve my issue

When asked whether ATO foreign investment email enquiry officials were able to resolve their issue, 5.5 per cent of questionnaire respondents agreed or strongly agreed. 28 per cent were neutral and 61 per cent felt the statement was not relevant to them. Most respondents have not needed to email the ATO enquiry address.

Appendix B – Stakeholder engagement

Figure 1: Treasury’s and the ATO’s Foreign Investment Stakeholder Engagement Metrics for 2019-20

Metric (KPI number)	2018-19			2019-20		
	ATO Residential real estate	Treasury Non- residential	Total	ATO Residential real estate	Treasury Non- residential	Total
FIRB information sessions (1 & 2)	40	15	55	3	79	82
Interdepartmental committees (IDCs) (4 & 6)	-	41	41	-	36	36
Stakeholder engagement events (1, 2, 4 & 6) ¹	8	317	325	24	536	560
Phone calls handled by Treasury and the ATO (5) ²	13,013	2,329	15,342	16,887	3,830	20,717
Emails handled by Treasury and the ATO (5)	10,337	450	10,787	12,360	827	13,177

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

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