



Australian Government  
The Treasury

**TSY/AU**

# REGULATOR PERFORMANCE FRAMEWORK

## Administration of Australia's Foreign Investment Framework

Report 2020-21



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# AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK

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## 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 proposals are reviewed on a case-by-case basis to determine whether they raise national security concerns or 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 regulatory administration of the framework in relation to business, agricultural land and sensitive or complex commercial real estate investments and for 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 Australian Taxation Office (ATO) is responsible for regulatory administration of the framework in relation to residential real estate, as well as non-sensitive commercial real estate (vacant and non-vacant) and corporate reorganisations, and for the development and maintenance of foreign ownership registers.<sup>1</sup> 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:

- considers proposed investments that are subject to the framework;
- makes recommendations to the Treasurer and other Treasury portfolio ministers on the national interest and national security implications of these proposals;
- advises the Treasurer on the operation of the framework; and
- fosters an awareness and understanding, both in Australia and abroad, of Australia's foreign investment policy and the framework.

The Treasury and the ATO consult with other Australian government departments, states and territories, national security agencies and authorities with responsibilities relevant to proposed investments. Advice and comments provided by consult partners are important in reviewing the implications of proposed investments and, in particular, determining whether they raise any national interest or national security concerns.

The impacts on the administration of the framework are addressed under relevant key performance indicators (KPIs) in the body of this report. The overall administration of the framework is assessed in this report; we have identified where the reforms, summarised below, influenced the Treasury and the ATO's performance. Further information on proposal numbers are available in the FIRB Annual Report 2020-21.

On 29 March 2020, the Treasurer announced that due to the impacts of COVID-19, all monetary screening thresholds would be temporarily reduced to zero dollars. The temporary zero dollar screening thresholds

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<sup>1</sup> 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.

ended on 1 January 2021. This coincided with the introduction of reforms to Australia's foreign investment framework. The reforms were in response to emerging risks and global developments.

The reforms enhance the foreign investment framework in relation to national security, and compliance monitoring and enforcement, as well as streamlining certain investments. A simpler and fairer fees framework was also introduced.

Importantly, the reforms preserved the underlying principles of the framework: that Australia welcomes foreign investment for the significant benefits it provides but also ensures that investments are not contrary to the national interest.

In July 2021, the Australian Government published a revised version of the Regulator Performance Guide. It refocuses expectations for regulator performance and reporting to be more outcomes-focused and principles-based. Instead of a once-off external validation, regulators are now expected to maintain a dialogue with stakeholders on performance throughout the financial year. Commencing with the 2021-2022 financial year, the Foreign Investment Division will report on its performance through new Treasury-wide arrangements that comply with the revised Guide.

## ASSESSING REGULATOR PERFORMANCE

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### METHODOLOGY

This report was prepared by the 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 2020-21 self-assessment draws on both quantitative and qualitative information to evaluate performance against the KPIs. This includes observations made by senior managers from the Treasury and ATO on the administration of the system, feedback received in the 2020-21 Foreign Investment Stakeholder Questionnaire (the questionnaire) and from investors on compliance-related activities. Further detail on the questionnaire can be found in Appendix A.

The Treasury received a total of 10 responses (out of a possible 30 responses) to the questionnaire. The questionnaire was circulated to stakeholders from 16 November 2021 to 1 December 2021 (a total of 11 working days). Due to the low response rate and sample size, the results may not be representative of the

broader stakeholder network. However, the responses provide valuable insight into the performance of the Treasury and ATO in their administration of the framework.

## OVERALL ASSESSMENT

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### SUMMARY OF PERFORMANCE 2020-21

The overall assessment in this report is that the KPIs were met during 2020-21. Further to this assessment, stakeholders have proposed improvements to the administration of the framework, related to both the development and implementation of the reforms, which requires a continued focus in the next reporting period. These matters are canvassed in the body of this report and include:

- continuing efforts to improve proposal review times and stakeholder experience;
- 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 operationalise the new compliance and national security powers;
- building the utility of assistance provided through the foreign investment telephone and email contact service model (*FIRB enquiry line*); and
- continuing to engage stakeholders through a mutual dialogue to help them understand their role in the reformed foreign investment framework.

# 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*

In 2020-21, stakeholder engagement was an important mechanism for the Treasury and the ATO to deepen its understanding of the foreign investment environment and facilitate discussions with industry sectors on emerging issues in Australia and abroad.

Due to the continued impact of COVID-19, communication with stakeholders was primarily facilitated through digital forums, ensuring that communication lines remained open in the lead up to and after the commencement of the reforms, even when communities were in lock-down. In the reporting period, the Treasury engaged in over 230 stakeholder meetings and the ATO conducted 15 stakeholder events.

The Treasury met monthly with consult partners to share information and gain insight into developments in the foreign investment environment. 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 consulted with the Department of Agriculture, Water and the Environment, the Bureau of Meteorology and state-based water authorities. These consultations assisted in building an understanding of foreign ownership trends in relation to agricultural land and water entitlements helping to ensure that the content of the reports meet audience needs.

Further, in conjunction with the Critical Infrastructure Centre, the Australian Security Intelligence Organisation (ASIO) and the Australian Signals Directorate, the Treasury continued its analysis of key sectors of the economy 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 30 per cent of respondents agreed or strongly agreed that Treasury and ATO officials had an understanding of their industry, organisation and operating environment. Respondents commented that while officials had a general understanding of the operations of various industry sectors, they felt that the depth of understanding of the applicant's industry varied between officials.

Metrics of foreign investment related stakeholder engagement activities can be found at Appendix B.

## 1.2 Minimising the potential negative impact of regulatory activities

At the beginning of the reporting period, the temporary zero dollar threshold arrangements had been in place for three months. They were put in place to protect Australia's national interest while the Government managed the economic challenges arising from COVID-19. On 5 June 2020, just prior to the reporting period, the Government announced major reforms to the foreign investment framework. The changes announced are the most significant foreign investment reforms in fifty years. To ensure the efficient operation of foreign investment in this period, the Treasury continued to work closely with consultation partners across government to ensure a smooth transition to the newly commenced legislation as well as the removal of temporary zero dollar screening thresholds.

From the end of March 2020, the Treasury and the ATO met with business groups (including the Business Council of Australia), individual investors (including sovereign wealth funds), the Law Council, the ATO's Foreign Investment Stakeholder Group<sup>2</sup> and state and territory representatives to discuss the temporary arrangements and increase awareness of the expanded foreign investment obligations amongst foreign investors not ordinarily subject to the framework. These consultations, which continued into the reporting period, enabled the Treasury and the ATO to understand the impacts the temporary arrangements had on investors and to ensure guidance materials addressed issues of concern to stakeholders. Insights gained through these engagements led to a number of changes to the temporary arrangements prior to their removal on 1 January 2021.

The framework was scrutinised through a range of forums during 2020-21, including in relation to the foreign investment reforms announced on 5 June 2020. These assessments provided a valuable opportunity for the Treasury and stakeholders to reflect on the direction of the framework and potential areas for improvement.

The Senate Economics References Committee's inquiry into foreign investment proposals, which began on 4 December 2019, continued through the reporting period. Originally scheduled to report by 7 September 2020, the completion date for the inquiry was postponed to 27 August 2021, when the final report was released.

The Treasury attended one public hearing for this inquiry during the reporting period, on 7 August 2020. At this hearing, the Treasury updated the committee on recent developments in the foreign investment landscape, the implementation of the temporary zero dollar thresholds and the Government's announcement of the foreign investment reforms.

On 28 October 2020, the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* and the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020* were referred to the Senate Economics Legislation Committee for inquiry and report by 26 November 2020.

The Treasury made a submission to the inquiry in November 2020, before the Treasury and the Chair of the Board attended a public hearing on 18 November 2020. The Treasury's submission focused on providing the rationale for the reforms; explaining the new national security, compliance, enforcement and streamlining measures; and outlining Treasury's consultation on the Bills to date.

Responses to the questionnaire show that 40 per cent of respondents either agreed or strongly agreed that their application had been dealt with efficiently. In comparison, 40 per cent of respondents disagreed with the statement and 20 per cent strongly disagreed. Feedback from submissions to the evaluation of the reforms noted that processing times were a key issue for stakeholders. The median processing time was 50 days in 2020-21, a period in which the Treasury processed an additional 1,225 proposals submitted under the zero dollar screening threshold regime. The median processing time was 48 days in the preceding

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<sup>2</sup> 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/>

reporting period. During this time 150 cases were considered under the zero dollar screening threshold from its commencement on 29 March 2020 to the end of the financial year.

The ATO's median review time remained at 10 days in 2020-21, the same as the median review time for the 2019-20 reporting period.

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

The Treasury and the ATO continue to implement continuous improvement strategies to reduce compliance costs for foreign investors.

To enable the Treasury and the ATO to streamline and strengthen their processes in administering their new powers under the reforms, \$62.8 million was provided over four years from 2020-21 for the July 2020 Economic and Fiscal Update measure Reforming Australia's Foreign Investment Framework. The funding will support both agencies to address national security risks, strengthen compliance measures, streamline proposal processes, and provide administrative enhancements.

To support the reforms, the 2020-21 Budget measure Strengthening Australia's Foreign Investment Framework also provided \$86.3 million over four years (starting 2020-21) to deliver business and digital transformation programs aimed at enabling the Treasury and the ATO to exercise their new powers efficiently. These programs will deliver end-to-end integration of business, while facilitating consultation partners and investors to interact with the foreign investment system more efficiently. A new technology solution will deliver:

- a full-service case management system to enable enhanced case management, strengthen compliance capability, and deliver a refined reporting tool;
- an advanced analytics platform, which will enable more informed proposal assessments, improve compliance management, and enable advanced scanning capabilities; and
- an ATO-led Register of Foreign Ownership of Australian Assets, which will enable a consolidated view of foreign owned assets.

Following the June 2020 announcement of the reforms, the Foreign Investment Division restructured its case review teams to be organised by sector, grouping staff with complementary skills and industry expertise. Staff in each team review cases from the relevant sector, further developing their subject matter expertise through ongoing exposure to that operating environment.

To make compliance with the framework easier, the Treasury worked with the Behavioural Economics Team of the Australian Government (BETA) to develop a range of documents and templates using behavioural insights principles. This approach is designed to make our communication regarding investor obligations clear, while also encouraging compliance. The documents and templates created in consultation with BETA and their principles are now in use. This contributed to the development of an updated compliance framework; a policy statement explaining the framework was published online in December 2020.

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 products, communications, reminder programs and awareness campaigns focusing on different elements of the foreign investment regime, aiming to drive higher levels of understanding and voluntary compliance by ensuring that foreign persons and their advisors 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 Provision of guidance and information

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

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

- the Law Council and state-based Law Societies, as well as conveyancing institutes, property-related stakeholders, and the Australia China Business Council 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 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 reforms and included new and updated Guidance Notes, information on the changes to the legislation 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 implemented several changes to its foreign investment-related web content including the provision of translated content for diverse audiences. These changes were designed to improve navigation and simplify language to enhance the client experience.

The Treasury continued to work with Austrade, Australian diplomatic missions and international Treasury posts to disseminate information and facilitate direct interactions with investors. Regular publications, including the FIRB Annual Report, also provide information on Australia's foreign investment framework and investment inflows.

Feedback received through the questionnaire indicated that 40 per cent of respondents thought that advice provided by Foreign Investment Division and ATO staff was current, clear, accessible, and concise. The Treasury continues to evaluate its guidance materials to ensure it is clear and consistent. The

evaluation process considers feedback received from stakeholders, particularly those that seek clarification through its enquiry lines.

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

On 9 December 2020, the Parliament passed the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020*. The design of the legislation involved targeted engagement with around 750 stakeholders (described in *Administration of Australia's Foreign Investment Framework Report 2019-20*). Engagement activities aimed to assess the impacts the new legislation would have on the operational environment.

From 31 July to 31 August 2020, stakeholders had the opportunity to comment on the exposure draft of the reforms and the definition of a sensitive national security business in the exposure draft Regulation. The Treasury hosted online public information sessions on the reforms, as well as individual engagements with particular investor and industry groups. This month-long consultation period garnered 54 submissions.

This was followed by a two-week consultation period on the remainder of the exposure draft Regulation. This process, which ran from 18 September to 2 October 2020, resulted in a further 43 submissions.

Given the scope of the reforms and the importance of foreign investment to the Australian economy, the Parliament tasked the Treasury with undertaking an evaluation of the new reforms over the first year of implementation, with the Parliament to be updated on their impact. The review took place in the second half of 2021 and is expected to provide insights into Treasury's performance as the regulator of foreign investment into Australia.

Beyond the review, the Treasury is committed to undertaking a further post implementation review of the reforms by 2025. For this review, Treasury will consult with affected stakeholders, and collect and analyse relevant data (for example, the value of proposed investment) to evaluate the impact of the reforms. In the meantime, the Treasury will continue to monitor the operation of the reforms, including through regular consultations and engagement with stakeholders.

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 hosted 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.

Responses to the questionnaire suggest stakeholders have positive views on the level of engagement with 80 per cent of respondents agreeing or strongly agreeing that the Treasury and the ATO actively engage with stakeholders on foreign investment policy matters.

## *2.3 Decisions communicated in a timely manner*

No objection notifications (decisions) issued under the Act must be communicated to the applicant no later than 10 days after the decision was made. In 2020-21, with six exceptions, decisions were communicated within this stipulated timeframe. Where the decision was communicated after the 10 day notice period, no foreign investor suffered detriment due to this administrative error.

To ensure decisions are communicated in a timely manner, the Treasury has strengthened case management capabilities and processes, including refining management oversight, enhancing proposal review training, review guidelines and quality assurance monitoring, to ensure that decisions are communicated within the legislative notice period.

## 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, proportionate approach to compliance obligations, engagement and enforcement actions*

The 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 the reporting period, the Treasury's compliance activities were framed according to the Foreign Investment Compliance Framework, updated in December 2020. Broadly, this covers education, compliance assurance, enforcement, and market intelligence. It outlines that the 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, the Treasury's approach is to provide support and education to foreign investors to assist them to meet their compliance obligations.

The ATO adopts a similar approach to compliance and will work with individuals in the first instance to help them understand their obligations and to influence their behaviour. Each year, the ATO undertakes a review of the global environment. This includes risk drivers and data-driven insights 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, depending on 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 six monthly reporting and payment obligations.

Legislative reforms that took effect on 1 January 2021 introduced new compliance and enforcement powers for the Treasury, accompanied by increased investor reporting obligations. The reforms provide a broader suite of powers and improve the ability of the Treasury and the ATO to tailor its responses depending on the nature of the breach. The powers allow the Government to pursue early, proportionate, and effective action to remedy a breach of foreign investment conditions. Additional deterrent measures such as infringement notices, enforceable undertakings, and higher civil and criminal penalties were introduced to ensure investors comply with their obligations. The Treasury has undertaken, and continues to progress, a significant program of work to operationalise its new powers.

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

The Treasury's compliance efforts harness information from a range of sources. This includes drawing on information and specialist advice obtained through consult partners, including Australian Government regulators and states and territories.

From 1 January 2021, all foreign investors issued a no objection notification or an exemption certificate were required by the Act to notify the Treasurer of certain events or actions taken, such as acquiring an interest in land or a business or starting/ceasing a business. These reports assist the Treasury in identifying if regulated actions have occurred.

During the reporting period, the Treasury's market intelligence activities focused on making better use of data to improve monitoring of foreign investment compliance. In collaboration with other government agencies, data-driven surveillance activities were undertaken in connection with the temporary zero dollar screening threshold to detect potential instances of non-compliance.

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. The ATO also uses publicly available information and data sources that supports the data matching capabilities.

## 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*

The circumstances in which the Treasury and the ATO can share information are limited by the protected information disclosure provisions of the Act. Within these constraints, the Treasury and the ATO continue to work with consult partners on information sharing arrangements that 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 the Treasury and the ATO to obtain and share information across agencies and with other consult partners including the Australian Federal Police, the Department of Home Affairs, AUSTRAC, states and territories and local councils as needed.

The Treasury and the ATO continue to work with consult partners to define roles and responsibilities in relation to compliance action under the Act. This has ensured that where the Treasury is the lead agency, it initiates and coordinates the action and interface with investors to avoid multiple requests for information.

More broadly, since 2018, the 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 Government to support compliance activities. The Forum is attended by consultation partners including the Department of Home Affairs, the Department of 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, 40 per cent of questionnaire respondents agreed and 10 per cent were neutral. Fifty per cent disagreed or strongly disagreed. Respondents commented that the requests for information they received were ad hoc, and usually extended the application timeframe. To improve its approach to information requests, Treasury revised its case assessment processes, including the identification of key questions early in the assessment process. Tested in a three-month pilot following this reporting period, the revised processes ensure information requests to foreign investors are more coordinated and are submitted earlier in the life of an application. Longer term, the digital transformation program will introduce further efficiencies as it is implemented over the next few years.

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

When recommending conditions be imposed on a no objections notification, the Treasury and the ATO consider the circumstances of the investor and the risks to the national interest which the conditions are designed to mitigate. More generally, the Treasury and the ATO's compliance work is tailored to the circumstances of individual investors. The 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. The Treasury and the ATO's compliance activity may include implementing 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 fourth year. The Treasury uses a risk-based approach to target its audits and 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 ATO compliance audit program is now in its sixth 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 paused foreign investment compliance work as part of the ATO's strategy to refocus its resources to address priority work, including screening foreign investment proposals arising from the zero dollar threshold arrangements. Placing compliance action on hold reflected the specific circumstances of the pandemic which may have prevented foreign investors from complying with their obligations, 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 COVID-19.

## 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 *Foreign Investment Review Board (FIRB)* website is the central access point for information on the foreign investment framework with 935,695 views in 2020-2021. The website has a broad range of information to support foreign investment enquiries and applications, including:

- a link to the online application portal;
- updates on the temporary measures and the reform package;
- general information about the FIRB, its role and the regulatory arrangements for foreign investment;
- guidance and information for foreign investors and their advisers;
- information on the Foreign Investment Division's risk-based approach to compliance; and
- reports on past performance.

Alerts are sent to website subscribers on any changes that are made to regulatory requirements and to the website. During 2020-21, the Treasury provided information to subscribers about the zero dollar threshold, the reforms to the framework, and about scheduled outages of the website and portal.

As part of implementing the legislative reforms, publicly available *Guidance Notes* on the website were updated to reflect the reformed legislation and regulations. As well as adding reform-related content, the guidance was consolidated into a more user-friendly format, reducing the total number of *Guidance Notes* from 53 to 15. This included a new *National Security Guidance Note* developed in consultation with national security partners that outlined the mandatory national security notification requirements and areas where voluntary notification is encouraged. A standalone *Transitional Guidance Note* was also released to address investor questions about transitional arrangements. Several design changes were made to the website to ensure investors and other stakeholders could readily access information related to national security, compliance and reporting; and to notify new actions established under the reforms.

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 foreign investment application, complete a land registration and lodge a vacancy fee form. Foreign investment pages on the ATO website show a total of 80,083 page views.

Feedback from the questionnaire indicated that 80 per cent of respondents agree or strongly agree that they have access to the information they need to effectively navigate the foreign investment approval processes. Respondents commented that the website provided sufficient information about the application process in general. Those who disagreed with the statement commented that new users would

find the website difficult to navigate and that improvements could be made with the clarity and consistency of information provided in relation to the approval process.

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

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

In 2020-21, the Treasury handled 3,477 calls on its foreign investment telephone enquiry line compared to 3,830 calls in 2019-20. The number of the Treasury's email responses in 2020-21 continued to increase, growing to 944 email enquiries from 827 enquiries in 2019-20 and 450 enquiries in 2018-19. During 2020-21, the majority of written enquiries were responded to within 10 days. The median written response time was 7 days.

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 2020-21, the ATO answered 22,105 phone enquiries, an increase from 2019-20, and 1,340 website enquiries via ato.gov.au 'Ask Alex' – the ATO's virtual assistant – a decrease from 2019-20. The ATO responded to 11,059 emails, slightly fewer than in 2019-20. Most related to residential screening (38 per cent), vacancy fees (37 per cent) and the land register (22 per cent). A much smaller number of emails concerned commercial applications, law and policy and compliance obligations.

In the 2019-20 Regulator Performance Framework report, the Treasury indicated that it was implementing a survey tool for its foreign investment enquiry line (*FIRB enquiries*). This was to supplement the statistical analysis of enquiry line volumes with a more detailed view of how the phone line is used and whether it is serving callers' needs. A high-level overview of the survey is Attachment C.

Both surveys show that most calls were resolved on the spot, and in good time, with a smaller number requiring a follow-up email. Just under half the number of callers surveyed reported that the enquiry line is their first point of contact with the Treasury. Treasury staff monitoring the line respond to questions about a wide range of foreign investment types and the way in which the Treasury administers policy, processes and compliance with the Act.

From an internal perspective, the surveys show the importance of focusing on training Treasury officers to develop their expertise in different aspects of foreign investment and its regulation.

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

The FIRB Annual Report is a key mechanism for reporting on foreign investment proposals, approvals, and compliance. This Regulator Performance Framework report is the main vehicle by which the Treasury and the ATO report on regulatory 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 Cooperative and collaborative relationships with stakeholders*

In the reporting period, the 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 framework and its administration.

Strategic foreign investment issues meetings are held monthly. These meetings are chaired by the First Assistant Secretary Foreign Investment Division 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 framework.

To ensure the framework balances the economic benefits from foreign investment while protecting the national interest, Treasury officials met with industry representatives from Australia and abroad. In the reporting period, there were 58 separate engagements with industry groups and organisations and 34 engagements with officials from foreign governments.

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 and introduce ideas on the Foreign Investment Program of work being undertaken by the ATO. The Group comprises representatives from industry bodies in the real estate sector, legal community and finance sector. Treasury representatives regularly attend meetings of the Stakeholder Group to provide updates on policy and law reform matters.

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

In addition to ongoing consultation with current and proposed investors and their advisers, the Treasury is undertaking an evaluation of the operation of the reforms implemented by the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020*. Stakeholders were invited to provide formal written submissions to inform the Treasury's evaluation process, with feedback requested for specific elements of the reforms. The evaluation report is due to be published in 2022.

Treasury staff met with the Law Council on a number of occasions 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.

Feedback received from audited entities indicated key compliance costs included legal and professional services fees and labour and administrative costs.

Feedback from stakeholders in the questionnaire indicated that 50 per cent of respondents agreed or strongly agreed that conditions are clear, assisting applicants to meet their compliance obligations. In response to feedback received in the 2019-2020 Foreign Investment Stakeholder Questionnaire, the Treasury revised the wording of the most commonly used conditions. The feedback received in the 2020-21 Questionnaire indicated that the revised wording has begun to improve stakeholders' experiences with Australia's foreign investment compliance framework.

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

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

## APPENDIX A – STAKEHOLDER QUESTIONNAIRE

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The Treasury continues to actively engage with stakeholders to provide information on the operation of the framework. Below is a summary of the 2020-21 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 10 responses out of approximately 93 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 response rate to the 2020-21 Questionnaire was significantly lower than in previous years. This may be attributed to the timing of the Regulator Performance Framework surveys in relation to the submission period for the Evaluation of the Reforms. The guidance for submissions addresses some of the KPIs and could contribute to “survey fatigue”. As a result, the responses may not reflect the experiences of the majority of investors.

A new question was included in the 2020-21 Foreign Investment Stakeholder Questionnaire. Respondents were asked to identify which agency, the Treasury or the ATO, they had interacted with in their most recent experience with the foreign investment application process. Respondents were asked to consider their most recent experience when answering the questionnaire. The disaggregated responses will be used to provide feedback to each agency internally.

### THE FOREIGN INVESTMENT PROPOSAL 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, 80 per cent of respondents agreed or strongly agreed, and 20 per cent disagreed with the statement. Respondents commented that the guidance notes updated in July 2021 are more comprehensive and that sufficient information about the general application approach can be found on the foreign investment website. Those who disagreed with the statement commented that new users would find the website difficult to navigate and that improvements could be made to improve the clarity and consistency of information provided in relation to the approval process.

#### **Applications are dealt with efficiently**

When asked whether their application had been dealt with efficiently, 40 per cent of respondents agreed or strongly agreed. Sixty per cent disagreed or strongly disagreed. Respondents commented that inconsistent approaches to reviewing applications led to delayed finalisation of cases beyond the statutory period. Respondents reported contributing factors including multiple requests for information.

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

When asked whether the Treasury and ATO officials kept them up to date about the status of their application, 40 per cent of respondents agreed or strongly agreed. Thirty per cent were neutral and 30 per

cent disagreed. Respondents commented that for the most part officials were helpful and communicated on the status of applications when information was requested.

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

When asked whether advice provided by the Treasury and ATO staff was current, clear, accessible, and concise, 40 per cent of respondents agreed or strongly agreed. Thirty per cent were neutral and 30 per cent disagreed. Respondents noted that the application process is complex and at times opaque. Respondents commented there was a lack of a consistent approach.

#### **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, 50 per cent of respondents agreed or strongly agreed that conditions are clear, assisting applicants to meet their compliance obligations. Thirty per cent were neutral and 20 per cent disagreed or strongly disagreed. Respondents commented that the conditions were usually clear but felt that conditions imposed were not always appropriate. Respondents felt that officials were less helpful in clarifying why certain conditions were imposed.

## **FOREIGN INVESTMENT POLICY COMMUNICATION**

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

When asked whether the Treasury and ATO actively engage with stakeholders in regards to foreign investment policy matters, 80 per cent of respondents agreed or strongly agreed. Twenty per cent disagreed or strongly disagreed. Respondents felt that engagement from Treasury and the ATO had improved from previous years.

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

When asked whether the Treasury and ATO officials display an understanding of their industry, organisation and operating environment, 30 per cent of respondents agreed or strongly agreed. Twenty per cent were neutral and 50 per cent disagreed. Respondents felt that officials generally understand the various operating environments relevant to their proposed investments. However, some respondents felt that the depth of understanding of the applicant's industry varied between officials.

#### **Treasury/ATO seek to streamline requests for information**

When asked whether the Treasury and ATO streamline requests for information, 40 per cent of respondents agreed, 10 per cent were neutral and 50 per cent disagreed or strongly disagreed. Respondents commented that the information requests they have received are ad hoc and sporadic. Respondents indicated that requests for information usually extended the application timeframe.

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

When asked whether the Treasury and ATO respond quickly to requests for information in relation to foreign investment issues, 60 per cent of respondents agreed or strongly agreed, 10 per cent were neutral

and thirty per cent disagreed or strongly disagreed. Most respondents commented that their experience in this area was positive, and officials responded promptly when contacted.

### **Information provided in *Guidance Notes* on the foreign investment website (*firb.gov.au*) was helpful**

When asked whether the information provided in the *Guidance Notes* on the website (*firb.gov.au*) was helpful, there was a clear improvement from the previous reporting period with 80 per cent of respondents agreeing it was helpful and 20 per cent strongly agreeing. Most respondents commented that the guidance notes are a helpful source of information. Respondents noted that there is room to improve consistency across guidance sources.

## **FOREIGN INVESTMENT PHONE AND EMAIL ENQUIRIES**

### **When I call the foreign investment enquiry line (*FIRB enquiries*), Treasury officials are able to resolve my issue**

When asked whether officials staffing the enquiry line were able to resolve their issue, 20 per cent of respondents agreed or strongly agreed. Twenty per cent were neutral and 40 per cent disagreed or strongly disagreed. Twenty per cent felt the statement was not relevant to them. Respondents commented that the enquiry line would provide sufficient assistance when questions were general and when a standard response could be provided.

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

When asked whether Treasury officials staffing the enquiries mailbox were able to resolve their issue, 20 per cent of respondents strongly agreed, 30 per cent were neutral and 20 per cent disagreed or strongly disagreed. Thirty per cent felt the statement was not relevant to them. Respondents commented that they do not frequently contact the Treasury through email.

### **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, 10 per cent of respondents strongly agreed, 30 per cent were neutral and 10 per cent strongly disagreed. Fifty 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, 20 per cent of respondents agreed or strongly agreed. Twenty per cent were neutral, 10 per cent disagreed and 50 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: Foreign Investment Stakeholder Engagement Metrics for 2020-21

Metric (KPI number)	2019-20			2020-21		
	ATO Residential real-estate	Treasury Non residential	Total	ATO Residential real-estate	Treasury Non residential	Total
Foreign investment information sessions (1 & 2)	3	79	<b>82</b>	-	17	<b>17</b>
Interdepartmental committees (IDCs) (4 & 6)	-	36	<b>36</b>	-	7	<b>7</b>
Stakeholder engagement events (1, 2, 4 & 6) <sup>1</sup>	24	536	<b>560</b>	29	210	<b>239</b>
Phone calls handled by FID and the ATO (5) <sup>2</sup>	16,887	3,830	<b>20,717</b>	22,105	3,477	<b>25,582</b>
Emails handled by FID and the ATO (5)	12,360	827	<b>13187<sup>3</sup></b>	11,059	944	<b>12,003</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.

3. In the Regulatory Performance Framework 2019-2020 it was reported that there were 13,177 total emails. This was a typographical error and the correct total amount is above.

## APPENDIX C – FOREIGN INVESTMENT ENQUIRY LINE SURVEY

The foreign investment enquiry phone line survey (*FIRB Enquiries*) ran from 1 April to 2 June 2021 and generated 127 responses.

Most callers (just over 62 per cent) to the enquiry phone line during the first survey period were from law firms or were agents of conveyancers working on behalf of investors. Callers selected the option based on the nature of their enquiry. Most calls were general in nature (around 32 per cent) or about rules and policy (just under 30 per cent). Compliance requirements or an existing application were both just under 16 per cent. Most callers were placed in the correct queue (almost 78 per cent). Due a low response rate, analysis was not useful to understand if callers had contacted the Treasury prior to their call to the enquiry phone line. This omission was addressed in the second survey.

The questions asked by callers were also recorded and Treasury officers asked to allocate these to a more specific category.

The largest proportion recorded (almost 26 per cent) was “other”, covering a diverse range of questions. Examples of “other” included questions about definitions under the legislation, the status of existing cases, review timeframes, details on how to correspond with the FIRB, and password resets for the investor portal.

Other enquiries were distributed across commercial land (over 20 percent), businesses, assets and securities (just over 10 per cent) and application fees and thresholds (also just over 10 per cent). A smaller proportion related to new applications (just over 9 per cent).

Most enquires were resolved by the Treasury officer taking the call (about 78 per cent), with a smaller proportion followed up by an email (11 per cent). An even smaller proportion was referred to another officer in the Treasury (about 8 per cent) or to the ATO (just over 6 per cent). In most instances that resolved enquires (around 71 per cent), Treasury officers did not use the prepared answers available.