

Foreign Investment

Review Board

Annual Report

2019–20

© Commonwealth of Australia 2021

ISSN 0155–0802 (print)

ISSN 2204–0927 (web)

This publication is available for your use under a Creative Commons Attribution 3.0 Australia licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a Creative Commons Attribution 3.0 Australia licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Treasury.

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see www.pmc.gov.au/government/commonwealth-coat-arms).

Other uses

Inquiries regarding this licence and any other use of this document are welcome at:

Manager
Communications
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

A copy of this document appears on the Foreign Investment Review Board website at www.firb.gov.au.

21 June 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

It is my pleasure to present to you the Annual Report of the Foreign Investment Review Board (the Board) for the year ending 30 June 2020. The report has been prepared in accordance with the Board's responsibilities to advise the Government on foreign investment matters. As in previous years, the report references developments in foreign investment and its related policy that occurred outside of the reporting period, including commenting on policy reforms which commenced on 1 January 2021.

In 2019–20, there were significant policy developments in the foreign investment framework, including measures to address the unique and unparalleled circumstances unfolding during the global COVID-19 pandemic, and reforms to respond to particular risks and enhance Australia's administration of the framework.

As with all sectors in Australia, the COVID-19 pandemic had significant implications on the operations of the Board, as well as the departments and agencies involved in the administration of the *Foreign Acquisitions and Takeovers Act 1975* (the Act).

The Board worked with applicants and business to navigate the impacts of the shock to Australia's foreign investment system. Challenges, including a transition to working remotely, presented the Board with opportunities to operate in an agile way with foreign investment applicants and their representatives.

The Board, Department of the Treasury (Treasury) and Australian Taxation Office (ATO), like others, quickly transitioned to working remotely, testing their business continuity procedures and ensuring that the administration of the foreign investment framework remained effective within the rapidly evolving environment. The Board's regular monthly meetings were held via video conference and, between March to October 2020, the Board did not meet in person.

The onset of the COVID-19 pandemic led to a rapid shift in how meetings were convened with stakeholders. Webinars, online forums and telephone conferences became the norm and provided platforms by which to communicate with stakeholders, ensuring that communication lines remained open, even when communities were in lock-down.

In the fourth quarter of the year, the Board's operations responded to the zero dollar threshold announced by the Government on 29 March 2020. These changes were necessitated by the need to manage the potential disruption posed by the COVID-19 pandemic to protect Australia's national interest during a challenging time for the economy, business and broader community.

At the time the zero dollar threshold was introduced, there were concerns about the pressures facing Australian businesses and the potential for them to be sold to foreign interests without any government oversight, presenting risks to the national interest.

Australia was not alone in implementing such measures at this time. Steps were taken by governments around the world to enhance screening frameworks in response to the COVID-19 pandemic.

Recognising that reducing the established investment thresholds would likely have an impact on the number and type of applications received, the Treasury recruited additional staff, implemented a range of administrative measures and adapted its business structures and processes. It introduced a triaging system to prioritise applications on the basis of their commercial deadlines and risk profile, and whether they protected and supported Australian businesses and jobs. Work was also undertaken with consultation partners to streamline assessment processes where possible. The ATO provided additional support to Treasury beyond its normal role for this period with the processing of commercial property applications.

Although the Government announced an extension of the statutory timeframes for the review of applications from the standard 30 days to up to six months, the majority of applications were processed well within the six month timeframe. In a number of cases, the Board expedited its consideration of applications so as to ensure commercial deadlines were met and disruptions caused by the COVID-19 pandemic were minimised as much as possible. The acquisition of Virgin Australia by Bain Capital is a relevant example. This report provides a case study on this proposal.

While the impacts of the COVID-19 pandemic were far reaching and led to shifts in the administration of the foreign investment framework, this did not detract from the Board's broader oversight of the framework.

The announcement in June 2020 of a major policy reform package reflects a large body of work and analysis that had been undertaken over an extensive period of time. The Board was pleased to have had the opportunity to provide its input into the policy development process. The implementation of the reforms from 1 January 2021, including the additional resourcing across the suite of functions, but particularly in relation to compliance, will significantly enhance the administration of the framework and ensure Australia remains at the forefront of foreign investment policy and practice.

This report provides data on proposed foreign investment in 2019-20. Both the volume and value of applications in 2019-20 was lower than in 2018-19. While the number of applications declined in 2019-20, the value of approvals has fluctuated since 2016-17, including a historically high figure of 23 approvals with a consideration value of greater than \$2 billion in 2018-19.

Of the 8,221 applications approved, 8,084 were non-zero dollar threshold proposals representing a total value of \$192.8 billion. This is a 7.3 per cent decrease in the number of non-zero dollar threshold applications approved and a 16.5 per cent decrease by value compared to 2018-19.

Although there was an overall decline in the total number of applications considered due mainly to a decline in the number of residential real estate applications, there was a significant increase in the number of applications that Treasury had on hand at the end of the financial year. At the start of the 2019–20 financial year, Treasury had 192 applications on hand. Of the 535 applications on hand at 30 June 2020, it is estimated that around 203 of these were zero dollar threshold applications.

I would like to take the opportunity to thank my Board colleagues for their ongoing contribution and commitment, and particularly during such a challenging time. I welcome Mr Steven Skala AO to the Board who brings significant experience through his senior roles in the law, commerce, international investment banking and governance. I thank Ms Alice Williams, whose term expired in July 2020, for her significant contribution to the administration of foreign investment over a five year period. I also thank Mr Roger Brake, the former head of the Foreign Investment Division in Treasury for his support of the Board and leadership during my time on the Board and as Chair.

Yours sincerely

A handwritten signature in black ink that reads "David Irvine". The signature is written in a cursive style with a horizontal line under the name.

David Irvine AO
Chair

CONTENTS

EXECUTIVE SUMMARY	XI
OVERVIEW OF REPORT	XIV
CHAPTER ONE: THE FOREIGN INVESTMENT REVIEW BOARD	1
Board responsibilities	2
Board membership	2
Public speeches	8
Support to the Foreign Investment Review Board	8
Stakeholder engagement	8
Operational costs.....	11
CHAPTER TWO: THE FOREIGN INVESTMENT FRAMEWORK	13
Foreign investment policies and priorities	13
Key reports and inquiries.....	18
CHAPTER THREE: APPLICATIONS DATA	21
Approvals Overview.....	22
Approvals by industry sector	26
New business approvals	37
Investor countries.....	37
Variations.....	40
Vacancy fees	43
Foreign investment fee collections.....	44
CHAPTER FOUR: COMPLIANCE	45
Compliance approach.....	45
Treasury’s compliance activities.....	45
ATO’s residential real estate compliance activities	48
APPENDIX A: BOARD MEETINGS DURING 2019-20	53
APPENDIX B: METHODOLOGICAL AND DATA CAVEATS	55
Methodological Overview	55
General Caveats.....	56
Policy Changes	59
APPENDIX C: EXAMINATION AND APPROVAL PROCESS	61
Board involvement	61
Handling of commercially sensitive and personal information	61
Application screening process	62
APPENDIX D: GLOSSARY	65

TABLES

Table 3.1: Applications considered 2016–17 to 2019–20 (number of applications)	24
Table 3.2: Applications considered in 2019–20, by zero dollar threshold and non-zero dollar threshold proposals (number of applications).....	24
Table 3.3: Applications decided 2016–17 to 2019–20 (value of proposed investment)	24
Table 3.4: Applications decided in 2019–20, by zero dollar threshold and non-zero dollar threshold proposals (value of proposed investment)	25
Table 3.5: Total approvals by value of proposed investment range 2016–17 to 2019–20 (number and value of approvals)	25
Table 3.6: Total approvals by value of proposed investment range in 2019–20, by zero dollar threshold and non-zero dollar threshold (number and value of approvals)	25
Table 3.7: Total approvals by industry sector: 2016–17 to 2019–20	27
Table 3.8: Manufacturing, electricity and gas sector approvals: 2016–17 to 2019–20.....	30
Table 3.9: Mineral exploration and development sector approvals: 2016–17 to 2019–20.....	30
Table 3.10 Services sector approvals: 2016–17 to 2019–20	31
Table 3.11: Commercial real estate approvals, by type: 2016–17 to 2019–20	32
Table 3.12: State and territory distribution of proposed investment in commercial real estate in 2019–20	32
Table 3.13: Residential real estate approvals, by type: 2016–17 to 2019–20.....	35
Table 3.14: State and territory distribution of proposed investment in residential real estate in 2019–20	36
Table 3.15: State and territory distribution of proposed investment in residential real estate, by type in 2019–20	36
Table 3.16: New business approvals by industry sector: 2016–17 to 2019–20	37
Table 3.17 Approvals by country of investor, by industry sector	39
Table 3.18: Variations considered: 2018–19 to 2019–20 (number of variations by variation type)	41
Table 3.19: Variations approved: 2018–19 to 2019–20 (number of variations by variation reason).....	41
Table 3.20: Vacancy fee statistics: 2018–19 to 2019–20.....	43
Table 3.21: Foreign investment fee collections: 2016–17 to 2019–20.....	44
Table 4.1: Residential real estate compliance investigations in 2017–18 to 2019–20.....	48
Table 4.2: Outcomes of residential real estate investigations that identified breaches in 2017–18 to 2019–20.....	50
Table 4.3: Source of residential real estate cases in 2017–18 to 2019–20	51
Table 4.4: Outcomes of completed residential real estate investigations by source in 2017–18 to 2019–20.....	52
Table 4.5: Infringement notices issued in relation to residential real estate in 2017–18 to 2019–20.....	52
Table A.1: Board meeting attendance during 2019–20.....	53

BOXES, CHARTS AND FIGURES

Box 1: COVID-19 pandemic and implications for foreign investment	15
Chart 3.1: Approvals value by industry sector: 2018–19 and 2019–20	26
Chart 3.2: Share of total value of approvals, by industry sector in 2019–20	26
Chart 3.3: Share of residential real estate approvals by state and territory in 2019–20, by number	33
Chart 4.1: Location of residential real estate breaches identified in 2019–20	51
Timeline of Methodology and Policy Changes	60

CASE STUDIES

Virgin Australia	17
Sargon Capital	29

EXECUTIVE SUMMARY

This Annual Report provides an insight into proposed foreign investment during an extraordinary year for Australia and the world. The 2019–20 year was a significant year not only in relation to the temporary measures introduced by the Government on 29 March 2020 to protect Australia’s national interest during the COVID-19 pandemic, but also with the announcement of reforms to the foreign investment framework, which were subsequently introduced into and passed by the Parliament in 2020–21.

2019–20 saw a decline in the number and value of approvals for proposed foreign investment in Australia compared to 2018–19. Business applications were impacted in the second half of 2019–20 by the global economic downturn caused by the COVID-19 pandemic. However, Australia fared positively during the COVID-19 pandemic period when compared to other developed countries, with independent reports noting that Australia’s reduction in Foreign Direct Investment (FDI) during the period was only slightly more than the average reduction globally.¹

Looking to the future, there is an expected recovery in 2020–21, with Australia continuing to remain an attractive destination for foreign investment, supported by our stable democracy; strong rule of law; highly-skilled and educated workforce; proximity to dynamic and fast-growing markets; abundant natural resources and world-class industry capabilities; and strong and well managed economy.

- Data in this report reflects proposed foreign investment under the Act in 2019–20, thereby providing information regarding flows of proposed investment into Australia in the period.
- During the year, Australia remained an attractive destination for Foreign Direct Investment, despite a reduction in the number and value of proposed applications in the year. The number of business applications dropped slightly compared to 2018–19, but remained strong overall compared to long term trends.
- There were significant policy developments during the year, with the introduction of the zero dollar threshold at the end of March 2020 and the announcement of major policy changes in June 2020. Significant operational changes were made to accommodate the impact of the zero dollar threshold and ensure that administration of the foreign investment framework remained effective. The changes increased the median application processing

1 UNCTAD, Global Foreign Direct Investment fell by 42% in 2020, outlook remains weak (2021) <https://unctad.org/news/global-foreign-direct-investment-fell-42-2020-outlook-remains-weak> (accessed 5 March 2021).

time. In 2019–20 the Treasury median processing time was 48 days (41 days in 2018–19²) and for the ATO, it was 10 days for residential applications (9 days in 2018–19) and 25 days for non-sensitive commercial applications (23 days in 2018–19).

- While there was a reduction in the overall number and value of investment approvals, Treasury experienced a significant increase in the number of applications on hand in response to the zero dollar threshold from 29 March 2020, with numbers peaking at over 700 applications at the end of 2020, albeit outside of this reporting period.
- The total value of investment approvals in 2019–20 was \$195.5 billion. While this is a decrease from 2018–19 (the total value of investment approvals was \$231.0 billion), it is an increase from 2017–18 (the total value of investment approvals was \$163.1 billion).
- There was a decline in the number of proposed investment approvals by approximately 500 compared with the previous year. This was predominately the result of a fall in the number of approved residential and commercial real estate applications.
- A total of 1,155 business applications worth \$178.4 billion were approved in 2019–20 compared to the 1,175 business approvals worth \$216.2 billion in 2018–19. The decrease in proposed business investment reflects a fall in proposals with a value of greater than \$2 billion. There were 11 approvals over \$2 billion in 2019–20 (worth \$62.4 billion) — compared with two approvals in 2017–18 and a peak of 23 approvals in 2018–19 valued at more than \$2 billion.
- In the period 29 March 2020 to 30 June 2020, there were 137 approvals in 2019–20 that related to zero dollar threshold proposals valued at \$2.7 billion.
- As in 2018–19, the United States is the largest source country for approved proposed investment by value, followed by Japan, Singapore, Canada, and United Kingdom.
- For the United States, the value of approvals fell from \$58.2 billion in 2018–19 to \$49.2 billion in the reporting period. While investment in finance and insurance and in mineral exploration and development rose, this was offset by declines in the agriculture, fishing and forestry, manufacturing, electricity and gas, real estate (commercial and residential) and services sectors.
- Japanese investors increased their total approved proposed investment by over \$7 billion from \$15.1 billion in 2018–19 to \$22.1 billion in 2019–20. The number of approvals from Japanese investors remained relatively constant in 2019–20 but the values of approvals in the manufacturing, electricity and gas sector increased significantly. This was despite falls in

2 The median application processing time in 2018–19 Regulator Performance Framework report was reported as 45 days. This has been subsequently revised due to a methodology change to align with statutory deadlines.

proposed Japanese investment in the finance and insurance, mineral exploration and development, and real estate sectors.

- Canada moved from the second largest source country for approved investment to the fourth largest due to a decline of nearly \$10 billion in the real estate sector.
- While approved proposed investment by number from China fell by almost 600 approvals in 2019–20, the value of Chinese approvals remained effectively stable overall (\$12.75 billion in 2019–20 compared to \$13.14 billion in 2018–19). China moved to the sixth largest source country by value.
- In terms of proposed investment in particular sectors, the services sector remained the largest by value at \$73.6 billion. This represents a fall of around \$2.4 billion compared to 2018–19. The commercial real estate sector was the second largest by value, where the value of approvals fell by almost \$34.2 billion to \$38.8 billion. The manufacturing, electricity and gas sector was the third largest by value, with a decrease of \$3.7 billion compared to 2018–19, at \$33.0 billion.
- While the largest number of proposed investment approvals was again in residential real estate (7,056), there was a drop of 457 approvals compared with 2018–19. Despite this fall, the total value of residential real estate approvals increased to \$17.1 billion.
- In the agriculture, forestry and fishing sector there were 174 approvals worth \$8.3 billion of proposed investment. Proposed investment applications have remained relatively stable since 2016–17 with approximately 200 applications per year worth between \$7 billion and \$8.3 billion.
- Compliance remained a key focus for Treasury and the ATO. Treasury completed four business investment audits, with a further five continuing past 30 June 2020. Some of these extended beyond the financial year due to the disruptions caused by the COVID-19 pandemic. The ATO's compliance investigation program was similarly disrupted by the COVID-19 pandemic. It 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 COVID-19 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 pandemic. The ATO completed 620 residential real estate investigations, identifying 259 properties that were in breach — less than half the number of breaches in 2018–19 (600).

OVERVIEW OF REPORT

This report has four chapters and four appendices:

- Chapter one provides an overview of the Foreign Investment Review Board (the Board) and the agencies who support the Board, the Foreign Investment Division in the Department of the Treasury (Treasury) and the Public Groups and International business line in the Australian Taxation Office (ATO), outlining responsibilities, membership and operational costs;
- Chapter two discusses developments in domestic and international foreign investment;
- Chapter three analyses data on foreign investment applications finalised in 2019–20. It includes approvals data by number, value, sector, and investor country. It also includes data on variations and foreign investment fee collections;
- Chapter four explains key developments in Australia’s foreign investment compliance program. It discusses the approach to compliance by Treasury and the ATO, and the work underway to strengthen assurance that foreign persons are meeting their obligations;
- Appendix A lists Board members’ attendance at Board meetings;
- Appendix B provides an overview of the main methodological and data caveats that apply to applications and approvals data in this report;
- Appendix C sets out the examination and approval process for foreign investment applications; and
- Appendix D contains a glossary.

The report this year also includes a breakdown of total number and value of proposals by zero dollar threshold proposals and non-zero dollar threshold proposals to allow comparisons between 2018–19 and 2019–20.



This chapter provides an overview of the Board and the agencies that support the Board, Treasury and the ATO, including details on the Board’s responsibilities, membership and operational costs.

The Foreign Investment Review Board is a non-statutory body established in 1976 to advise the Treasurer and the Government on foreign investment matters. The Board’s functions are advisory only and it does not make binding decisions on foreign investment proposals. Responsibility for making decisions on foreign investment policy, investment proposals and compliance with approval conditions rests with the Treasurer.³

During 2019–20, the Board had eight members, comprising seven part-time members and one full-time executive member — the head of Treasury’s Foreign Investment Division. The Government seeks to attract members to the Board with deep knowledge and experience in a range of sectors that they can actively contribute to the Board’s responsibilities. Strong probity procedures are in place to ensure any conflicts of interest that may occur are managed appropriately.

The Board considers all applications that are provided to the Treasurer for decision. To facilitate its advice, the Board’s regular practice is to hold face-to-face meetings on a monthly basis as well as weekly telephone conferences. It also considers matters out-of-session via email. During the COVID-19 pandemic the Board replaced its monthly face-to-face meetings with secure video conferencing. Appendix A lists Board members’ attendance for the monthly meetings during the reporting period.

3 The Treasurer has provided delegations to senior officers in Treasury and ATO to make decisions on applications and compliance actions that are consistent with the foreign investment framework. Certain applications are decided by other Treasury portfolio ministers.

Board responsibilities

The role of the Board is to:

- examine proposed investments that are subject to the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and supporting legislation, and to make recommendations to the Treasurer and other Treasury portfolio ministers on the national interest implications of these proposals;
- provide advice on the operation of the foreign investment framework and related matters;
- foster awareness and understanding, both in Australia and abroad, of Australia's foreign investment policy;
- provide guidance to foreign persons and their representatives or agents on the operation of the foreign investment framework; and
- monitor compliance within the foreign investment framework.

Board membership

As at 30 June 2020, the Board comprised the following members.

- Mr David Irvine AO (Chair)
- Ms Alice Williams
- Mr David Peever
- The Hon Cheryl Edwardes AM
- Ms Teresa Dyson
- The Hon Nick Minchin AO
- Ms Margaret (Meg) McDonald
- Mr Roger Brake (full-time executive member)

Since the end of the financial year, Ms Alice Williams' term expired on 15 July 2020 and Mr Steven Skala AO was appointed from 18 September 2020. On 19 October 2020, Mr Tom Hamilton was appointed First Assistant Secretary of the Foreign Investment Division and replaced Mr Roger Brake as executive member of the Board.



The Board; (left to right,) Nick Minchin, Steven Skala, Meg McDonald, Chair David Irvine, Teresa Dyson, David Peever and Tom Hamilton. Absent: Cheryl Edwardes.
10 December 2020, Canberra.

Board membership as of 5 February 2021

Mr David Irvine AO

Chair and non-executive member

Chair since 16 April 2017

Member since 3 December 2015

Mr Irvine has significant national security expertise as a former Director-General of both the Australian Security Intelligence Organisation and the Australian Secret Intelligence Service. He is also a former Australian Ambassador to China and former Australian High Commissioner to Papua New Guinea.

Other roles

Adjunct Professor — Australian Graduate School of Policy and Security at Charles Sturt University

Chair — Cyber Security Cooperative Research Centre



Mr David Peever

Non-executive member

Member since 1 February 2016

Mr Peever retired as Managing Director of Rio Tinto Australia in 2014, after 27 years with the company.

He is a former Vice Chairman of the Minerals Council of Australia and Director of the Business Council of Australia. He was a member of the Prime Minister's Indigenous Advisory Council and chaired the Minister of Defence's First Principles Review of the Defence Department as well as the subsequent Implementation Oversight Committee.

He is a former Director of Melbourne Business School and was the founding Director of the Stars Foundation which enables education and opportunity for indigenous girls. He is also the former Chairman of Cricket Australia.

Other roles

Chairman — Brisbane Airport Corporation Group of Companies

Chairman — Naval Group Australia

Director — Australian Foundation Financial Investment Company



The Hon Cheryl Edwardes AM

Non-executive member

Member since 14 August 2017

Mrs Edwardes brings extensive legal and regulatory experience to the Board. Mrs Edwardes, a solicitor by profession, is a former Minister in the Court Government and was the member for Kingsley for 17 years.

In 1993, she became the first woman to be appointed Attorney-General in Western Australia. Mrs Edwardes was awarded an Order of Australia in the Queen's Birthday Honour 2016 for significant service to the people and Parliament of Western Australia, to the law and to the environment and through executive roles with business, education and community organisations.



Other roles

Commissioner — West Australian Football Commission

Director — VIMY Resources

Director — Flinders Resources

Director — NuHeara Limited

Ms Teresa Dyson

Non-executive member

Member since 2 January 2018

Ms Dyson is a non-executive director, serving on a range of listed, public and not-for-profit boards. Ms Dyson has over 25 years of experience as a senior tax adviser, including as a partner at Ashurst and Deloitte, advising on infrastructure, financing, corporate tax issues, mergers and acquisitions activities, the not-for-profit sector, and tax controversy. She brings corporate and governance experience from a range of sectors. Ms Dyson is a former member and chair of the Board of Taxation.



Other roles

Director — Energy Qld Ltd

Director — Energy Super

Director — Genex Power Ltd

Director — Seven West Media Ltd

The Hon Nick Minchin AO

Non-executive member

Member since 17 December 2018

Mr Minchin brings wide ranging senior leadership credentials, public policy, industry and international experience to the Board.

Recently, Mr Minchin served as the Australian Consul-General in New York.

Mr Minchin held a number of ministerial positions, including as Minister for Industry, Science and Resources from 1998 until 2001 and Minister for Finance and Administration from 2001 until 2007. While in office, he held the posts of Leader of the Government in the Senate, and Vice President of the Executive Council. Mr Minchin was elected to the Australian Senate for South Australia in July 1993 and served until June 2011.



Ms Margaret (Meg) McDonald

Non-executive member

Member since 26 March 2019

Ms McDonald brings to the Board extensive experience in senior public and private sector roles, in Australia and internationally. She has previously held a number of executive positions including Chief Operating Officer of the Clean Energy Finance Corporation, CEO of Low Carbon Australia Limited (LCAL) and positions with global resources and metals manufacturer Alcoa. She has served as Director on the boards of the Australian Renewable Energy Agency and the Cooperative Research Centre for Low Carbon Living.

Ms McDonald was Deputy Ambassador to the United States in Washington DC between 1998 and 2002 and Australia's Ambassador for the Environment between 1996 and 1998.

Ms McDonald holds an Honours Degree in Applied Science from the University of NSW.

Other roles

Trustee — The Nature Conservancy



Mr Steven Skala AO

Non-executive member

Member since 18 September 2020

Mr Skala brings significant experience through his senior roles in the law, commerce, international investment banking and governance.

Between 1982 and 2004, Mr Skala was a Partner of Australian law firms, Morris Fletcher & Cross (now Minter Ellison) and Arnold Bloch Leibler. He is a former Chairman of Wilson Group Limited, Hexima Limited and The Island Food Company Limited, is a former Director of the Channel TEN Group of companies and Max Capital Group Limited, and was a Founding Member of Adara Partners.

Mr Skala is also a former Chairman of Film Australia Limited and the Australian Centre for Contemporary Art, a former Vice President (Deputy Chairman) of The Walter & Eliza Hall Institute of Medical Research, and a former Director of the Australian Broadcasting Corporation and the Australian Ballet.

Other roles

Vice Chairman Australia — Deutsche Bank AG
Chair — Clean Energy Finance Corporation
Member — Technology Investment Advisory Council
Director (Alternate) — Hexima Limited
Chairman — Heide Museum of Modern Art
Deputy Chairman — General Sir John Monash Foundation
Director — The Centre for Independent Studies



Mr Tom Hamilton

Executive member

Member since 19 October 2020

The position of executive member is held by the First Assistant Secretary of Treasury's Foreign Investment Division. The executive member provides the link between the Board and the Treasury, which provides support to the Board.



Public speeches

In 2019–20, Mr Irvine, the Chair of the Board, delivered addresses at the 2019 Sino-Australian Investment and Financing Forum and to the Australia-China Business Council. The Chair and Board members also participated, through teleconferencing and video conferencing, in a range of meetings and outreach activities with investors, their representatives and representatives of particular sectors. These forums facilitated two-way dialogue during the height of the COVID-19 pandemic response, providing investors with information on Australia's response to changes in the foreign investment environment and the temporary changes to foreign investment screening that were introduced in the reporting period. They allowed the Board to gain market intelligence and insights which informed its advice to the Government.

Mr Irvine issued two media releases concerning the temporary changes made by the Government to the foreign investment framework to protect the national interest during a historically challenging time for the economy, businesses and the broader community as a result of the COVID-19 pandemic.

Mr Irvine's speeches and media releases on foreign investment are available on the Foreign Investment Review Board website.

Support to the Foreign Investment Review Board

The Board is supported in its responsibilities by Treasury's Foreign Investment Division, and the ATO's Public Groups and International business line.

Treasury

The Foreign Investment Division in Treasury is responsible for advising Government on all aspects of foreign investment policy. It is also responsible for the day-to-day administration of the foreign investment framework in relation to business, agriculture and sensitive or complex commercial real estate applications.

Australian Taxation Office

The ATO has administrative responsibility for foreign investment applications relating to residential real estate, non-sensitive commercial real estate and corporate reorganisations. The ATO also has responsibility for collecting all foreign investment application and vacancy fees, and for developing and administering the registers of foreign ownership of agricultural land, water entitlements and residential land.

Stakeholder engagement

With major developments in the foreign investment framework during the reporting period, such as the introduction of the zero dollar threshold on 29 March 2020, stakeholder

engagement was a key priority for the Board, Treasury and the ATO. Engagement during the period intensified in response to the COVID-19 pandemic, which:

- helped to convey developments in a timely manner and understand perspectives from investors, their advisers and the community more broadly
- provided a vehicle to educate investors and their advisers
- provided an avenue for feedback on foreign investment policy, processes and reforms
- provided information on trends and issues so that the Board remained informed of emerging issues
- ensured effective working relationships with Commonwealth, state and territory consultation partners to assess foreign investment applications.

On 5 June 2020, the Government announced major reforms to the Act 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 with around 750 stakeholders on the proposed reforms to inform, and help shape, the exposure draft legislation and regulations released beyond this reporting period.

Engagement with foreign investors

Engagement with foreign investors occurred through a variety of channels including:

- the Foreign Investment Review Board website: This is the main source of information for foreign investors and includes up-to-date guidance material, including guidance on the zero dollar threshold. In 2019–20, there were over 1.3 million page views of information stored on the Foreign Investment Review Board website;
- foreign investment email enquiries: In 2019–20, the ATO replied to over 12,350 email enquiries on foreign investment matters and Treasury responded to over 827. Enquiries ranged from general queries about the foreign investment framework or sectoral trends, to specific queries about past, prospective and current applications and developments in the foreign investment framework. For both Treasury and the ATO the number of email enquiries was significantly higher than in previous years, including a spike in enquiries following the introduction of the zero dollar threshold on 29 March 2020;
- the foreign investment enquiries hotline: In 2019–20, the ATO handled over 16,887 calls on its foreign investment enquiry line and 1,805 website enquiries via its ato.gov.au 'Ask Alex' — ATO virtual assistant. Treasury handled over 3,830 calls. For Treasury this was a significant increase, and as with email enquiries, a spike in phone enquiries occurred following the introduction of the zero dollar threshold on 29 March 2020 in response to the COVID-19 pandemic; and

- face-to-face meetings and webinars with stakeholders: For the bulk of the financial year, a range of meetings on varying topics were held face-to-face. The onset of the COVID-19 pandemic, however, led to a rapid shift in how meetings were convened with stakeholders. Webinars, online forums and telephone conferences became the norm and provided platforms to communicate with stakeholders, ensuring that communication lines remained open, even when communities were in lock-down.

Engagement with consultation partners and other government agencies

Given the breadth of industries and transactions subject to the foreign investment framework, Treasury and the ATO rely on strong relationships with key consultation partners.

During the reporting period, Treasury continued to meet with consultation partners at both senior and operational levels. Secondment arrangements with consultation partners, including the ATO, the Inspector-General of Taxation, the Critical Infrastructure Centre and the Department of Defence continued and provided an important avenue for cross-fertilisation of views and practices.

The benefit of these arrangements was particularly evident in the second half of 2019–20, following the introduction of the zero dollar threshold when consultation partners were called on in a variety of ways to help with the elevated case load and the need to streamline processes to facilitate timely consideration of applications.

In addition, with the introduction of the zero dollar threshold, around 26 officers from Australian Government agencies, including the Australian Competition and Consumer Commission, Attorney-General's Department, the Productivity Commission, the Australian Securities and Investments Commission and the Australian Bureau of Statistics were deployed to Treasury to assist with administration of the foreign investment regime. This was to better meet the increased demand arising as a result of the COVID-19 pandemic.

Operational costs

The operational costs reported here only represent a proportion of the costs associated with the operation of the foreign investment system. Broader operational costs not reported here include the costs associated with the operations of consultation partners assisting Treasury and the ATO in providing advice to decision makers.

The Board

\$0.6 million

Remuneration of Board members in 2019–20 was around 83 per cent of total Board expenses, with the remainder expended on travel, car hire and incidentals. Board members' fees are determined by the Remuneration Tribunal.

Treasury

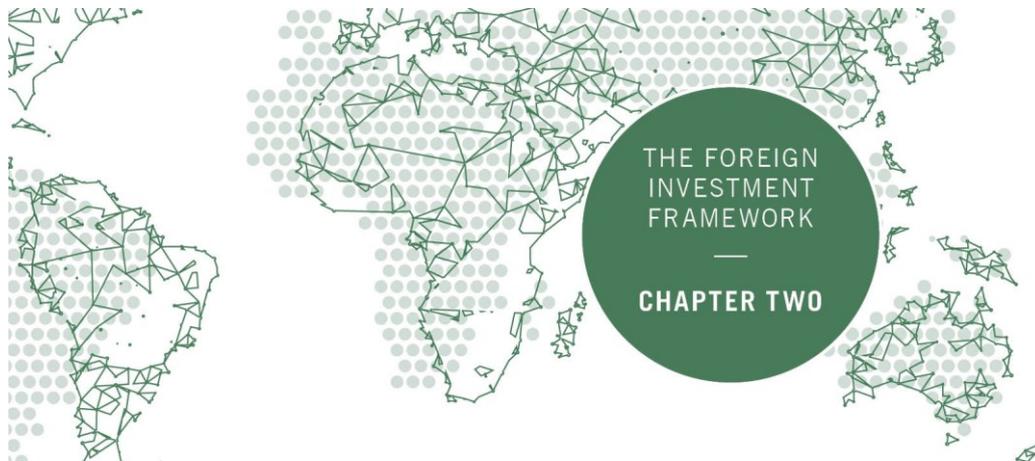
\$11.5 million

Expenses for Treasury's Foreign Investment Division mainly reflect employee salary and administrative costs. Over the course of 2019–20, the Division employed an average of 67.5 full-time equivalent Treasury staff, and a number of external contractors and consultants, including lawyers from the Australian Government Solicitor, and seconded staff from its consultation partners. In 2019–20, the Foreign Investment Division established a presence in the Treasury Melbourne Office. This is in addition to staff located in Canberra and Sydney.

The Australian Taxation Office

\$7.6 million

In 2019–20, the ATO employed 62.2 full-time equivalent staff, employed across the residential real estate application screening process, data matching and compliance activities, application screening of non-sensitive commercial land (vacant and non-vacant) and corporate reorganisations, the development and maintenance of foreign ownership registers, and the development of systems and administration of the annual vacancy fee measure. The ATO's teams are located across a number of sites including Sydney, Canberra, Newcastle and Melbourne.



This chapter provides an overview of the main changes to Australia’s foreign investment policy during 2019–20, including the domestic and global backdrop for these developments.

Foreign investment policies and priorities

In the reporting period, significant foreign investment policy responses were implemented or announced to safeguard Australia’s national interest. These include the temporary zero dollar threshold changes to the foreign investment review framework in response to the health and economic disruptions caused by the COVID-19 pandemic and the announcement of major reforms to the foreign investment framework on 5 June 2020.

Policy background

Foreign investment is critical to Australia’s economy and prosperity. For much of its history, Australia has relied on foreign investment as an additional source of capital to facilitate greater investment than domestic savings alone could finance. Foreign investment also promotes competition among Australia’s industries, encourages greater innovation and productivity, and facilitates the transfer of international skills and knowledge and Australian businesses’ access to overseas markets.

Australia is an attractive destination for foreign investment. In the three years to 2019, Foreign Direct Investment (FDI) inflows into Australia averaged 3.3 per cent of gross domestic product (GDP) — compared with 1.7 per cent for the Organisation for Economic Co-operation and Development (OECD) and 1.5 per cent for the G20. Australia’s inward stock of FDI totalled \$1,019.5 billion as at 31 December 2019, a \$25.2 billion (2.5 per cent) increase from 31 December 2018.

At the same time, successive governments have recognised that some proposed foreign investment may not be in Australia’s national interest. It is for this reason that Australia has had a foreign investment review framework in place since the 1970s.

The foreign investment review framework

The foreign investment framework (the framework) is designed to facilitate investment, while still enabling the Government to protect the national interest. Australia's framework operates according to a 'negative test', whereby foreign investment proposals will proceed unless found to be contrary to the national interest. National interest considerations are assessed on a case-by-case basis and Treasury will seek to manage risks to the national interest according to the individual facts of the case.

The balance that the framework achieves helps promote public confidence and ensures Australia is able to realise the many benefits that foreign investment provides.

The changing foreign investment landscape

In recent years, the risks associated with foreign investment have significantly evolved as a result of rapid changes in technology and shifts in the geopolitical landscape. Concerns about growing national security risks have been recognised and discussed in previous annual reports, including in relation to critical infrastructure.

One outcome of these changes is that security agencies are increasingly consulted as part of the foreign investment review process.

Australia is not alone in recognising these risks. The changing foreign investment landscape has led many countries and jurisdictions to review and update their foreign investment screening regimes in recent years, including Canada, China, the European Union, India, Japan, New Zealand, the United Kingdom and the United States.

The impact of the COVID-19 pandemic

While these developments had been underway for some time, 2019–20 introduced a new and unexpected challenge to the foreign investment landscape: the COVID-19 pandemic (Box 1).

Box 1: COVID-19 pandemic and implications for foreign investment

The COVID-19 pandemic — a once-in-a-century pandemic — delivered an enormous shock to economies and businesses across the world, with significant effects on Foreign Direct Investment (FDI) flows and policy. It struck at a time when global FDI flows were already relatively weak,⁴ and had been in steady decline in the past five years. The Organisation for Economic Co-operation and Development⁵ (OECD) estimated the COVID-19 pandemic disruptions led to a 50 per cent decrease in global FDI flows in the first half of 2020 compared to the second half of 2019.

In Australia, it was recognised that foreign capital could support distressed Australian businesses, sustain Australian jobs and contribute to the economic recovery. At the same time, the economic shock caused by the COVID-19 pandemic raised the risk that many normally viable businesses could be sold to foreign interests without government oversight, particularly for acquisitions that fell below screening thresholds.

Selected international responses⁶

The OECD described the COVID-19 pandemic as an ‘accelerator’ rather than ‘trigger’ for developments in investment screening practices that were already underway, particularly in relation to essential security interests⁷.

In the first half of 2020, a number of governments enhanced their foreign investment screening frameworks or accelerated the introduction of new measures as a response to the COVID-19 pandemic. **Canada, France, Hungary, Italy** and **New Zealand** made temporary adjustments to lower screening thresholds or applied more stringent rules to a broader range of transactions. **France, Germany, Japan** and **Spain** made permanent changes to their investment screening frameworks. Additionally, **India** and **Romania** introduced new rules directly linked to the COVID-19 pandemic, while **China** and **Russia** passed more comprehensive foreign investment reforms.

On 25 March 2020, the **European Commission** issued Guidelines calling on European Union Member States to implement rigid foreign investment screening ‘in a time of public health crisis and related economic vulnerability’ to safeguard European Union critical companies and assets from foreign acquisitions. This applied particularly to the public health, pharmaceutical, medical research, infrastructure and biotechnology sectors.

4 The World Bank — FDI net inflows data 2015-2019.

5 OECD Report: COVID-19 disruptions send global FDI plunging 50% (October 2020).

6 United Nations Conference on Trade and Development: World Investment Report 2020.

7 OECD Report: Investment screening in times of COVID-19 and beyond (July 2020).

In response to the COVID-19 pandemic, significant changes to Australia's foreign investment policy settings were implemented to safeguard the national interest. Usually investments are only screened if they fall above a range of monetary thresholds. For foreign investors from countries with which Australia has a Free Trade Agreement, this can be as high as \$1.2 billion, noting that varying levels of thresholds can apply. All investment applications from Foreign Government Investors are screened.

On 29 March 2020, the Government temporarily reduced all screening thresholds under the Act to \$0 to ensure it had appropriate scrutiny of proposed foreign investments during the COVID-19 pandemic. The Government emphasised that while the measures were needed to protect the national interest, they were temporary and would only be in place during the COVID-19 pandemic.

Recognising this change would increase the caseload of foreign investment applications, Treasury worked with applicants to extend processing timeframes to up to six months to ensure adequate time for screening, with the aim of prioritising urgent applications that supported Australian jobs and businesses. At the same time, Treasury took steps to support a significant increase in the volume of new applications and enquiries. These included reviewing business practices and capability needs, introducing a risk-based triaging process, increasing staffing numbers to manage the growing caseload, and initiatives to improve ICT, staff development and training. Consequently, the great majority of applications were processed much faster than six months, with the median processing times during the last quarter of 2019–20 being less than two months. Measures were implemented as part of the Government's commitment to meet commercial deadlines wherever possible.

Treasury also developed policies and drafted regulations to implement the temporary measures. Upon announcement, a Questions and Answers sheet and a new Guidance Note were published on the Foreign Investment Review Board website to provide information on the temporary changes. The new Guidance Note was updated a number of times to address new issues raised by investors and help them understand how the zero dollar threshold would apply in various circumstances. Treasury closely engaged with a broad range of stakeholders during this period.

When announcing reforms to the foreign investment framework on 5 June 2020 (see below), the Treasurer indicated his intention that there would be a smooth transition from the zero dollar threshold measures to the new legislative framework that commenced on 1 January 2021.

Virgin Australia

Foreign investment has played an important part in helping businesses get through the downturn caused by the COVID-19 pandemic by securing jobs and supporting Australia's economic recovery.

In November 2020, investment vehicles advised by the Boston-headquartered investment firm Bain Capital completed their acquisition of Virgin Australia Holdings Limited (Virgin Australia) following a competitive sale process.

Australia's second largest airline, Virgin Australia, and many of its subsidiaries, had entered into voluntary administration in April 2020. Prior to the COVID-19 pandemic, Virgin Australia had employed around 10,000 people and a further 6,000 indirectly, flew to 15 international and 39 domestic destinations and had more than 10 million members of its Velocity loyalty program.

Facing significant liquidity concerns around the airline, Virgin Australia's administrator ran a compressed recapitalisation and sale process. The Foreign Investment Review Board worked closely with Commonwealth and state and territory regulators, Virgin Australia's administrator and potential investors to protect the national interest and ensure a sale could be completed in a timely manner.

This successful investment in Virgin Australia supported Australian jobs and allowed the airline to continue to operate. A commercially viable second domestic airline group is vital to ensuring Australia has a competitive and sustainable aviation sector.



Foreign Investment Reforms

On 5 June 2020, the Treasurer announced major reforms to the foreign investment framework. Though announced in the midst of the COVID-19 pandemic, the reforms had been in development well before the pandemic. The reforms ensure Australia's foreign investment framework keeps pace with global developments and emerging risks, particularly risks to national security. Key elements of the reforms include:

- powers to protect national security, including through zero dollar screening of sensitive investments, the ability to call-in other investments that raise national security concerns, and a last resort power to be used only in exceptional circumstances
- stronger compliance and enforcement powers, including expanding infringement notices and higher civil and criminal penalties. This will bring foreign investment regulation in line with comparable regulators
- measures to streamline certain non-sensitive investments, particularly by investment funds with passive foreign government investors
- a new register of foreign owned assets, including land, water entitlements and businesses
- new fees that ensure the cost of administering the framework continues to be borne by foreign investors, not Australian taxpayers.

The package was passed by the Parliament in December 2020 and commenced on 1 January 2021. It is not expected that the reforms will detract from Australia's attractiveness as a destination for foreign investment given its growing and well-educated population, rich natural resource base, proximity to dynamic and fast-growing markets, strong rule of law and well-managed economy.

Key reports and inquiries

Foreign investment has been the subject of public debate and scrutiny in 2019–20. There were a number of forums in which aspects of the foreign investment framework were considered, providing a valuable opportunity to reflect on the strengths and areas for improvement in the framework.

Senate Inquiry into Foreign Investment Proposals

On 4 December 2019, the Senate referred an inquiry into foreign investment proposals to the Senate Economics References Committee for inquiry and report. The inquiry's terms of reference asked for the review of foreign investment proposals against the national interest test, including some specific aspects such as: the protection of Australia's market-based system, the impact of proposed foreign investment on competition, conditions, and the role of the Board.

Treasury made a submission to the inquiry on 10 March 2020 and, in the reporting period, attended one public hearing (15 May 2020). Treasury's submission focused on the foreign investment framework, including its architecture and administration, the protection of confidential information, and the operation of conditions and compliance.

Productivity Commission Report

In June 2020, the Productivity Commission released a research report on foreign investment and the Government's policy in that area. The report identifies a number of strengths in the current framework that should be retained, including that the Treasurer should remain the decision-maker, 'national interest' should not be strictly defined in legislation and the 'negative test' should continue.

The report also identified areas for improvement. For example, the Productivity Commission observed that conditions are a limited means to address increasing national security risks, and recommended these risks would be better mitigated through national regulation. The report also called for stronger regulatory powers to address compliance, lower fees and greater transparency from the Board. Some of these issues are addressed in the foreign investment reforms which commenced on 1 January 2021.

ACCC Water Report

As directed by the Government, on 7 August 2019 the Australian Competition and Consumer Commission (ACCC) commenced an inquiry into markets for tradeable water rights in the Murray-Darling Basin. The scope of the inquiry includes the role and practices of market participants, including foreign investors, and their obligations for providing public information on water market activities and tradeable water right holdings.



This chapter provides an overview of all applications that were finalised during 2019–20, irrespective of the date the application was submitted. This report refers to ‘proposed investment’, the value of which for acquisitions (including securities, real estate or other assets) is the value agreed between the transaction parties or, if not yet agreed, a reasonable estimate at the time the application is submitted. Data on the value of expected investment for new businesses is not collected.

The information contained in the Foreign Investment Review Board Annual Report provides a useful source of data on Foreign Direct Investment (FDI) in Australia. It provides information on proposed investments that fall within the scope of the Act. The data in this report reflects the proposed investment flows during the period. Policy or legislative changes, and changes to reporting methodologies over time, can limit the comparability of data year-to-year. Approvals data can also be impacted by one or more large one-off proposed transactions, affecting the comparability of industry data across years.

However, the Foreign Investment Review Board Annual Report does not measure total foreign investment made in any year, nor does it measure changes in net foreign ownership levels in Australia. There are a number of caveats to be applied in interpreting the data. They reflect investor intentions (not actual purchases) to acquire Australian assets. This is because, while a foreign person may be approved to make an acquisition, the acquisition may not proceed. Further, notification requirements by investors are subject to screening thresholds, and therefore not all potential investments are captured. The outputs in this report can also be skewed by very large investment proposals and multiple competing proposals for the same target.

During the COVID-19 pandemic, temporary measures to reduce the impact of the pandemic on business and the economy were made by the Government to the thresholds for screening foreign investment proposals. The numbers and value of proposed investments that were required to apply for approval from the Treasurer because of the temporary measures are identified in this report.

Further details on the methodology and caveats applied in interpreting the data in this report are set out in Appendix B.

Trends in actual investment are measured by the Australian Bureau of Statistics (ABS).⁸ ABS data provides an overview of the stock of FDI in Australia. However, unlike Foreign Investment Review Board data, ABS statistics are based on the immediate origin of investment. The ultimate investor is not identified where investments pass through third-party countries used as international investment hubs, because it does not trace the investment back to its original source.

Approvals Overview

In 2019–20, excluding variations, the total number of applications considered was 9,004. Of the 8,224 on which a decision was made (not withdrawn or exempt), 8,221 applications for proposed investment were approved with a value of \$195.5 billion. This represents a decline of 503 proposals approved compared to 8,724 approvals in 2018–19. The value of proposed investment approvals also decreased by \$35.5 billion, down from \$231.0 billion in 2018–19 (see Tables 3.1 and 3.3).

Of the 8,221 applications approved, 8,084 were non-zero dollar threshold proposals representing a total value of \$192.8 billion (see Tables 3.2 and 3.4). This is a 7.3 per cent decrease in the number of non-zero dollar threshold cases approved and a 16.5 per cent decrease by value compared to 2018–19. Tables 3.2, 3.4 and 3.6 separating zero dollar threshold and non-zero dollar threshold proposals have been included so that comparisons can be made between 2018–19 and 2019–20 excluding the effect of the temporary thresholds.

In the period, 137 zero dollar threshold proposals were approved for a total value of \$2.7 billion.

Factors that may have contributed to the decline in the number and value of applications approved are noted in the discussion of the relevant sectors in this Chapter.

The overall decline in the number of applications considered masks the significant increase in the number of foreign investment applications which Treasury had on hand in the financial year. Treasury had 192 applications on hand at the start of the year and 535 on hand by the end of the year. Of the 535 on hand at 30 June 2020, it is estimated that 203 were zero dollar threshold applications. In the fourth quarter of 2019–20 the number of non-zero dollar threshold

8 See ABS Catalogue no.:
5302.0 — *Balance of Payments and International Investment Position, Australia*, which provides the overall investment trends;
5352.0 — *International Investment Position, Australia: Supplementary Statistics*, which includes actual foreign investment statistics by investor country or by industry division for inward foreign investment; and
5494.0 — *Economic Activity of Foreign Owned Businesses in Australia, 2014-15*, for information on the economic activity of foreign owned businesses in Australia.

applications received by Treasury increased by approximately 27 per cent compared to the same period in 2018–19.

There were 32 approvals valued at \$1 billion or more, with a total value of \$91.5 billion. The number of approvals valued at \$2 billion or more declined by around 52 per cent to 11 approvals valued at \$62.4 billion (see Table 3.5).

The United States was again the top source of proposed investment by value in 2019–20, with Japan, Singapore, Canada and the United Kingdom making up the top five sources of proposed foreign investment in 2019–20.

Conditional approvals

Where an application raises national interest concerns, such as potential tax risks, conditions can be imposed on the approval to mitigate the potential risks and ensure the proposed investment is not contrary to the national interest. In 2019–20, the number of approvals made subject to conditions decreased by around 10 per cent to 3,713 proposals, and the value of approvals subject to conditions decreased by around 25 per cent to \$139.0 billion.

Rejections and other outcomes

Information on investments that were required to be divested due to being in breach of the framework are in Chapter 4: Compliance.

Exemption Certificates are an advance approval to allow foreign persons to undertake a program of acquisitions of land and/or business and entities. No exemption certificate applications were declined in 2019–20, nor were any exemption certificates revoked.

In 2019–20, 715 applications were withdrawn prior to a decision being made, representing an increase of 45 withdrawals compared to 2018–19. Around 76 per cent of these related to residential real estate applications. In the residential real estate sector, withdrawals may result from applicants submitting a series of applications and subsequently withdrawing their remaining applications once they purchase a property or if the property subject to the application has been sold to other parties. The reasons for withdrawal of applications are varied. A foreign person may not proceed with a purchase or defer a purchase for commercial reasons. Also, in competitive bid or tender processes a foreign person may not be shortlisted or be unsuccessful prior to a decision on their application. Withdrawals may also be prompted by assets, land or securities being withdrawn from sale by a vendor, or the investor consortium composition changing following the submission of an application, or concerns identified by the investor with the proposed investment.

In 2019–20, 65 applications were determined to be exempt, six less than in 2018–19. Over 61 per cent of these related to residential real estate applications. Exempt refers to where applications have been lodged for a proposed investment that is subsequently determined to be exempt due to the proposed investment meeting the criteria for an exemption in the Act or factors such as the proposed investment not meeting a threshold subject to the Act.

Table 3.1: Applications considered 2016–17 to 2019–20 (number of applications)

Outcome	2016–17	2017–18	2018–19	2019–20
	No.	No.	No.	No.
Approved without conditions	8,607	6,301	4,575	4,508
Approved with conditions	5,750	4,844	4,149	3,713
Total approved	14,357	11,145	8,724	8,221
Rejected	3	2	1	3
Declined	-	3	-	-
Total decided	14,360	11,150	8,725	8,224
Withdrawn	770	644	670	715
Exempt	60	61	71	65
Total considered	15,190	11,855	9,466	9,004

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Data on declined applications is not separately available for years before 2017–18.

Table 3.2: Applications considered in 2019–20, by zero dollar threshold and non-zero dollar threshold proposals (number of applications)

Outcome	Zero dollar threshold	Non-zero dollar threshold
	No.	No.
Approved without conditions	116	4,392
Approved with conditions	21	3,692
Total approved	137	8,084
Rejected	0	3
Declined	0	0
Total decided	137	8,087
Withdrawn	9	706
Exempt	4	61
Total considered	150	8,854

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Table 3.3: Applications decided 2016–17 to 2019–20 (value of proposed investment)

Outcome	2016–17	2017–18	2018–19	2019–20
	\$b	\$b	\$b	\$b
Approved without conditions	53.8	40.1	45.9	56.5
Approved with conditions	143.9	123.0	185.1	139.0
Total approved	197.7	163.1	231.0	195.5
Rejected	20.0	0.1	10.0	0.0
Declined	-	3.0	-	-
Total decided	217.7	166.1	241.0	195.5

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Data on declined applications is not separately available for years before 2017–18.

Table 3.4: Applications decided in 2019–20, by zero dollar threshold and non-zero dollar threshold proposals (value of proposed investment)

Outcome	Zero dollar threshold	Non-zero dollar threshold
	\$b	\$b
Approved without conditions	2.2	54.3
Approved with conditions	0.5	138.5
Total approved	2.7	192.8
Rejected	-	0.0
Declined	-	-
Total decided	2.7	192.8

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Table 3.5: Total approvals by value of proposed investment range 2016–17 to 2019–20 (number and value of approvals)

Value of approval	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
< \$1 million	10,285	5.7	7,618	4.1	6,021	3.1	5,665	3.0
≥ \$1 million & < \$50 million	3,516	13.4	2,995	11.3	2,160	10.0	2,062	9.7
≥ \$50 million & < \$100 million	147	10.3	103	7.3	103	7.2	88	6.1
≥ \$100 million & < \$500 million	235	53.3	213	44.9	219	47.3	216	50.5
≥ \$500 million & < \$1 billion	45	29.7	53	34.8	49	33.5	48	34.7
≥ \$1 billion & < \$2 billion	15	16.9	22	28.4	14	18.5	21	29.1
≥ \$2 billion	13	68	2	32	23	111	11	62.4
Total	14,256	197.7	11,006	163.1	8,589	231.0	8,111	195.5

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Data from previous financial years have been updated to exclude new businesses.

Table 3.6: Total approvals by value of proposed investment range in 2019–20, by zero dollar threshold and non-zero dollar threshold (number and value of approvals)

Value of approval	Zero dollar threshold		Non-zero dollar threshold	
	No.	\$b	No.	\$b
< \$1 million	33	0.0	5,632	3.0
≥ \$1 million & < \$50 million	80	0.7	1,982	9.0
≥ \$50 million & < \$100 million	6	0.3	82	5.8
≥ \$100 million & < \$500 million	4	0.6	211	49.9
≥ \$500 million & < \$1 billion	1	1.0	47	33.7
≥ \$1 billion & < \$2 billion	0	0.0	22	29.1
≥ \$2 billion	0	0.0	11	62.4
Total	124	2.7	7,987	192.8

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Approvals by industry sector

Chart 3.1: Approvals value by industry sector: 2018-19 and 2019-20

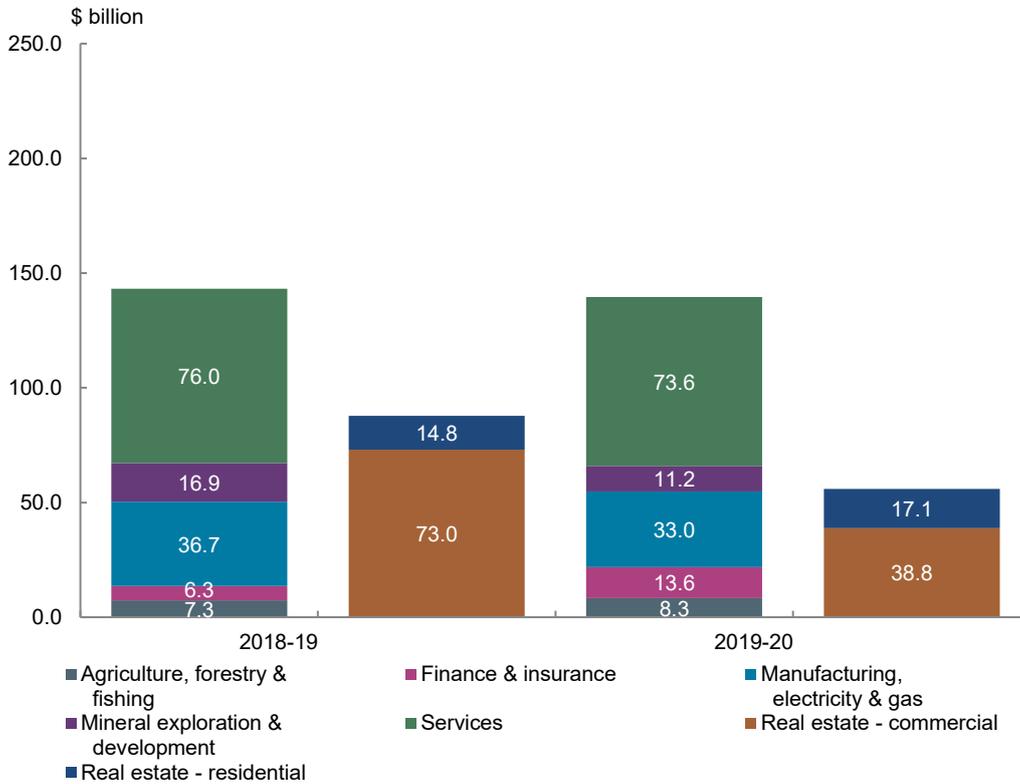
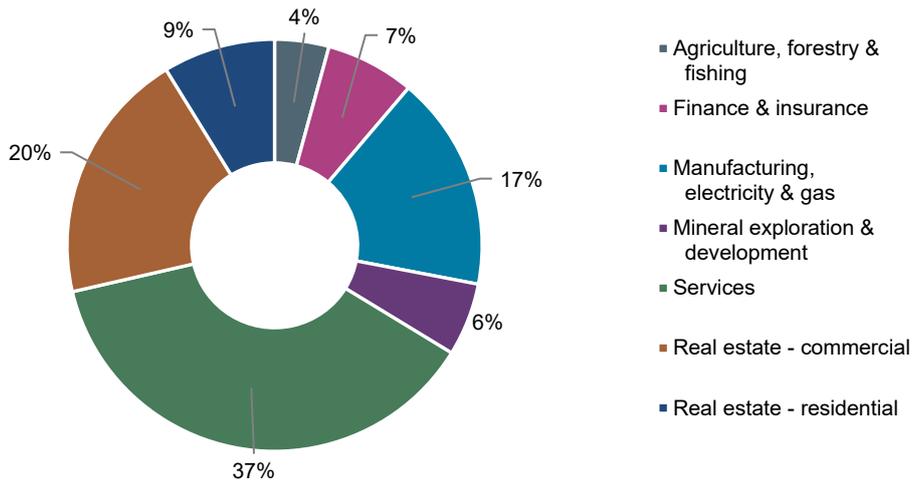


Chart 3.2: Share of total value of approvals, by industry sector in 2019-20



Notes applying to Charts 3.1 and 3.2

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

A total of 1,155 business applications (applications other than residential real estate applications) worth \$178.4 billion were approved in 2019–20 compared to the 1,175 business approvals worth \$216.2 billion of proposed investment in 2018–19 (see Table 3.7).

In 2019–20, the services sector again attracted the highest value of approved investment, totalling \$73.6 billion, followed again by commercial real estate, totalling \$38.8 billion. In both sectors the approved investment decreased compared to 2018–19 approvals (a decrease of \$2.4 billion and \$34.2 billion respectively).

The value of approvals in the manufacturing, electricity and gas sector decreased by \$3.7 billion (to \$33.0 billion) compared to 2018–19 and the mineral exploration and development sector decreased by \$5.7 billion (to \$11.2 billion).

In 2019–20, the value of approvals in the finance and insurance sector increased by \$7.3 billion (to \$13.6 billion), residential real estate saw an increase in the value of approvals of \$2.3 billion (to \$17.1 billion) and agriculture, forestry and fishing increased by \$1.0 billion (to \$8.3 billion).

Over the last four years the value of approvals in the agriculture, forestry and fishing sector has remained relatively stable at between \$7.0 billion and \$8.3 billion per year. For the first time in four years the agriculture, forestry and fishing sector has been the smallest sector by value for proposed investment approvals.

Table 3.7: Total approvals by industry sector: 2016–17 to 2019–20

Industry Sector	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Agriculture, forestry & fishing	223	7.0	201	7.9	197	7.3	174	8.3
Finance & insurance	25	3.8	37	6.0	26	6.3	37	13.6
Manufacturing, electricity & gas	73	40.9	95	16.6	99	36.7	100	33.0
Mineral exploration & development	140	15.9	115	17.4	121	16.9	108	11.2
Services	215	56.5	185	63.2	245	76.0	296	73.6
Real estate — commercial	465	43.7	391	39.5	487	73.0	440	38.8
<i>Sub-total 'Non-residential'</i>	<i>1,141</i>	<i>167.7</i>	<i>1,024</i>	<i>150.6</i>	<i>1,175</i>	<i>216.2</i>	<i>1,155</i>	<i>178.4</i>
Real estate — residential	13,198	30.0	10,036	12.5	7,513	14.8	7,056	17.1
Total	14,339	197.7	11,060	163.1	8,688	231.0	8,211	195.5

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Agriculture, forestry and fishing

There were 174 approvals granted for \$8.3 billion worth of proposed investment in the agriculture, forestry and fishing sector. The largest source countries of investment by value in this sector were Canada (\$2.6 billion) and Singapore (\$1.4 billion) (see Table 3.17).

Finance and insurance

The value of approved proposed investment in the finance and insurance sector was \$13.6 billion. This was an increase of \$7.3 billion on the value of proposed investment compared to 2018–19.

The United States was the largest source country of investment by value in this sector (\$2.5 billion), with the United Kingdom the next largest source country (\$2.3 billion) (see Table 3.17).

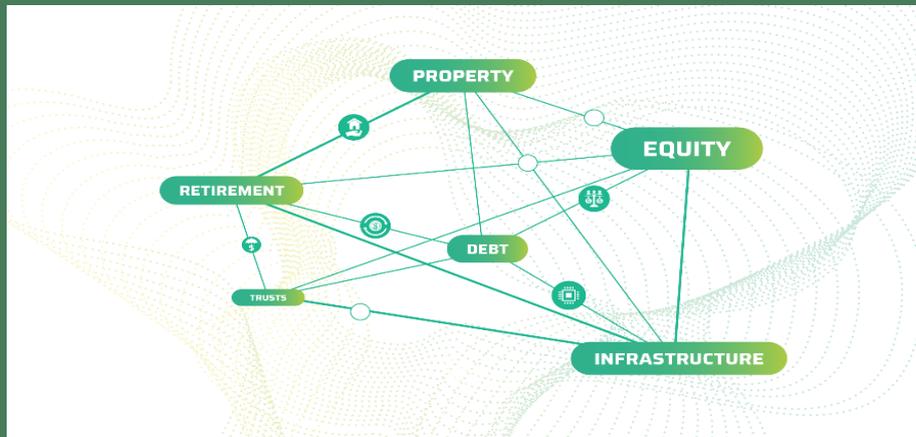
Sargon Capital

In 2020, Pacific Infrastructure Partners Pty Ltd, a majority United States privately-owned investor, acquired the financial advisory and trustee business of Sargon Capital Pty Ltd (Receivers Appointed), and together with its majority shareholder, Cloverhill S Capital Holdings LLC, also acquired Sargon Capital's subsidiaries (Administrators Appointed), for a total consideration of \$30 million.

This acquisition shows how foreign investment is woven into our daily lives, preserving jobs and creating more opportunities, and supporting local businesses. It is noteworthy that the proposal was submitted to the Foreign Investment Review Board and approved within five days, to avoid the risk of Sargon Capital's business collapsing and about 90 employees losing their jobs.

The acquirers see value and opportunity in the Sargon Capital business, and intend to commit further working capital into the business while providing leadership capability and strengthened governance to enable Sargon Capital to provide increased choice in the Australian trustee market.

The Sargon Group, established in 2013 to provide a range of services for the Australian superannuation industry, contains Australian Registrable Superannuation Entity and Australian Financial Services licensed businesses.



Manufacturing, electricity and gas

There was \$33.0 billion worth of proposed investment approved in the manufacturing, electricity and gas sector (see Table 3.8). This represents a \$3.7 billion decrease on the value recorded in 2018–19.

This was the result of a decrease in the value of approvals in the 'other' category (\$17.3 billion), water, sewerage & waste disposal (\$1.8 billion) and chemical, petroleum & coal products

(\$3.7 billion). The decrease was partially offset by two large approvals in the food, beverages and tobacco category.

The value of approvals in electricity and gas supply saw a modest increase of \$1.9 billion from its low in 2018–19.

Japan was again the largest source country of investment by value in this sector (\$17.5 billion), followed by France (\$5.0 billion), Canada (\$2.0 billion) and China (\$1.9 billion) (see Table 3.17).

Table 3.8: Manufacturing, electricity and gas sector approvals: 2016–17 to 2019–20

Group	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Chemical, petroleum & coal products	1	1.0	2	0.3	4	4.4	3	0.7
Electricity & gas supply	37	33.5	52	9.3	47	3.7	65	5.6
Food, beverages & tobacco	21	3.8	15	4.6	15	1.3	17	18.5
Water, sewerage & waste disposal	7	1.3	8	0.2	9	2.0	5	0.2
Other (a)	7	1.3	18	2.2	24	25.3	10	8.0
Total	73	40.9	95	16.6	99	36.7	100	33.0

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

(a) Comprises: textile, leather, clothing and footwear manufacturing; pulp, paper and converted paper product manufacturing; polymer product and rubber products manufacturing; non-metallic mineral product manufacturing; primary metal and metal product manufacturing; fabricated metal products manufacturing; transport equipment manufacturing; machinery and equipment manufacturing; and furniture manufacturing.

Mineral exploration and development

The mineral exploration and development sector saw a decline in both the number of approvals (from 121 in 2018–19 to 108 in 2019–20), and in the value of those approvals (from \$16.9 billion in 2018–19 to \$11.2 billion in 2019–20).

The United States (\$4.7 billion), the United Kingdom (\$1.3 billion) and China (\$0.8 billion) were the largest source countries of investment by value in the sector (see Table 3.17).

Table 3.9: Mineral exploration and development sector approvals: 2016–17 to 2019–20

Group	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Coal	24	5.5	23	8.5	37	6.5	27	1.3
Oil & gas extraction	17	1.1	20	1.6	17	4.1	14	2.5
Metallic minerals	73	6.3	51	4.9	43	4.6	34	3.1
Non-metallic minerals mining and quarrying	4	0.2	3	-	3	0.8	7	0.1
Exploration and other mining support services	22	2.8	18	2.4	21	0.9	26	4.1
Total	140	15.9	115	17.4	121	16.9	108	11.2

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Services

There were 296 approvals for proposed investment in the services sector in 2019–20, an increase of 51 approvals on the previous year (see Table 3.10).

In 2019–20, the United States was the largest source country by value with \$27.9 billion of proposed investment. This was more than three times the value of the second largest source country, the United Kingdom which recorded \$9.0 billion of proposed investment in this sector (see Table 3.17).

Table 3.10 Services sector approvals: 2016–17 to 2019–20

Group	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Accommodation, food and beverage (a)	10	1.4	8	2.0	17	1.5	16	3.2
Arts and Recreation (b)	11	2.3	14	1.3	8	0.7	11	3.8
Communications (c)	8	0.9	19	2.2	21	17.4	48	21.0
Construction (d)	48	7.3	14	1.3	22	4.1	19	2.9
Health (e)	29	3.6	34	7.3	39	12.4	48	8.5
Property and business services (f)	26	0.7	41	35.1	57	9.1	63	12.3
Trade (g)	26	3.6	24	4.0	24	6.1	27	4.3
Transport (h)	45	30.2	20	5.8	37	18.7	50	14.8
Other (i)	12	6.6	11	4.3	20	5.8	14	2.7
Total	215	56.5	185	63.2	245	76.0	296	73.6

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

(a) Comprises: accommodation; food and beverage services.

(b) Comprises: heritage activities; creative and performing arts; sports and recreation and gambling.

(c) Comprises: publishing (including internet); motion picture and sound recording activities; broadcasting (including internet); and telecommunication services (including internet).

(d) Comprises: building construction; heavy and civil engineering construction and services to construction.

(e) Comprises: hospitals; medical and other health care services; residential and social assistance services.

(f) Comprises: property and real estate operators; professional, scientific and technical services; computer system design services; and administrative services.

(g) Comprises: wholesaling of basic material, machinery and equipment, grocery, liquor and tobacco products; motor vehicle and motor vehicle parts retailing; retailing of fuel, food and other store based retailing; and non-store retailing and retail commission-based buying and/or selling.

(h) Comprises: road, rail, water, air and space, postal and courier (pickup and delivery), warehousing and storage; and transport support services.

(i) Comprises: repair and maintenance; public administration; defence; education related services; and personal and other services.

Commercial real estate

In 2019–20, there was a decrease in both the number and value of approvals in the commercial real estate sector. There were 440 approvals valued at \$38.8 billion compared to 2018–19 where there were 487 approvals valued at \$73.0 billion.

The number of approvals of proposed investment in developed commercial real estate increased (221 in 2018–19 to 247 in 2019–20) while the total value decreased (\$58.3 billion in 2018–19 to \$28.2 billion in 2019–20). The rise in the number of applications despite the fall in value can in part be explained by the introduction of the zero dollar threshold changes on

29 March 2020, which led to applications for a variety of low-value small business premises that would previously have been below the pre-existing monetary thresholds.

Table 3.11: Commercial real estate approvals, by type: 2016–17 to 2019–20

	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Commercial								
<u>Developed</u>								
Existing commercial property	219	20.9	166	18.3	184	39.0	220	22.8
- Exemption certificates	30	11.2	25	7.1	37	19.2	27	5.5
<i>Sub-total 'Developed'</i>	<i>249</i>	<i>32.1</i>	<i>191</i>	<i>25.4</i>	<i>221</i>	<i>58.3</i>	<i>247</i>	<i>28.2</i>
<u>For development</u>								
- Vacant commercial property	182	3.7	169	6.0	228	6.8	167	7.4
- Exemption certificates	34	7.9	32	8.0	38	7.9	26	3.2
<i>Sub-total 'For development'</i>	<i>216</i>	<i>11.6</i>	<i>200</i>	<i>14.0</i>	<i>266</i>	<i>14.7</i>	<i>193</i>	<i>10.6</i>
Total commercial	465	43.7	391	39.5	487	73.0	440	38.8

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Table 3.12: State and territory distribution of proposed investment in commercial real estate in 2019–20

Location	Number of approvals	Commercial		Total \$b
		Developed \$b	For development \$b	
ACT	3	0.1	0.0	0.07
NSW	131	6.4	4.7	11.05
NT	5	0.0	0.0	0.02
Qld	68	2.3	0.5	2.86
SA	24	1.5	0.1	1.63
Tas.	5	0.0	0.0	0.01
Vic.	78	2.9	1.0	3.98
WA	29	0.1	0.6	0.70
Various	97	14.9	3.6	18.51
Total	440	28.2	10.6	38.83

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Residential real estate

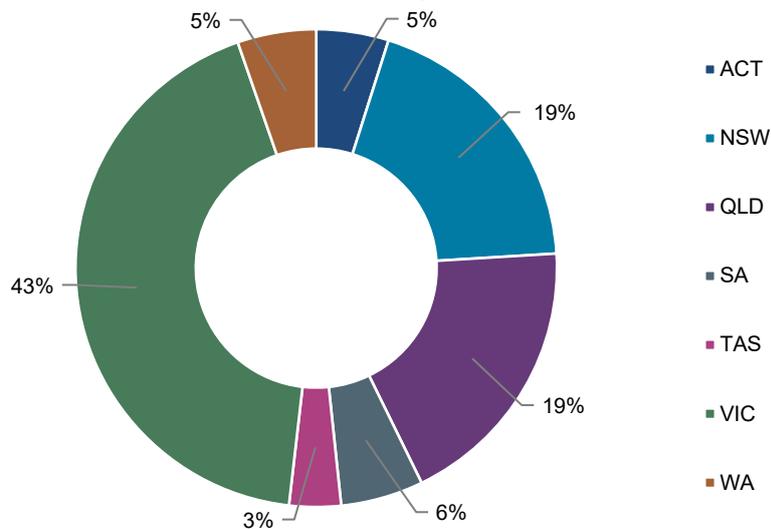
In 2019–20, a total of 7,056 residential real estate applications valued at \$17.1 billion were approved for proposed investment. This represents a decrease of 455 in the number of approvals from 2018–19 and continues a trend seen since 2015–16. Despite this, the value of proposed investment in residential real estate in 2019–20 increased by \$2.3 billion compared to 2018–19.

Since 2016–17, foreign demand for residential real estate in Australia has declined. Factors that may explain the fall in the number of residential real estate approvals include:

- a tightening of domestic credit and increased restrictions on capital transfers in home countries;
- state taxes and foreign resident stamp duty increases;
- the introduction of an exemption certificate so that only one approval is required for individuals considering a number of residential properties with the intention to purchase only one property; and
- foreign investment application fees.

In 2019–20, the number of residential real estate approvals for proposed purchases in New South Wales and Victoria increased to 62 per cent of all approvals given to single states/territories. The value of residential real estate approvals in these two states together increased by less than 2 per cent compared to the previous financial year.

Chart 3.3: Share of residential real estate approvals by state and territory in 2019–20, by number



Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B. This Chart excludes approvals that apply to more than one state or territory. The Northern Territory has not been allocated a share for the purpose of this Chart due to the proportionately small number of approvals.

Established residential dwellings

In 2019–20, there were 1,101 approvals for established residential dwellings (see Table 3.13). Established dwellings (or developed residential premises) can generally only be purchased by temporary residents for use as their home while they remain in Australia. A small number of approvals are given for foreign persons that operate a substantial Australian business to acquire an established dwelling to house Australian based staff or for redevelopment to add to the housing stock.

In 2019–20, there was slight increase in the proportion of established dwelling single purchase exemption certificates (312) that made up all established dwelling approvals (1,101) to 28.3 per cent from 24.2 per cent of all established dwelling approvals in 2018–19 (317 established dwelling single purchase exemption certificates and 1,312 established dwelling approvals).

These certificates enable foreign persons to receive pre-approval to purchase a single established dwelling and notify the details of the property once purchased, rather than requiring the person to seek individual approvals for each dwelling they may be considering purchasing.

For development

Australia's foreign investment policy encourages investment in the residential real estate sector, which is expected to help build a new supply of houses. In 2019–20, almost 6,000 approvals for development were given including combination exemption certificates for new dwellings, vacant land and other residential property for development (see Table 3.13).

In 2019–20, the value of exemption certificate approvals decreased to \$9.0 billion compared to \$9.2 billion in 2018–19 and \$4.6 billion in 2017–18.

Table 3.13: Residential real estate approvals, by type: 2016–17 to 2019–20

	2016–17		2017–18		2018–19		2019–20	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Residential								
<u>Developed</u>								
- Existing residential property								
- Individual purchases	1,484	2.1	1,075	1.5	995	1.2	789	4.1
- Single purchase EC	521	0.8	538	0.9	317	0.4	312	0.5
<i>Sub-total 'Existing'</i>	<i>2,005</i>	<i>2.9</i>	<i>1,613</i>	<i>2.3</i>	<i>1,312</i>	<i>1.7</i>	<i>1,101</i>	<i>4.5</i>
- Exemption certificate	3	0.0	2	0.0	1	0.1	4	0.1
<i>Sub-total 'Developed'</i>	<i>2,008</i>	<i>3.0</i>	<i>1,615</i>	<i>2.4</i>	<i>1,313</i>	<i>1.8</i>	<i>1,105</i>	<i>4.6</i>
<u>For development</u>								
- Vacant land								
- Individual purchases	2,911	1.1	2,281	0.9	1,745	0.7	1,520	0.6
- Single purchase EC	na	0.0	118	0.1	39	0.0	58	0.0
<i>Sub-total 'Vacant land'</i>	<i>2,911</i>	<i>1.1</i>	<i>2,399</i>	<i>0.9</i>	<i>1,784</i>	<i>0.7</i>	<i>1,578</i>	<i>0.7</i>
- New dwellings								
- Individual purchases	7,864	6.6	5,494	4.8	3,888	3.1	3,726	3.2
- Single purchase EC	na	0.0	166	0.1	60	0.1	135	0.1
- New dwelling EC	46	14.1	24	2.7	16	1.7	16	1.6
- Near new dwelling EC	na	0.0	10	0.0	22	0.0	22	-
<i>Sub-total 'New dwellings'</i>	<i>7,910</i>	<i>20.7</i>	<i>5,694</i>	<i>7.7</i>	<i>3,986</i>	<i>4.8</i>	<i>3,899</i>	<i>4.9</i>
- Redevelopment	335	0.9	315	0.8	262	0.5	149	0.3
- Exemption certificate	34	4.3	13	0.8	40	6.8	34	6.3
<i>Sub-total 'For development'</i>	<i>11,190</i>	<i>27.1</i>	<i>8,421</i>	<i>10.2</i>	<i>6,072</i>	<i>12.9</i>	<i>5,660</i>	<i>12.1</i>
Combination exemption certificates								
- established dwelling / vacant land / new dwellings	na	na	na	na	126	0.1	291	0.4
Total residential	13,198	30.0	10,036	12.5	7,511	14.8	7,056	17.1

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Table 3.14: State and territory distribution of proposed investment in residential real estate in 2019–20

Location	Number of approvals	Residential		Total \$b
		Developed \$b	For development \$b	
ACT	340	0.0	0.3	0.3
NSW	1,329	0.3	1.5	1.7
NT	13	0.0	0.0	0.0
Qld	1,311	0.2	1.2	1.4
SA	387	0.1	0.1	0.2
Tas.	243	0.1	0.1	0.1
Vic.	3,000	0.8	2.7	3.5
WA	368	0.1	0.3	0.4
Various	65	3.2	6.3	9.5
Total	7,056	4.6	12.5	17.1

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Table 3.15: State and territory distribution of proposed investment in residential real estate, by type in 2019–20

Location	New Dwelling		Existing Property		Redevelopment		Vacant land		Developer (a)		Combination ECs	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b	No.	\$b	No.	\$b
ACT	276	0.2	34	0.0	2	0.0	3	0.0	3	0.1	22	0.0
NSW	936	1.1	123	0.3	39	0.1	188	0.1	4	0.0	39	0.1
NT	2	0.0	10	0.0	0	-	1	0.0	0	-	0	-
Qld	744	0.5	174	0.2	47	0.1	319	0.1	9	0.5	18	0.0
SA	188	0.1	108	0.1	10	0.0	66	0.0	0	-	15	0.0
Tas.	35	0.0	108	0.1	1	0.0	54	0.0	0	-	45	0.0
Vic.	1,542	1.3	453	0.8	33	0.0	812	0.3	19	0.9	141	0.2
WA	134	0.1	71	0.1	14	0.0	135	0.1	3	0.2	11	0.0
Various	2	0.0	23	3.2	20	3.5	0	-	20	2.8	0	-
Total	3,859	3.3	1,104	4.6	166	3.8	1,578	0.7	58	4.4	291	0.4

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

(a) 'Developer' includes new dwelling exemption certificates provided to real estate developers (previously off the plan approvals), as well as near new dwelling exemption certificates.

This table excludes the developed, and for development exemption certificates for foreign persons shown in Table 3.13.

New business approvals

Foreign government investors require approval to start an Australian business.⁹ New business approvals in the agriculture, forestry and fishing sector, mineral exploration and development sector and manufacturing, electricity and gas sector remained stable in 2019–20, while the finance and insurance sector and the services sector approvals declined compared to 2018–19 approvals (see Table 3.16).

Table 3.16: New business approvals by industry sector: 2016–17 to 2019–20

Industry	2016–17	2017–18	2018–19	2019–20
	No.	No.	No.	No.
Agriculture, forestry & fishing	0	0	1	1
Finance & insurance	2	5	7	4
Manufacturing, electricity & gas	0	3	2	2
Mineral exploration & development	1	1	0	0
Services	4	11	12	4
Total	7	20	22	11

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Investor countries

Leading sources of proposed investment

Table 3.17 shows proposed investment approvals in 2019–20, disaggregated by industry sector, for the top 18 countries by the value of approvals. The United States and Japan were the top two sources of proposed investment by value. Singapore, Canada and United Kingdom were the third to fifth top investors by value.

Key sectors for the United States in 2019–20 included the finance and insurance sector (which increased in approvals value from \$791.8 million in 2018–19 to \$2.5 billion in 2019–20) and the mineral exploration and development sector (which increased in approvals value from \$2.9 billion in 2018–19 to \$4.7 billion in 2019–20). The value of proposed investment from the United States in the real estate sector decreased from \$19.6 billion in 2018–19 to \$13.1 billion in 2019–20, and there was a decrease in approvals value from \$31.2 billion in 2018–19 to \$27.9 billion in 2019–20 in the services sector.

⁹ This requirement was codified in the Act from 1 December 2015.

Starting an Australian business refers to when a foreign government investor starts to carry on an Australian business, or if a foreign government investor already carries on an Australian business, the business starts a new activity under the Australian and New Zealand Standard Industrial Classification (ANZSIC, 2006) Codes and the activity is not incidental to an existing activity of the Australian business and the activity is within a different Division under the Codes. For a foreign government investor that already carries on an Australian business, starting a new business excludes when they establish a new entity, alone or with others, to undertake the same Australian business or acquire interests in such an Australian business.

Proposed approved investment from Japan increased by \$7.0 billion, shifting Japan to the second largest source country by value. There was significant growth in the value of approvals for Japanese investors in the manufacturing, electricity and gas sector (which increased in value from \$2.5 billion in 2018–19 to \$17.5 billion in 2019–20).

While the value of proposed investment from China in 2019–20 (\$12.8 billion) remained relatively steady compared to 2018–19 (\$13.1 billion), China was the sixth top source of approved investment in 2019–20 (down from fifth largest source country in 2018–19). In 2019-20, the value of proposed investment from China increased in the agriculture, forestry and fishing sector, finance and insurance sector, manufacturing, electricity and gas sector and the real estate sector. There was a decrease in the value of approvals from China in the mineral exploration and development sector (\$2.7 billion in 2018–19 to \$0.8 billion in 2019–20), and in the services sector (\$3.5 billion in 2018–19 to \$1.5 billion in 2019–20).

Table 3.17 Approvals by country of investor, by industry sector

Country	Number of approvals	Agriculture, forestry and fishing \$m	Finance & insurance \$m	Manufacturing, electricity & gas \$m	Mineral exploration & development \$m	Real estate \$m	Services \$m	Total \$m
UNITED STATES	305	716.8	2,540.5	283.9	4,681.9	13,088.8	27,877.5	49,189.3
JAPAN	129	197.8	1,334.0	17,487.9	226.7	1,059.9	1,774.9	22,081.1
SINGAPORE	423	1,374.8	1,727.4	798.3	8.9	9,541.6	2,740.4	16,191.3
CANADA	260	2,550.4	195.0	2,048.2	597.2	3,307.1	7,325.9	16,023.8
UNITED KINGDOM	350	232.4	2,274.2	464.6	1,339.2	1,583.0	9,027.4	14,920.7
CHINA	4,314	300.5	1,030.0	1,936.7	836.5	7,110.7	1,538.4	12,752.8
HONG KONG	743	205.5	97.6	417.5	13.9	2,412.2	8,153.1	11,299.7
FRANCE	90	23.0	-	5,033.5	301.3	2,415.8	1,212.2	8,985.8
UNITED ARAB EMIRATES	80	39.8	865.9	136.3	53.0	688.1	2,776.4	4,559.4
GERMANY	85	98.2	-	308.3	4.5	3,686.1	265.4	4,362.5
NETHERLANDS	69	495.6	2.9	155.0	-	1,085.6	597.0	2,336.2
SAUDI ARABIA	25	22.2	798.2	40.1	1.4	21.0	1,274.9	2,157.8
MALAYSIA	298	27.1	643.4	5.6	204.5	556.7	593.8	2,031.1
NEW ZEALAND	35	331.2	33.0	261.4	5.4	32.5	1,140.9	1,804.5
THAILAND	29	128.3	-	-	166.1	1,360.7	-	1,655.1
SWITZERLAND	47	159.3	18.4	214.4	0.4	504.7	623.3	1,520.4
PHILIPPINES	29	4.5	-	907.5	-	16.4	91.6	1,020.0
IRELAND	14	11.4	-	-	-	18.8	942.3	972.5
Other Countries	1,617	827.1	106.3	1,194.2	939.9	2,626.5	2,423.9	8,117.8
New Dwelling EC	38	-	-	-	-	1,621.7	-	1,621.7
Subtotal	8,980	7,745.8	11,666.7	31,693.4	9,380.7	52,737.8	70,379.2	183,603.6
Australia	214	469.2	1,884.4	1,259.3	1,809.1	3,085.9	3,168.7	11,676.6
Total	9,194	8,215.0	13,551.1	32,952.7	11,189.8	55,823.7	73,547.9	195,280.2

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.
 'Other' comprises all other countries not specifically listed in the top countries by value, from which there is proposed investment approved.

Variations

The Act allows foreign persons to apply for variations relating to approvals, conditions that are imposed as part of an approval, exemption certificates, and to orders. Variations may also be made at the Treasurer's own initiative if the person consents to the variation or the variation meets a no disadvantage to the foreign person test. Irrespective of whether an application is received or the variation is at the Treasurer's initiative, the variation may only be made if the Treasurer is satisfied that it is not contrary to the national interest. Variation applications are considered on a case-by-case basis, and are usually limited to more technical changes and extensions of deadlines in conditions.

For example, a commercial real estate development condition has a deadline of five years for the commencement of construction from the date of approval. Where, due to circumstances beyond the developer's control, the developer is unlikely to meet the deadline, the developer may apply for the deadline for the condition to be varied to provide further time.

A significant departure from the original application or approval will generally require a further application. This could include the addition of another foreign person to the application or increasing the equity interest in the proposed investment.

In 2019–20, there were 341 variations considered, compared to 379 in 2018–19 (see Table 3.18). Of these, 272 were approved in 2019–20 compared to 360 in 2018-19. One variation was declined in 2019–20, compared to zero variations declined in 2018-19. In 2019-20, there were 65 variations withdrawn, compared to 15 variations withdrawn in 2018-19.

Table 3.18: Variations considered: 2018–19 to 2019–20 (number of variations by variation type)

Outcome	Variation to exemption certificate (a)				Variation to Land approval (b)				Variation to Other approval		Total All variations	
	Acquisition program certificate		New dwelling certificate		Residential		Other		2018–19	2019–20	2018–19	2019–20
	2018–19	2019–20	2018–19	2019–20	2018–19	2019–20	2018–19	2019–20				
No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.
Approved	13	17	0	0	302	211	14	27	31	17	360	272
Declined	0	0	0	0	0	1	0	0	0	0	0	1
Total decided	13	17	0	0	302	212	14	27	31	17	360	273
Exempt	0	0	0	0	0	0	0	0	0	1	0	1
Not a variation	1	1	0	0	0	0	2	1	1	0	4	2
Withdrawn	3	6	0	0	7	42	2	6	3	11	15	65
Total considered	17	24	0	0	309	254	18	34	35	29	379	341

Table 3.19: Variations approved: 2018–19 to 2019–20 (number of variations by variation reason)

Reason	Variation to exemption certificate (a)				Variation to Land approval (b)				Variation to Other approval		Total All variations	
	Acquisition program certificate		New dwelling certificate		Residential		Other		2018–19	2019–20	2018–19	2019–20
	2018–19	2019–20	2018–19	2019–20	2018–19	2019–20	2018–19	2019–20				
No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.
Longer time to undertake action only	0	5	0	0	1	68	3	7	13	8	17	88
Change to conditions only	9	9	0	0	163	138	8	13	7	5	187	165
Other, or more than one reason	4	3	0	0	138	5	3	7	11	4	156	19
Total considered	13	17	0	0	302	211	14	27	31	17	360	272

Notes for Tables 3.18 and 3.19

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

(a) Comprises: Land exemption certificates, business exemption certificates, and tenements and mining, production or exploration entity certificates.

(b) Comprises: new dwelling exemption certificates and residential land exemption certificates.

These tables only include variations relating to exemption certificates and no objection notifications, irrespective of if resulting from an application by a foreign person, the Treasurer's initiative, or a compliance action.

Variations are not attributed a value as applicable values have been attributed to the exemption certificate or no objection notification that is subject to the variation.

Variations are reported in the financial year in which the variation is considered irrespective of when the original approval was given.

Over time multiple variations could be made to a single approval.

Vacancy fees

In the 2017–18 Budget, the Government introduced a vacancy fee for houses left vacant by foreign investors for more than six months in a 12 month period. The fee was designed to encourage foreign investors to make their properties available for rent where they were not occupied as a residence, thereby increasing the number of properties available for Australians to live in.

Foreign investors who apply for investment approval or propose to purchase in a development using a New Dwelling Exemption Certificate after 9 May 2017 are required to lodge an annual vacancy fee return at the end of each 12 month period of ownership (referred to as the vacancy year). Foreign owners of dwellings that are not residentially occupied or made available on the rental market for more than 183 days each year may be liable to pay a vacancy fee.

If a foreign owner does not lodge a vacancy fee return by the due date, the property may be deemed to be vacant and a vacancy fee liability may be raised regardless of the number of days the dwelling was residentially occupied during the vacancy year. This is an annual lodgement obligation.

In 2019–20, the ATO received 5,413 vacancy fee returns, more than double the figure in 2018–19 of 2,218. A further 109 foreign owners who failed to lodge a return were deemed liable to pay a vacancy fee. The returns indicate a low vacancy rate of approximately 4.3 per cent among properties subject to the vacancy fee measure. The vacancy rate is slightly lower when compared to the 5.3 per cent in 2018–19.

Table 3.20: Vacancy fee statistics: 2018–19 to 2019–20

	2018–19	2019–20
Occupied 183 days or more	2,037	5,077
Occupied fewer than 183 days	118	231
Dwelling exempt	63	105
Subtotal declarations	2,218	5,413
Deemed unoccupied	44	109
Total	2,262	5,522

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

The ATO conducts a number of ‘help and assist’ pre-lodgement activities to assist foreign persons to comply with their vacancy fee obligations. This includes email and phone contact, which prompts foreign persons to lodge their vacancy fee return and avoid being deemed liable to pay the fee regardless of whether a property has been occupied or left vacant. The ATO’s approach is to assist a foreign person who has not lodged their return in the first year. However, if a foreign person fails to lodge in their second vacancy year, the foreign person may be deemed liable for the fee. This approach is reflected in the increase in ‘deemed occupied’ in the 2019–20 statistics.

Foreign investment fee collections

The ATO administers the vacancy fee, and is also responsible for collecting foreign investment application fees. In 2020, the ATO reported in its Annual Report that \$94 million in foreign investment fees were collected. As detailed in Table 3.21, this figure includes \$90.3 million in application fees and \$3.7 million in vacancy fees.

In 2019–20, application fee collections were down on 2018–19 reflecting a decline in applications considered.

Table 3.21: Foreign investment fee collections: 2016–17 to 2019–20

	2016–17	2017–18	2018–19	2019–20
Fee Collections	\$m	\$m	\$m	\$m
Application Fees	134.0	114.0	92.2	90.3
Vacancy Fees			1.8	3.7
Total	134.0	114.0	94.0	94.0

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.



This chapter discusses the Treasury's and the ATO's approach to ensure investors comply with their obligations under the Act and provides an overview of compliance activities in 2019-20.

Compliance approach

Compliance activities are fundamental to the integrity of the foreign investment framework.

Treasury is responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and commercial land foreign investment proposals. The ATO is responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and the vacancy fee, and some commercial land proposals. Treasury and the ATO adopt a risk-based approach to their compliance work and focus efforts on areas of greatest risk to the national interest. They aim 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.

Foreign investment compliance activities are also supported by specialist advice from other agencies as required. Agencies that support compliance work include the Department of Home Affairs, Department of Defence, Department of Health, Department of Foreign Affairs and Trade, Australian Transaction Reports and Analysis Centre (AUSTRAC) and Australian Federal Police.

Treasury's compliance activities

In the reporting period, Treasury's compliance activities were framed according to the Foreign Investment Compliance Framework which was implemented in September 2017. Broadly, this covers education, compliance assurance, enforcement, and market intelligence. Compliance activities undertaken in the reporting period are outlined below.

Education and promotion

Stakeholder engagement activities include educating foreign investors and their advisers on their compliance obligations. In 2019–20, stakeholder engagement activities undertaken by Treasury and the ATO included:

- regular meetings with key stakeholders, including hosting the third Cross-Government Foreign Investment Compliance Forum;
- engagement with professional service providers that are advising investors;
- participation in industry forums and seminars including hosting Treasury’s inaugural Foreign Investment Division compliance forum for audit firms and auditors;
- developing and publishing guidance material on the Foreign Investment Review Board and ATO websites to educate foreign investors and their advisers on their compliance obligations; and
- responding to written enquiries and phone calls to the foreign investment related hotlines.

Better outcomes on compliance can be achieved if investors and their advisers understand their obligations. To that end, Treasury published two public facing guidance notes on independent audit conditions and requirements for fulfilling compliance reporting obligations (prior Guidance Notes 51¹⁰ and 52¹¹). These are issues on which Treasury regularly engages with investors. Public guidance provides standardised information that is accessible by all investors and their advisers and assists investors understand their obligations.

The Cross-Government Foreign Investment Compliance Forum is hosted by the Foreign Investment Division in Treasury and is a forum in which senior officials from agencies with an interest in investor compliance with foreign investment obligations can have a strategic dialogue on compliance issues and support compliance work under the Act. The Forum also helps identify synergies with other regulatory frameworks and can help with cross jurisdictional issues.

Since the announcement of the changes to the compliance provisions in the Act in June 2020, Treasury has been developing an education campaign for investors and their advisers to ensure that from commencement of the reforms on 1 January 2021, there is clarity on how the new compliance powers will be administered. New guidance material to assist investors understand their compliance obligations was made available on the Foreign Investment Review Board website in December 2020.

Treasury’s engagement within Government agency partners is also of primary importance to ensure that their views are considered. This consideration is included not only in the context of

10 Guidance Note 51 was replaced by Guidance Note 13 from 1 January 2021.

11 Guidance Note 52 was replaced by Guidance Note 13 from 1 January 2021.

an investor's application process, but it also carries through to the post-acquisition compliance work when considering whether an investor has met their obligations under the conditions imposed as part of their no objections notifications.

Compliance assurance

Audit program

The annual audit program was introduced in 2017. In undertaking compliance audits, Treasury uses a risk-based approach to determine which transactions are subject to audit. This approach considers issues such as the nature of conditions imposed on an investment proposal, the impact of non-compliance on the national interest and indicators of potential non-compliance.

During 2019-20, four audits were completed with an additional five audits from the 2019-20 audit program underway as at 30 June 2020. The results of the audits at 30 June 2020 found one instance of partial-compliance amongst investors. In this instance, Treasury worked with the investor to put in place a remediation action plan.

Reviews

Treasury reviews instances of potential non-compliance as part of its compliance assurance activities. Reviews are often triggered by information received from members of the public regarding suspected breaches of the Act by investors. In 2019-20, Treasury received 24 reports of potential non-compliance as well as finalised a number of reviews.

Compliance monitoring

Treasury's assurance activities also include ongoing monitoring of compliance. For example, investors are often requested to report on their compliance with conditions imposed as part of no objections notifications. These reports provide Treasury with information regarding the level of compliance and provide information about how compliance activities could be targeted in the future. The Treasury actively engages with investors and their advisers via compliance monitoring activities such as remediation action plans to bring them into compliance.

In addition to reviewing compliance reports received from investors, Treasury also actively conducts its own compliance reviews as part of regular monitoring efforts. The purpose of these reviews is to proactively (rather than reactively) monitor investor compliance with conditions.

Enforcement

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

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

Compliance monitoring and enforcement tools were significantly strengthened by changes to the Act which commenced on 1 January 2021. Since the announcement of the reforms on 5 June 2020, Treasury has developed operational policies and procedures to support the administration of the new compliance powers.

Market intelligence

In the reporting period, Treasury’s market intelligence activities were focussed on making better use of data to improve monitoring of foreign investment compliance. Data-driven surveillance activities were undertaken in connection with the zero dollar threshold. These activities included the interrogation of six commercial databases and collaboration with other government agencies to detect instances of non-compliance with the zero dollar thresholds requirements.

To further facilitate market intelligence capabilities, Treasury worked with a number of government and non-government agencies to secure ongoing access to data sources. This will assist in undertaking routine and ad hoc surveillance activities for both proactive and retrospective detection of non-compliance.

ATO’s residential real estate compliance activities

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

The data reported in this section is based on residential real estate compliance investigations undertaken by the ATO from 1 July 2019 to 30 June 2020.

During the period, 746 cases were identified for investigation, down from 1,220 cases in 2018-19. Of these, 620 investigations were completed, compared to 1,068 in 2018-19, which identified 259 properties that were in breach of Australia’s foreign investment rules, down from 600 in 2018-19 (see Table 4.1).

Table 4.1: Residential real estate compliance investigations in 2017–18 to 2019–20

Investigations	2017–18	2018–19	2019–20
	No.	No.	No.
Identified	1710	1220	746
Completed	1404	1068	620
Properties in breach	600	600	259

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Outcomes of residential property investigations

In the reporting period, there was a reduction in compliance actions, largely due to the impact of the COVID-19 pandemic and some practical changes to how the ATO dealt with breaches relating to investors who are joint tenants. As a result of the COVID-19 pandemic, a temporary compliance strategy was implemented and compliance cases on hand were paused in March 2020. Investors undergoing compliance action at the time were advised of options to bring their behaviour into compliance and they were put on notice that the ATO may be in contact in the future to discuss their circumstances. Investigative work continued on the more serious compliance cases as did prevention campaigns.

Many of the compliance staff who support the ATO's audit program were redeployed to priority work as a result of the COVID-19 response. This priority work included actioning the increased number of commercial property cases generated from the zero dollar threshold changes.

Incidents of residential real estate non-compliance are largely the result of investors being unaware of their obligations to obtain foreign investment approval. The ATO generally finds that had the investor sought approval, they would have been found eligible to hold the property. Educating investors and their intermediaries is ongoing to ensure awareness of their foreign investment obligations if they are investing in Australian residential real estate.

Outcomes of investigations which identified breaches included divestments, retrospective approvals, variations of conditions and raising a vacancy fee liability. These outcomes are reported in Table 4.2. In some circumstances an infringement notice may have also been applied. Infringement notice data is reported in Table 4.5.

As outlined in Table 4.2, divestment (27.0 per cent), retrospective approval during government consideration (23.9 per cent) and change of conditions (22.0 per cent) are the most frequent outcomes. Compliance outcomes are influenced by the ATO's compliance strategy and case selection methodologies, which apply a risk-based approach to encourage foreign investors to comply with the rules where their investment is in the national interest. In most circumstances an infringement notice, which imposes a financial penalty on a foreign person, was applied to breaches even if the application was subsequently given approval or conditions of approval changed.

Table 4.2: Outcomes of residential real estate investigations that identified breaches in 2017–18 to 2019–20

Compliance outcome	2017–18		2018–19		2019–20	
	No.	Percentage	No.	Percentage	No.	Percentage
Divestment (a)	131	21.8	83	13.8	70	27.0
Retrospective approval (b)	102	17.0	79	13.2	49	18.9
Change of conditions (c)	177	29.5	220	36.7	57	22.0
Retrospective approval during government consideration (d)	190	31.7	213	35.5	62	23.9
Vacancy fee raised	-	-	5	0.8	21	8.1
Total outcomes	600	100.0	600	100.0	259	100.0

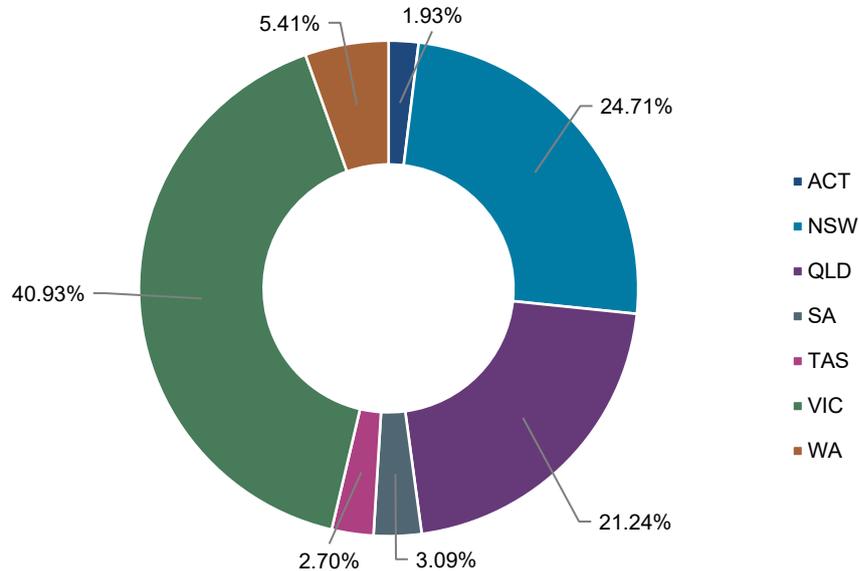
Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

- (a) Includes a voluntary disposal of a property following an ATO investigation, and where a formal disposal order was issued under the Act.
- (b) Approval is provided after the property has been purchased.
- (c) In the course of an investigation, the ATO determines a foreign investor is in breach of their approval condition and works with the investor to remedy the breach. Where appropriate, an infringement notice is also issued in these situations for failure to comply with conditions.
- (d) A foreign person seeking approval to acquire an interest in property is identified during the foreign investment screening process that they had already acquired an interest in the property in question, usually by entering into a contract. Where appropriate, an infringement notice is also issued.

Breaches by location

Chart 4.1 shows the geographic distribution of properties that were found to be in breach of the foreign investment rules in 2019–20.

Just over 40 per cent of the breaches identified by compliance investigations related to residential property in Victoria. The proportion of breaches in New South Wales increased from 20.8 per cent in 2018–19 to 24.7 per cent. The proportion of breaches recorded in Queensland decreased from 24.5 per cent in 2018–19 to 21.2 per cent.

Chart 4.1: Location of residential real estate breaches identified in 2019–20

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

No properties were found in breach in the Northern Territory. The Northern Territory had only a small number of residential real estate approvals for the period.

Investigations by source

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

Table 4.3: Source of residential real estate cases in 2017–18 to 2019–20

Source of Case	2017–18		2018–19		2019–20	
	No.	Percentage.	No.	Percentage	No.	Percentage
Community information	256	15.0	88	7.2	22	2.9
Data matched (a)	1,090	63.7	939	77.0	645	86.5
Self-disclosure	288	16.8	107	8.8	28	3.8
Other referrals	76	4.4	86	7.0	51	6.8
Total received (b)	1,710	1,220	1,220	100.0	746	100.0

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

(a) Data matched includes the vacancy fee

(b) The total number of received cases includes new cases identified in the prior financial year which remained open at the end of that financial year. In 2019–20 there were 152 cases carried forward from 2018–19 year.

Since 2015, the ATO has continued to increase its data matching capacity and use of data from a variety of different sources related to foreign investors in the residential real estate sector. These include state and territory land title records, immigration records, and data from the

Australian Securities and Investments Commission and AUSTRAC. These sources have assisted in developing sophisticated detection methods for breaches of the foreign investment rules.

In the reporting period, data matching made up 87 per cent of the 620 cases identified for investigation. Although information received from the community is a source of intelligence for the ATO, only a small proportion of investigations arising from community information actually involved a breach of the Act. In most cases, the owners of the properties reported by community members were found to be Australian citizens or permanent residents and were therefore exempt from the Act.

Table 4.4: Outcomes of completed residential real estate investigations by source in 2017–18 to 2019–20

Source	2017–18		2018–19		2019–20	
	No. of completed investigations	No. of breaches	No. of completed investigations	No. of breaches	No. of completed investigations	No. of breaches
Community information	228	37	86	12	18	2
Data matching	866	370	810	484	537	236
Self-disclosure	249	175	103	76	21	8
Other referral	61	18	69	28	44	13
Total	1,404	600	1,068	600	620	259

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

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

Data matching figures include vacancy fee investigations.

Infringement notices

There are two levels of infringement notices which impose different financial penalties on a foreign person. A Tier 1 infringement notice may be issued where a foreign person notifies of a breach before an infringement notice is issued, while in cases where the ATO identifies a breach as a result of compliance activity, a Tier 2 infringement notice may be issued. Table 4.5 provides information on infringement notice outcomes.

Table 4.5: Infringement notices issued in relation to residential real estate in 2017–18 to 2019–20

Penalty type	2017–18		2018–19		2019–20	
	No.	Total Value \$	No.	Total Value \$	No.	Total Value \$
Tier 1 infringement	347	1,001,080	346	1,288,000	140	499,360
Tier 2 infringement	82	1,175,400	169	2,267,320	36	804,600
Total	429	2,176,480	515	3,555,320	176	1,303,960

Before republishing this data or comparing between years, thoroughly review the methodological and data caveats in Appendix B.

Tier 1 infringement notices are issued where the breach is self-disclosed.

Tier 2 infringement notices are issued where the breach is identified by the ATO's compliance activity

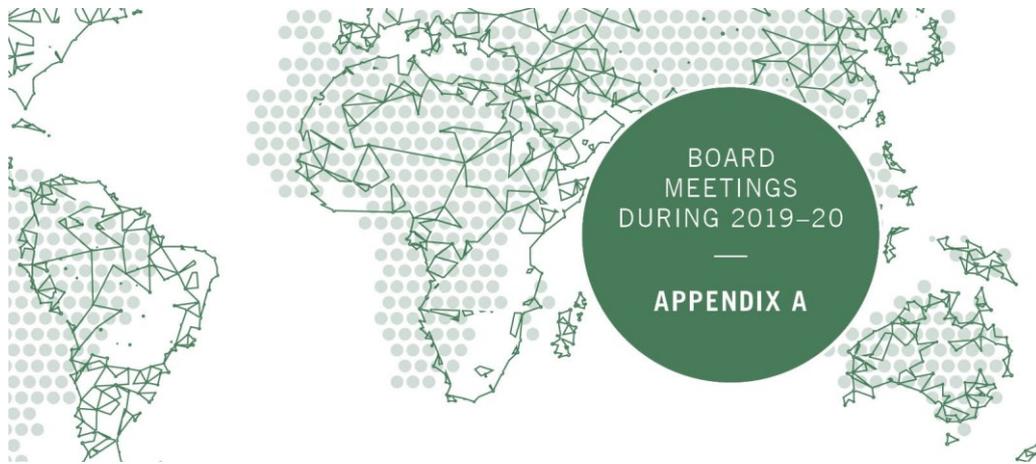
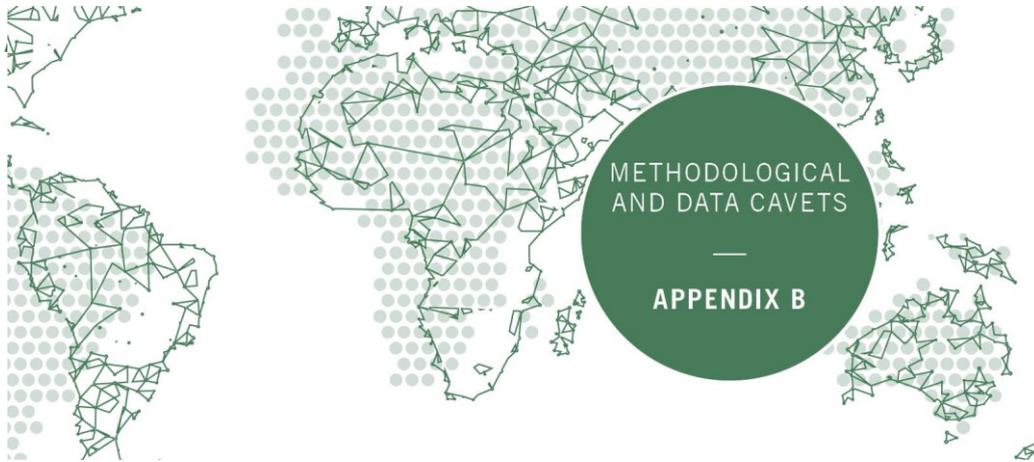


Table A.1: Board meeting attendance during 2019–20

	No. of meetings attended	No. of meetings eligible to attend
David Irvine (Chair)	10	10
Teresa Dyson	10	10
Cheryl Edwardes	10	10
Margaret (Meg) McDonald	10	10
Nick Minchin	9	10
David Peever	9	10
Alice Williams	9	10
Roger Brake	9	10

Due to the impacts of the COVID-19 pandemic, the Board replaced their monthly face-to-face meetings with teleconference meetings between March and October 2020. In the reporting period four face to-face meetings between March and June 2020 changed to teleconference meetings and are included in the figures in this table.



This appendix provides an overview of the main methodological and data caveats that apply to applications and approvals data in this Annual Report. Care should be taken when making comparisons with earlier years or alternate data sources on foreign investment.

Methodological Overview

- The statistics contained in this Annual Report do not measure total foreign investment made in any year, nor do they measure changes in net foreign ownership levels in Australia. They reflect investor intentions (not actual purchases) to acquire Australian assets that are subject to the Act. They can be skewed by very large investment proposals and multiple competing proposals for the same target.
- The data does not necessarily reflect a change from domestic to foreign ownership as in some proposals both the seller and the purchaser are foreign persons.
- The statistics may include some transactions that do not actually proceed. They include:
 - approvals in a given year but which are not actually implemented in that year or at all;
 - approvals for multiple competing potential acquirers of the same target (including for potential consortium participants that are yet to determine their final maximum percentage interest);
 - approvals for shares, units or other interests, where only a portion of those intended may be acquired; and
 - proposed investment programs covered by an exemption certificate, where the program is not fully implemented.

- Hence there are substantial differences between these statistics on proposed investment and actual investment flows. The latter are captured by the ABS, which covers investment transactions between Australian residents and non-residents.
- Foreign investment application fees are collected when an application is submitted to the Board. The revenue recognised is based on the receipt of the application and/or payment during the reporting period (including fees paid under New Dwelling Exemption Certificates for acquired properties) less an estimate of future outflows relating to applications where the fee might be waived.

General Caveats

- Data capture, systems and reporting methodologies change over time.
- Data presented for earlier years may have been revised since last published.
- An approval category that was not available during a financial year is denoted by 'na'.
- A proposed investment value is not attributed to new business approvals, corporate reorganisations approvals, or variations.
- A retrospective approval may be given when a foreign person failed to seek foreign investment approval but would have received approval had they previously submitted an application. Retrospective applications remain liable to pay the relevant application fee and an infringement notice.
- Totals presented throughout the report may not add due to rounding.
- Variations are only included in Tables 3.18 and 3.19.

Country of Control

- Country of control figures in Table 3.17 indicate the total number of approvals in which investors from the particular country have a disclosed beneficial interest in or where widely held interests have been allocated to a country based on factors such as the largest interest holder or country of control of the investor. Approvals involving investment originating from more than one country are generally counted as one approval for each of the countries concerned where they include investment from foreign persons greater than five per cent or where there is shared control. For consortium approvals, or where there is shared control, the proposed investment may be counted against a number of countries with the investment value apportioned between those countries involved.
- The total number of approvals in Table 3.17 may differ from the total number of approvals in Tables 3.1, 3.5, and 3.7 as the data is recorded by country. For instance, one application from two investor countries will appear as one approval per country (that is, it will be reflected as two approvals).

- Data on specific countries includes their overseas territories. Data on China excludes Special Administrative Regions and Taiwan.
- Australia appears in the list of countries due to approvals where:
 - Australians hold disclosed beneficial interests in the investor;
 - widely held interests have been allocated to Australia based on other factors such as location or control of the investor;
 - an Australian investor(s) jointly intends to make a proposed investment with a foreign person through a new entity; or
 - an Australian investor(s) intends to jointly establish a new business with a foreign government investor.

Industry Sectors

- Figures on approvals by industry sector in this report are recorded by target acquired, reflecting the industry sector of the target. For example, one application to acquire two targets (under the single agreement) that operate in separate sectors will appear as two approvals, with one approval recorded per sector. If they operate in the same sector, this will appear as two approvals recorded against the sector. Hence the total number of approvals in Table 3.7 may be greater than or equal to the total number of approvals in Tables 3.1 and 3.3.
- Proposed acquisitions of diversified company groups are classified into a single industry sector according to the major activity of the group, such as in a diversified mining company with interests in various minerals.
- Proposed acquisitions of land, including land entities and mining, production or exploration entities, are classified as follows:
 - commercial land and residential land are reported in the real estate sector;
 - agricultural land is included in the agriculture, forestry and fishing sector and within this industry, is allocated based on actual use, or if not currently being used for a primary production business, based on its likely use as agricultural land; and
 - tenements are included in the mineral exploration and development sector and within this industry are allocated based on the mineral, oil or gas that can be recovered.
- One new dwelling exemption certificate (previously advanced 'off-the-plan' certificate) equates to one approval in terms of the number of approvals but the value reflects the maximum amount that foreign persons may acquire under the certificate in the proposed development.

- Tables 3.7 to 3.15, and their corresponding charts, exclude approvals of new businesses and internal reorganisations. An industry breakdown of new business approvals is provided in Table 3.16.
- In tables providing breakdowns by states and territories, 'Various' refers to approvals where the proposed investment is to be undertaken in more than one state or territory.

Consideration Value

- The value ascribed to a proposed investment which has received approval is the amount agreed to in any contract entered into or a reasonable estimate advised by the applicant based on the available information. It represents an estimate of the expected proposed investment in the 12 months from the approval unless the approval is granted for a longer period (and assumes full implementation). In applications where the acquisition has already been completed, it is the amount paid for the interest acquired.
 - Where an approved acquisition is a part of an offshore acquisition, the proposed investment figure is calculated based on the share attributable to the approved acquisition in Australia.
 - Where amounts are in a foreign currency, this is converted to Australian dollars based on the exchange rate at the time of the contract or when the application was made.
 - There are some approvals for which proposed investment is treated as nil. Examples include internal corporate reorganisation and financing arrangement approvals.
- Proposed investment recorded for exemption certificates is the maximum investment that may be made by foreign persons covered by the certificate over the duration of the certificate. Actual foreign investment under new dwelling exemption certificates is likely to take place over multiple years during the sale phase of the covered development. Also, as of December 2015, exemption certificates for foreign persons (formerly known as annual programs) are no longer limited to a maximum 12 month period and so investments under these certificates may take place over a longer period, generally up to a maximum of three years.
 - For new dwelling exemption certificates which allow developers to receive pre-approval on behalf of foreign persons to enable foreign persons to purchase up to 50 per cent of new dwellings within a development up to a cumulative value of \$3 million per investor in a single development, the approved investment figure may overstate the extent of actual foreign purchases.
 - Near-new dwelling exemption certificates will generally be given a nil value as the maximum value of proposed investment for the development will have been attributed to any associated new dwelling exemption certificate in the year that the certificate was granted.

- Proposed investment values allocated against source countries assume that investment funds will be sourced from overseas. The extent to which approved proposed investment will actually be funded from outside of Australia and result in foreign capital inflows depends not only upon whether they are implemented, but also upon the proportion that is financed from foreign sources. The proposed funds to be invested may be contributed by Australians, for example, where they are in partnership with foreign interests, or where the investment is financed from existing Australian operations.
- The value ascribed to a new dwelling exemption certificate is the total estimated sales value of the new dwellings in the development available for purchase by foreign persons. The value recorded is as provided by the applicant when applying for the exemption certificate.
- Throughout this report '0.0' indicates a figure of less than \$50 million.

Policy Changes

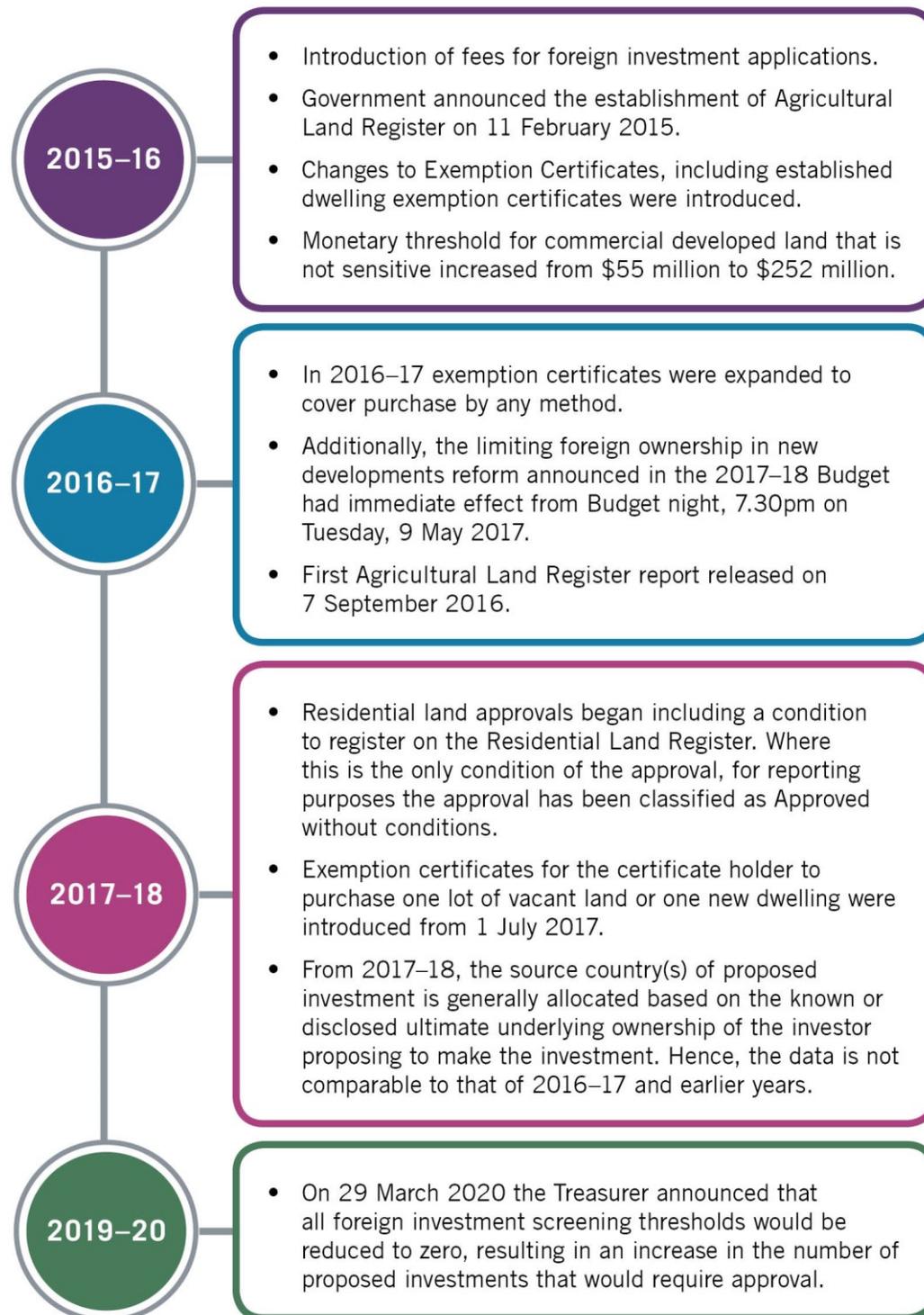
The breadth of the data on proposed investment in this annual report reflects the requirements under the foreign investment framework during the applicable reporting period. The requirements have changed over time, and in some instances, during a reporting period.

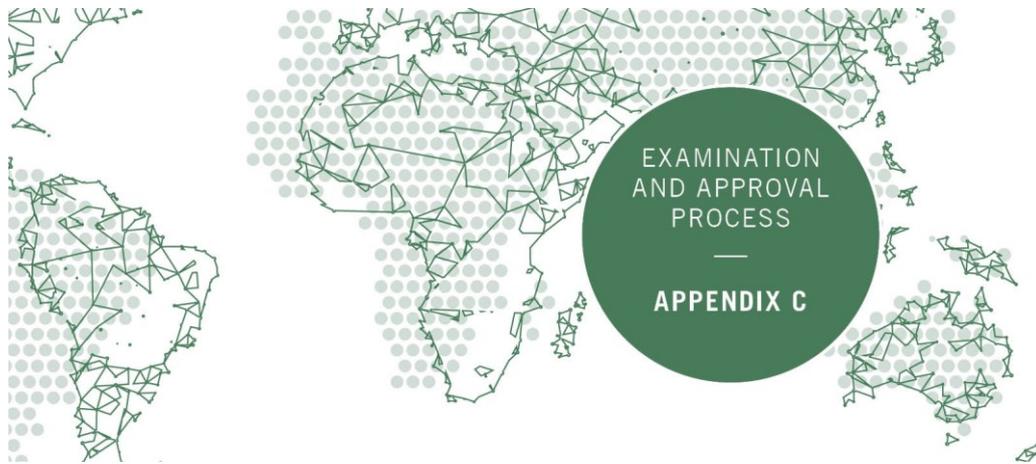
The data does not cover foreign investments considered or made below the various screening thresholds that apply under the Act. The 29 March 2020 introduction of the zero dollar threshold for all investment categories, however, impacted data in the final quarter of the 2019-20 reporting period.

The data does not cover follow-on investments to expand the capital stock of existing foreign owned businesses (both in existing areas and into related areas) such as pro-rata capital injections. For example, additional investment by a foreign owned miner expanding its mining operations by reinvesting its Australian profits in its operations is not reflected in the data.

Policy and legislative change can have a considerable impact on the continuity of data. For instance, changes in Australia's foreign investment policy since the mid-1980s have affected the number of some types of proposals, limiting comparability over time.

Timeline of Methodology and Policy Changes





The assessment of foreign investment applications is a rigorous process and seeks to ensure that proposed investments are not contrary to Australia’s national interest. In fulfilling this objective, proposed investments are examined with a view to identifying any sensitivity regarding the national interest and determining whether these sensitivities can be mitigated or managed.

This section sets out the assessment process during 2019–20. Readers should note significant changes and amendments to the foreign investment framework commenced on 1 January 2021, which will impact future examination and approvals processes.

Board involvement

The Board provides advice to the Treasurer on significant applications received. It performs this role with the benefit of weekly reports on applications received and through regular meetings and discussions with the Board’s Executive Member and Treasury or ATO officers. Formal Board meetings are generally held monthly (and over the period these included meetings by videoconference). The Board members draw on their considerable collective and individual professional and commercial experience in discharging their advisory role.

Handling of commercially sensitive and personal information

Information required to assess an application is commercially sensitive or of a private or confidential nature. Consequently, appropriate measures are in place to ensure that confidentiality is protected.

In the event that access to confidential information is sought for purposes other than the assessment of an application, Treasury and the ATO are subject to legislative provisions that govern how information received under the framework may be used or disclosed. Circumstances in which information can be disclosed include for the administration of specified Commonwealth statutes, to certain law enforcement bodies and in aggregate form, such as the public reporting of data in this report. Unauthorised disclosure of protected information under

the framework is an offence subject to a maximum of two years imprisonment, a \$26,640 fine, or both.

Application screening process

Initial examination

The initial examination seeks to determine whether an application meets the notification requirements specified in the Act, whether the application contains sufficient detail and that the correct application fee has been paid. Timing is also considered, including deadlines that are commercially important to the applicant. The Board has direct and early involvement in significant or sensitive applications.

Consultation arrangements

For significant applications, consultations are undertaken with Australian Government departments, state and territory government departments, national security agencies and authorities with responsibilities relevant to the proposed investment. Advice and comments provided by these agencies are important in assessing the implications of proposed investments and in particular, in determining whether they raise any national interest issues. The Board may also receive unsolicited submissions from third parties.

National interest factors

The Act empowers the Treasurer to prohibit an investment if satisfied it would be contrary to the national interest. However, the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy.

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Treasurer can decide in each case whether the investment would be contrary to the national interest. Across all applications the Government typically considers the following factors:

- national security;
- competition;
- other government policies (including taxation);
- impact on the economy and the community; and
- the character of the investor.

Recognising their significance, additional factors are considered as part of the national interest test for proposed investments in the agricultural sector and for residential land as well as for applications made by foreign government investors. General guidance on the national interest factors is published in Australia's foreign investment policy.

Statutory timeframe

The Act requires a decision to be made on applications within 30 calendar days of the correct fee being paid, unless the application is a variation application. The Act provides a further 10 calendar days for the applicant to be notified of the decision. If a decision is not made within this time or the applicant has not been advised, the application is deemed to be 'approved' since 'no objection' to the proposal has been made, or an exemption certificate is deemed granted.

If such applications cannot be decided within 30 days, because they are complex or further information is needed to properly assess them, the applicant can voluntarily extend in writing the decision period where it is clear that more time will be required. In practice, this is the common way of extending the statutory timeframes. Alternatively, the Treasurer can issue an Interim Order extending the timeframe up to a further 90 days.

Approvals and conditions

The Board, Treasury and the ATO work closely with applicants, and in some cases, vendors. If a proposed investment raises potential national interest concerns, these concerns are discussed with the applicant and the applicant is provided an opportunity to comment. If the applicant proposes mitigating actions, these will also be taken into account.

Where a proposed investment raises no national interest concerns or concerns are adequately addressed by conditions, the applicant is notified in writing of no objection or no objection subject to conditions or granted an exemption certificate. Once an applicant receives a no objection or no objection subject to condition notification or is granted an exemption certificate, the applicant may proceed with the proposed investment. If national interest concerns remain and may not be able to be addressed, the proposed investment may be prohibited by the Treasurer, or in the case of an exemption certificate, the Treasurer may decline to grant the exemption certificate. The Treasurer declining to grant an exemption certificate is without prejudice to future applications for specified targets that the foreign person may lodge.

Temporary measures in response to the COVID-19 pandemic and its impact on the application screening process

On 29 March 2020, the Treasurer announced changes to Australia's foreign investment review framework in response to the COVID-19 pandemic, with all monetary screening thresholds temporarily reduced to \$0 during the pandemic, a time of heightened risk for distressed Australian businesses. The *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* gave effect to this temporary change.

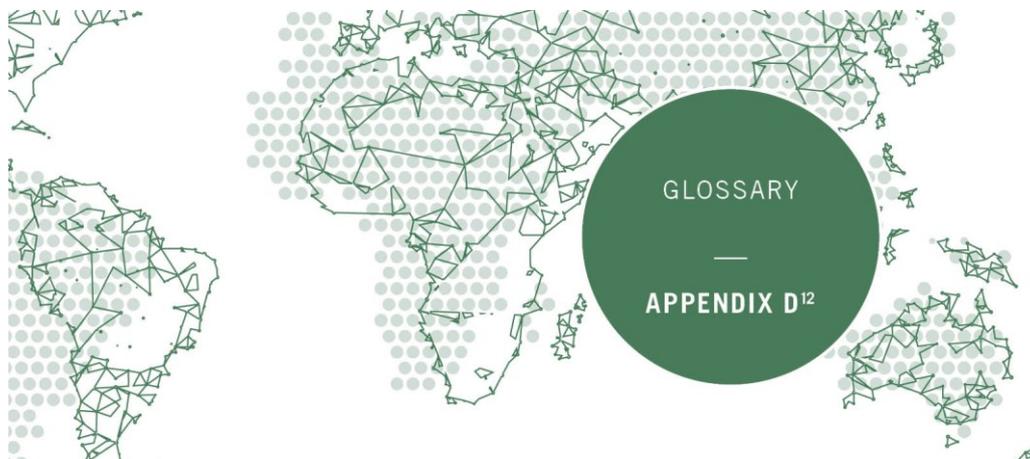
The Treasury and ATO subsequently implemented administrative measures — adapting business structures and processes to support an increase in the volume of new applications and enquiries, when compared with the same quarter last year.

The Treasury and the ATO triaged applications on the basis of their commercial deadlines and risk profile, with priority given to the applications for investments that protect and support Australian businesses and jobs. In particular, the potential impact on the community and

employment was considered when screening applications. The Government remained committed to meeting commercial deadlines wherever possible.

To ensure sufficient time for screening applications, the Treasury and ATO worked with some applicants to extend statutory timeframes for reviewing applications from 30 days to up to six months. However, to ensure the great majority of applications were processed much faster Treasury and the ATO significantly increased staff to manage the workload for both urgent proposals that support Australian businesses and routine applications. They also reviewed business practices and capability needs, introducing a risk-based triaging process, and developed initiatives to improve IT, staff development and training. Where the statutory timeframes were extended to six months, proposals were completed well within the six month timeframe.

The temporary measures did not substantially change the foreign investment assessment and approval process. The measures were lifted on 1 January 2021 when the foreign investment reforms announced and passed in 2020 commenced.



Act	<i>The Foreign Acquisitions and Takeovers Act 1975</i> (as in force during 2019–20).
Agricultural land	Land in Australia that is used, or that could reasonably be used, for a primary production business. The regulations may provide that land of a specified kind is not agricultural land.
Commercial land	Land in Australia or the seabed of the offshore area, other than land: <ul style="list-style-type: none"> • used wholly and exclusively for a primary production business; or • on which there is at least one dwelling (except commercial residential premises); or • on which the number of dwellings (except commercial residential premises) that could reasonably be built is less than the number prescribed by the regulations (10, during 2018–19).
Compliant	Sufficient appropriate evidence has been provided by the applicant to demonstrate compliance with a condition.
Compliant with caveats	Compliance with the condition has been observed. However, the wording of the condition means: <ul style="list-style-type: none"> • there is limited sources of appropriate evidence that can be provided by the applicant to evidence compliance; or • there is potential for misinterpretation of a condition; or • the controls implemented by the applicant, whilst technically in accordance with the condition, may not effectively address the underlying risk. <p>Further consideration of the condition, and possible variations, will need to be considered in the context of Treasury’s foreign investment compliance risk.</p>
Established dwelling	A dwelling (except commercial residential premises) on residential land that is not a new dwelling.
Exemption certificates	Advance approval to allow foreign persons to undertake a program of acquisitions of land and/or business and entities. These are granted with a specified monetary limit within a defined region or sector and generally include conditions requiring the foreign person to report actual acquisitions and any other conditions that would normally be applied for the type of land and/or business and entity to be acquired. Business exemption certificates were introduced on 1 July 2017. Prior to 1 December 2015, the equivalent to land exemption certificates was known as an annual program certificate.

12 The definitions are based on the *Foreign Investment and Takeovers Act 1975* as in force in 2019-20.

Foreign government investor	<p>A foreign government investor includes:</p> <ul style="list-style-type: none"> • a foreign government or separate government entity; or • a corporation or trustee of a trust in which: <ul style="list-style-type: none"> – a foreign government or separate government entity, alone or together with one or more associates, holds a substantial interest (that is, an interest of at least 20 per cent); – foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate substantial interest (that is, an interest of at least 40 per cent); or • a general partner of a limited partnership in which: <ul style="list-style-type: none"> – a foreign government or separate government entity, alone or together with one or more associates, holds an interest of at least 20 per cent; – foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate interest of 40 per cent or more; or • a corporation, trustee or general partner of a kind described in the two dot points above, assuming the references to foreign government (or foreign governments) in those dot points include references to a foreign government investor (or foreign government investors) within the meaning of those dot points.
Foreign person	<p>Foreign person means:</p> <ul style="list-style-type: none"> • an individual not ordinarily resident in Australia; • a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; • a corporation in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; • the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; • the trustee of a trust in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; • a foreign government; or • any other person, or any other person that meets the conditions, prescribed by the regulations.
New dwelling	<p>A dwelling (except commercial residential premises) that will be, is being or has been built on residential land and that:</p> <ul style="list-style-type: none"> • has not been previously sold as a dwelling; and • either has not been previously occupied; or if the dwelling is contained in a development and the dwelling was sold by the developer of the development — has not been previously occupied for more than 12 months total.
Non-compliant	<p>The applicant is unable to provide sufficient evidence to demonstrate compliance with the condition.</p>
Observation	<p>Compliance with the condition has been observed. However, observations were made during the audit which may relate to:</p> <ul style="list-style-type: none"> • potential enhancements to processes, documents or systems to improve effectiveness of compliance outcomes; or • potential risks to ongoing or future compliance; or • the applicant’s engagement during the audit process.

Ordinarily resident	<ol style="list-style-type: none"> 1. An individual who is not an Australian citizen is ordinarily resident in Australia at a particular time if and only if: <ol style="list-style-type: none"> a. the individual has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and b. at that time: <ol style="list-style-type: none"> i. the individual is in Australia and the individual's continued presence in Australia is not subject to any limitation as to time imposed by law; or ii. the individual is not in Australia but, immediately before the individual's most recent departure from Australia, the individual's continued presence in Australia was not subject to any limitation as to time imposed by law. 2. Without limiting paragraph (1)(b), an individual's continued presence in Australia is subject to a limitation as to time imposed by law if the individual is an unlawful non-citizen within the meaning of the <i>Migration Act 1958</i>.
Partially compliant	<p>The compliance audit has concluded that the applicant is:</p> <ul style="list-style-type: none"> • compliant with some aspects of the condition, but not all, where the condition has a number of elements; or • in the process of implementing controls to ensure compliance with the condition; or • technically not in compliance with the condition, but able to demonstrate controls which mitigate the underlying risk and / or intent of the condition.
Residential land	<p>Land in Australia if:</p> <ul style="list-style-type: none"> • there is at least one dwelling on the land; or • the number of dwellings that could reasonably be built on the land is less than the number prescribed by the regulations (10 in 2019–20); and • does not include land: <ul style="list-style-type: none"> – used wholly and exclusively for a primary production business; or – on which the only dwellings are commercial residential premises.
Substantial interest	<p>A person holds a substantial interest in an entity or trust if:</p> <ul style="list-style-type: none"> • for an entity — the person holds an interest of at least 20 per cent in the entity; or • for a trust (including a unit trust) — the person, together with any one or more associates, holds a beneficial interest in at least 20 per cent of the income or property of the trust.
Temporary resident	<p>An individual who:</p> <ol style="list-style-type: none"> 1. holds a temporary visa under the <i>Migration Act 1958</i> that allows the individual to remain in Australia for a continuous period of more than 12 months (disregarding the amount of that period remaining); or 2. meets the following conditions: <ol style="list-style-type: none"> a. the individual is residing in Australia; b. the individual has applied for a permanent visa under the <i>Migration Act 1958</i>; c. the individual holds a bridging visa under that Act that allows the individual to remain in Australia until the application has been finally determined; or 3. meets the conditions prescribed by the regulations.
Vacant land	<p>Land is vacant if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock.</p>