

Foreign Investment Review Board

Annual Report

2020–21

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4 April 2022

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 2021. The report has been prepared in accordance with the Board's responsibilities to advise the Government on foreign investment matters.

The 2020-21 reporting period saw the implementation of the most significant reforms to the *Foreign Acquisition and Takeover Act 1975* since its inception. The reforms, which commenced on 1 January 2021, ensure the foreign investment framework keeps pace with emerging risks and global developments as well as strengthens Australia's foreign investment regime to ensure Australia continues to realise the benefits of foreign investment.

The legislative reforms were a key focus for the Board with the introduction of stronger powers for the Government to protect national security, including through mandatory screening of sensitive investments, the ability to call-in other investments that raise national security concerns, and a last resort power to be used in exceptional circumstances. In addition, the reforms saw the introduction of new streamlining measures for less-sensitive investments, new compliance and enforcement powers for the Treasurer and increased foreign investor reporting obligations. The foreign investment compliance framework was updated in December 2020 and framed the Treasury's compliance activities.

The Board and the Treasury worked closely with investors in the lead up to the 1 January 2021 reform implementation, and subsequently, to ensure a smooth transition. This included significant consultation with over 2,000 stakeholders, including foreign investors and their advisers, foreign governments, institutional investors, business councils and peak bodies, relevant government agencies and the broader community.

This reporting period also saw the transition out of the temporary zero dollar threshold period on 1 January 2021. From 29 March to 31 December 2020, all foreign investments regardless of value were screened to ensure government oversight of the sale of Australian businesses during COVID-19. Prior to and throughout this transition, the Board and the Treasury engaged closely with stakeholders and focused their communication efforts on directing investors to the updated guidance material available on the Board's website, which provided clear, consistent and readily available information for investors to understand and navigate these changes.

As COVID-19 continued to cause economic uncertainty and impact investor confidence, foreign direct investment inflows declined across countries comparable with Australia. The reporting period saw a decline in the number of proposals, however, the total value of approved

investments increased from \$195.5 billion in 2019-20 to \$233.0 billion in 2020-21. The Board participated in a range of outreach activities with investors and their representatives to encourage two-way dialogue and increase information sharing to build confidence during these uncertain times and provide insights which informed its advice to the Government.

As we look towards the future, the Board continues to support Australia's post COVID-19 economic recovery including through encouraging an open and ongoing communication with investors, this includes an increase in foreign investment inflows across multiple sectors including commercial real estate, manufacturing, gas and electricity and services during the reporting period.

I would like to take the opportunity to thank my Board colleagues for their ongoing contribution and commitment. I also thank Mr David Peever, whose term expired in March 2021, for his significant contribution to the administration of foreign investment over a five-year period.

Finally, I would like to farewell our esteemed Chair, David Irvine, who sadly passed away on 30 March 2022. David led the Board through an increasingly complex foreign investment landscape, the challenges presented by COVID-19, and advising on and implementing the Government's foreign investment reforms. Not only was David a gracious and decent man, but he was also one of Australia's most well-respected public servants. The Board will miss his warmth, insights and exceptional leadership.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cheryl Edwardes', written in a cursive style.

**THE HON CHERYL EDWARDES AM
ACTING CHAIR**

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EXECUTIVE SUMMARY

This Annual Report provides insight into proposed foreign investment during a rapidly changing and challenging year for Australia and the world. The 2020-21 reporting period saw the implementation of significant reforms to the *Foreign Acquisition and Takeover Act 1975* (the Act). The reforms ensure that our foreign investment framework keeps pace with emerging risks and global developments, as well as strengthens Australia's foreign investment regime to ensure we continue to realise the benefits of foreign investment.

The implementation of the reforms also signalled the transition out of the zero dollar threshold, a temporary arrangement introduced by the Government to protect the national interest during COVID-19. Under the temporary arrangements, all foreign acquisitions, regardless of value, were screened to provide additional oversight.

The Board and the Treasury consulted widely with stakeholders to ensure a seamless transition to the reforms and continued to provide an avenue for two-way dialogue with investors and their representatives to collect market intelligence and insights which in turn informed its advice to the Government.

The economic uncertainties surrounding COVID-19 continued to affect investor confidence and foreign direct investment inflows through 2020-21, contributing to a decline in the number of proposals the Treasury considered compared with the previous financial year. However, the total value of investments increased by \$37.5 billion from 2019-20 to \$233.0 billion.

- Data in this report reflects foreign investment proposals subject to the Act in 2020-21, providing information regarding flows of proposed investment into Australia during the reporting period.
- The total value of investment approvals in 2020-21 was \$233.0 billion. This represents a 19.2 per cent increase from 2019-20 where the total value of investment was \$195.5 billion. It is also an increase from 2018-19 where the total value of investment was \$231.0 billion.
- The total number of proposed investments considered in 2020-21 was 7,614, a decline from 9,004 in 2019-20 as the uncertainty of COVID-19 affected investor confidence. Of the 7,614 proposed investments, 6,650 were approved, 891 were withdrawn, 72 were exempt, and one was rejected.
- In the period 1 July to 31 December 2020, there were 1,025 approvals that related to zero dollar threshold proposals valued at \$14.4 billion, and 5,625 approvals that related to non-zero dollar threshold proposals valued at \$218.5 billion. The zero dollar threshold ceased on 31 December 2020.

- In 2020-21, the United States was the largest source country for approved investment by value, as it was in 2019-20 and 2018-19. It is followed in order by Singapore, Canada, China and Germany.
- The value of investment from the United States was \$56.9 billion in this reporting period. This represents an increase in the value of investment from \$49.1 billion in 2019-20. Services and real estate (both commercial and residential) were the highest value sectors with investment approvals worth \$27.3 billion and \$20.8 billion.
- Singapore became the second largest source country of approved investment in 2020-21, with the total value of investment increasing to \$21.3 billion. The total number of approved investments increased in the reporting period to 524 approved investments from 423 approved investments in 2019-20.
- The value of investment from German-based investors increased almost threefold in the reporting period, increasing from \$4.3 billion in 2019-20 to \$12.0 billion in 2020-21. Services and real estate (both commercial and residential) were the highest value sectors with investment approvals worth \$7.5 billion and \$1.8 billion.
- Commercial real estate received the highest number of approvals and highest value of investment for the reporting period, with approvals worth \$82.0 billion. This was up from \$38.8 billion in 2019-20. Services was the sector with the second highest value of approvals. The value of approved investments increased moderately in this sector from \$73.6 billion in 2019-20 to \$76.9 billion in 2020-21. Manufacturing, gas and electricity was the third highest value sector, recording investment worth \$35.3 billion in 2020-21.
- The ATO completed 404 residential real estate investigations, identifying 83 properties in breach of the FATA. This was a decrease in the number of breaches identified in 2019-20 where 259 properties were found to be in breach from 620 residential real estate investigations.

CHAPTER ONE: THE FOREIGN INVESTMENT REVIEW BOARD

This chapter provides an overview of the Board and the agencies that administer the framework, the 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 decisions on foreign investment proposals. Responsibility for making decisions on foreign investment policy and investment proposals rests with the Treasurer.¹ Compliance and enforcement powers are exercised by the Treasurer and appointed Treasury and ATO officers.

During 2020-21, the Board had eight members, comprising seven part-time members and one full-time executive member – the First Assistant Secretary of the Treasury's Foreign Investment Division. On 31 March 2021, Mr David Peever's term expired, reducing the Board's part-time members to six. The Government seeks to attract members to the Board with deep knowledge and experience in a range of sectors to 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.

To facilitate its advice, the Board holds regular meetings on a monthly basis as well as teleconferences. It also considers matters out-of-session via email. During the reporting period, the Board replaced some of its monthly face-to-face meetings with secure video conferencing due to COVID-19 lockdown measures. Appendix A lists Board members' attendance for the monthly meetings during the reporting period.

Board responsibilities

The role of the Board is to:

- examine proposed investments that are subject to the foreign investment framework (the framework), which encompasses the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and supporting legislation and regulations
- make recommendations to the Treasurer and other Treasury portfolio ministers on the national interest implications of these proposals
- advise the Treasurer on the operation of the framework and the Act

¹ The Treasurer has provided delegations to senior officers in the Treasury and ATO to make decisions on applications that are consistent with the foreign investment framework. Certain applications are decided by other Treasury portfolio ministers.

- foster an awareness and understanding, both in Australia and abroad, of Australia's foreign investment policy and the Act
- provide guidance to foreign persons and their representatives or agents on the framework and the Act.

Board membership

As at 30 June 2021, the Board comprised the following members.

- Mr David Irvine AO (Chair)
- The Hon Cheryl Edwardes AM
- Ms Teresa Dyson
- The Hon Nick Minchin AO
- Ms Margaret (Meg) McDonald
- Mr Steven Skala AO
- Mr Tom Hamilton (full-time executive member)

Mr David Peever's term expired on 31 March 2021.

Board Membership



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

Inaugural Chair, now Board Member – Cyber Security Cooperative Research Centre



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, government 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 – Shine Justice Ltd
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.

Other roles

Director – Student Educational Travel Organisation Limited



Ms Margaret (Meg) McDonald

Non-executive member

Member since 26 March 2019

Ms McDonald has extensive experience in senior public and private sector roles, in Australia and internationally.

Ms McDonald 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 global positions with resources and metals manufacturer Alcoa. Her previous board roles include with 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 was 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

Commissioner – Greater Sydney Commission
Trustee – The Nature Conservancy



Mr Steven Skala AO

Non-executive member

Member since 18 September 2020

Mr Skala has a distinguished career of service including on the boards of public and private companies, and government-related and not-for-profit organisations. He has 40 years' experience in law, business and banking.

The holder of BA and LL.B (Hons) degrees from University of Queensland and a BCL from the University of Oxford, Mr Skala was appointed an Officer of the Order of Australia on 26 January 2010 for services to the arts, education, business and commerce.

Mr Skala has been Vice Chairman, Australia of Deutsche Bank AG since 2004, is Chairman of the Clean Energy Finance Corporation and is an ex officio member of the Commonwealth's recently established Technology Investment Advisory Council. He is a former Chairman of Wilson Group Limited, Hexima Limited (of which he is currently an alternate Director) 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. Between 1982 and 2004, he was a Partner of Australian law firms, Morris Fletcher & Cross (now Minter Ellison) and Arnold Bloch Leibler and was previously Chairman of Film Australia Limited and the Australian Centre for Contemporary Art, Vice President (Deputy Chairman) of The Walter & Eliza Hall Institute of Medical Research, a Director of the Australian Broadcasting Corporation and a Director of the Australian Ballet.

Other roles

Chairman – Heide Museum of Modern Art

Deputy Chairman – General Sir John Monash Foundation

Director – Centre for Independent Studies

Member – International Council of the Museum of Modern Art (MoMA) in New York.



Mr Tom Hamilton

Executive member

Member since 19 October 2020

The position of executive member is held by the First Assistant Secretary of the 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 2020-21, Mr Irvine, the Chair of the Board, delivered addresses at a number of engagements including the Mergermarket Australia M&A Forum 2020, the National Foundation for Australia-China Relations and the Australian National University's National Security College. Mr Irvine and other Board members also participated in a range of meetings and outreach activities with investors, their representatives, and representatives from a range of sectors. These forums encouraged two-way dialogue, provided investors with information on the framework and allowed the Board to gain market intelligence and insights which informed its advice to the Government.

The Treasury

The Foreign Investment Division in the Treasury is responsible for advising Government on all aspects of foreign investment policy as well as regulating foreign investment in Australia. It is responsible for the day-to-day administration of the framework in relation to business, agriculture and sensitive or complex commercial real estate proposals. The Treasury is also responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and some commercial land foreign investment proposals. The Treasury also provides secretariat services in support of the Board.

Australian Taxation Office

The ATO has administrative responsibility for foreign investment proposals 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. The ATO is also responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and some commercial land proposals.

Stakeholder engagement

The Board, the Treasury and the ATO closely engaged with stakeholders following the introduction of the temporary zero dollar thresholds on 29 March 2020 and the announcement of major reforms to the Act and associated regulations on 5 June 2020, to convey the changes and receive feedback. This engagement continued into 2020-21.

The Treasury consulted extensively throughout two major consultation periods on the reforms to the framework, engaging over 2,000 stakeholders. This included investors and their legal advisers, foreign governments, institutional investors, business councils and peak bodies, relevant government agencies and the broader community.

To facilitate a smooth transition to the reformed legislation, from November 2020 into early 2021, the Board and the Treasury increased and revised their communication with investors. Engagement activities shifted away from providing general information on the

reforms and focused on highlighting the availability of updated guidance material, the end date for the temporary zero dollar thresholds and changes to the Board's website.

Engagement with foreign investors

Engagement with investors occurred through a variety of channels over the 2020-21 reporting period, including:

- the Board's website: This is a main source of information for foreign investors and includes up-to-date guidance material. In 2020-21, there were 1.17 million page views
- foreign investment email enquiries: In 2020-21, the ATO replied to 11,059 email enquiries on foreign investment matters and the Treasury responded to 944 email enquiries. These ranged from general queries about the framework or sectoral trends, to specific queries about past, prospective and current applications and developments in the framework
- the foreign investment enquiries hotline: In 2020-21, the ATO handled 14,482 calls on its foreign investment enquiry line and 1,340 website enquiries via its ato.gov.au 'Ask Alex' – ATO virtual assistant. The Treasury handled 3,477 calls
- webinars, online forums and telephone conferences with stakeholders: due to the continued impact of COVID-19, communication with stakeholders continued to be provided through digital forums, 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 framework, the Treasury and the ATO rely on strong relationships with consultation partners. These include Commonwealth Government agencies, their regulators and the state and territories.

On 20 October 2020, the Treasury held its annual Insights Day for consultation partners over webinar, with more than 50 representatives from other Commonwealth Government agencies and the state and territories attending. The Insights Day was an opportunity for the Treasury to provide an update on developments in the foreign investment landscape, discuss emerging issues and underline the critical role consultation partners play in assisting the Treasury to perform its role.

Up to and after this time, the Treasury actively consulted with these agencies and state and territory governments on the design and implementation of the reforms. Feedback received during the reporting period indicated that consultation partners were satisfied with the level of engagement provided by the Treasury.

Throughout the reporting period, the Treasury continued secondment arrangements with consultation partners, including the ATO, the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission, the Productivity Commission, the Attorney-General's Department, the Australian Bureau of Statistics (ABS),

the Department of Home Affairs, the Department of Foreign Affairs and Trade, and the Department of Defence, providing an important avenue for exchange of views and practices.

Operational costs

The operational costs reported here 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 the Treasury and the ATO in providing advice to decision makers.

The Board

\$0.5 million

Remuneration of Board members in 2020-21 was around 89 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.

The Treasury

\$27 million

Expenses for the Treasury's Foreign Investment Division (the Division) mainly reflect employee salary and administrative costs. Over the course of 2020-21, the Division employed an average of 103.4 full-time equivalent staff, and a number of external contractors and consultants. This included lawyers from the Australian Government Solicitor, and seconded staff from its consultation partners. In 2020-21, the Foreign Investment Division had a presence in Canberra, Melbourne, Perth, Brisbane, Newcastle and Sydney. During 2020-21, the Division continued to regulate businesses and it also supported the Government Reforms and built new national security and compliance capabilities.

The Australian Taxation Office

\$8.6 million

In 2020-21, the ATO employed 72.1 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. In addition, the ATO also engaged a number of contractors and other suppliers. The ATO's teams are located across several sites including Sydney, Canberra, Newcastle, Brisbane and Melbourne.

CHAPTER TWO: THE FOREIGN INVESTMENT FRAMEWORK

This chapter provides an overview of the main changes to Australia's foreign investment policy during 2020-21, including the domestic and global backdrop for these developments.

Foreign investment policies and priorities

The framework underwent profound changes in 2020-21. Foreign investment proposals continued to be screened at the temporary zero dollar threshold until major reforms to the framework commenced on 1 January 2021.

Policy background

Foreign investment contributes to the prosperity of businesses, communities and the overall economy. Australia is an attractive destination for foreign investment due to its open economy and stable policy settings. As a medium-sized economy, Australia has relied on foreign investment as an additional source of capital for much of its history. By supplementing Australia's domestic savings, foreign investment facilitates greater economic investment in Australia than would otherwise be sustainable. It promotes healthy competition among Australia's industries, thereby supporting greater innovation and productivity. It also creates skilled jobs, improves access to overseas markets, enhances overall export performance and increases income.

Australia remains an attractive destination for foreign investment. This is reflected in foreign direct investment (FDI) inflows, which in the three years to 2020 averaged 2.9 per cent of gross domestic product (GDP) – compared with 1.2 per cent of GDP for the OECD and 1.3 per cent of GDP for the G20. Australia's inward stock of FDI totalled \$1,026.6 billion as at 31 December 2020, a 2.5 per cent increase from 12 months earlier.

While foreign investment delivers significant economic benefits to Australia, successive governments have recognised that foreign investments must be in the national interest. The framework has aimed to balance these objectives since its introduction in the early 1970s.

The foreign investment framework

The framework allows the Government to consider the national interest while ensuring Australia remains an attractive investment destination to support Australia's economic development. The framework helps to instil public confidence in foreign investment that is required to maintain Australia's open policy settings.

Since its introduction, the framework has operated as a 'negative test', allowing proposed investments to proceed unless found to be contrary to the national interest. National interest considerations are assessed on a case-by-case basis. From 1 January 2021, this system was supplemented by a new test which enables the assessment on national security grounds of certain proposed investments that give rise to national security concerns.

The changing foreign investment landscape

As noted in last year's report, risks to Australia's national interest, particularly national security, have increased in recent years due to global developments, including rapid technological advances and changes in the international security environment. Across the world, there has been growing recognition of the evolving risks associated with foreign investment. In response, a number of countries have enhanced their foreign investment screening frameworks, including Canada, France, Germany, Japan, China, Russia, India, New Zealand, the United Kingdom and the United States. As a result, 87 per cent of OECD Member countries had foreign investment screening mechanisms in place by the end of the reporting period, compared to 79 per cent of Member countries at the end of 2020 and just over 60 per cent a decade ago.

The screening process for national security actions

The foreign investment reforms introduced two new types of actions: notifiable national security actions (NNSA) and reviewable national security actions (RNSA). Of the 730 non-residential foreign investment applications received while the reforms were in effect during the reporting period (1 January 2021 to 30 June 2021), almost 60 were NNSAs or RNSAs that otherwise would not have been subject to government scrutiny.

While this is relatively small in the context of the total number of applications received during this period, it is still a material improvement in the Government's ability to scrutinise potential national security risks to Australia. In this regard, 13 of these proposed investments had conditions applied to safeguard Australia's national security.

Key developments in 2020-21

The continued impact of COVID-19

At the beginning of the reporting period, temporary arrangements had been in place for three months that reduced all screening thresholds under the framework to zero dollars. They were put in place to protect Australia's national interest while the Government managed the economic challenges arising from COVID-19.

To ensure awareness of the temporary arrangements, the Board and the Treasury engaged extensively with stakeholders, including foreign investors that may not have been previously exposed to the framework. Insights gained through these engagements led to a number of changes to the temporary arrangements prior to their removal on 1 January 2021.

During the temporary arrangements, the Government provided additional support to investors proposing low-risk investments by expediting the approval process and allowing capital to be deployed quickly to Australian businesses and jobs in response to COVID-19. In July 2020, the Government introduced three new types of streamlined exemption certificates (ECs). This included low-risk business ECs (for investors acquiring small entities in non-sensitive sectors), low-risk commercial land ECs (for investors acquiring small interests in developed commercial land or businesses renewing commercial leases) and restoration variations to existing ECs (for investors to pursue their original, approved, investment strategies in light of the threshold

changes). These ECs were issued to large retailers including those with national operations in restaurants, clothing retail and suppliers for the construction industry.

To reduce the regulatory burden for lease extensions, amendments were introduced to the *Foreign Acquisitions and Takeovers Regulation 2015* in September 2020. This included reinstating normal monetary thresholds for the renewal or material variation of existing non-sensitive leasehold interests in developed commercial land if the same investor held a substantially similar interest prior to the temporary arrangements. This change aimed to help commercial landlords and their tenants maintain a mutually beneficial arrangement in the response to COVID-19 by not subjecting these types of commercial land interests at zero dollars.

The temporary zero dollar thresholds were removed on 1 January 2021. While the temporary arrangements enabled greater scrutiny of investments, inflows into Australia remained robust, declining less than in other developed economies and supporting the country's economic recovery. Despite the significant health and economic challenges from COVID-19, the broader Australian economy and budget position continued to be strong. There were no discernible proposed investments during the reporting period considered to be opportunistic and designed to take advantage of an Australian business in financial distress.

Development and implementation of the foreign investment framework reforms

On 5 June 2020, the Treasurer announced comprehensive reforms to the framework to ensure Australia's screening mechanisms kept pace with the geo-strategic environment and rapid technological advancement. The reforms contained measures to update the framework across national security; compliance, monitoring and enforcement; integrity; fees; and investment in non-sensitive businesses. Accompanied by a new Register of Foreign Ownership of Australian Assets (to consolidate the existing water entitlement, agricultural land and residential land registers), the intent of the reforms was to improve the operation of the framework overall and ensure it was effectively targeting foreign investments that could pose national interest and national security concerns.

Feedback was collected via multiple forums, including online public information sessions and individual engagements with investor and industry groups, leading to a number of adjustments to the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* and the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020* ahead of their introduction into Parliament on 28 October 2020. The legislation incorporating these changes was referred to the Senate Economics Legislation Committee for inquiry and report by 26 November 2020.

To support the reforms, the 2020-21 Budget measure *Strengthening Australia's Foreign Investment Framework* provided \$86.3 million over four years (starting 2020-21) to implement the new foreign ownership register and upgrade the Treasury's foreign investment case management system. This was in addition to the \$62.8 million provided over four years from 2020-21 for the July 2020 Economic and Fiscal Update measure *Reforming Australia's Foreign Investment Framework*.

The reforms were passed by the Parliament on 9 December 2020 and commenced on 1 January 2021.

Box 1: Preparation for the commencement of the reforms

As part of implementing the reforms to the framework, the Treasury updated public guidance on the Board's website prior to 1 January 2021 to help investors navigate the new changes and understand the processing arrangements for new and existing proposals.

As well as adding reform-related content, the guidance material was consolidated into a more user-friendly format, including by reducing the total number of Guidance Notes from 53 to 15. Among the 15 Guidance Notes was a new National Security Guidance Note. Developed in close consultation with national security agencies, it outlined the mandatory national security notification requirements and areas where voluntary notification is encouraged. A standalone *Transition Guidance Note* was also released to address investor questions about the transition from the pre-reform system to the new regime.

Foreign government investors and a streamlined process for certain passive investments

The reform package included a streamlining measure aimed at investment funds in which foreign government investors hold an aggregate interest of 40 per cent or more, but no single foreign government investor holds an interest of 20 per cent or more.

Prior to the commencement of the reforms, such an investment fund would itself be treated as a foreign government investor under the framework, meaning it would be subject to the lower monetary and control thresholds.

As a result of the streamlining reform, the same investment fund is no longer treated as a foreign government investor and is therefore subject to the higher monetary and control thresholds that apply to foreign private investors, provided all its foreign government investors were passive —meaning they do not influence or control the fund’s investment decisions.

This change recognises that some privately controlled and managed institutional investors were regularly screened under the framework as foreign government investors, even though operational and strategic control over fund investments and fund investment decisions are generally undertaken entirely by the general partners of the funds. Broadly speaking, this measure streamlines the handling of non-sensitive cases and reduces red tape for affected investors.

CHAPTER THREE: PROPOSALS OVERVIEW

This chapter provides an overview of all proposals finalised during the reporting period, irrespective of when the proposal was submitted.

This report provides a useful source of data on FDI in Australia and information on proposed investments that fall within the scope of the Act. However, there are a number of caveats to be applied when interpreting the data.

This report refers to ‘proposed investment’, where the value of 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. The data also reflects investor intentions (not actual purchases) to acquire Australian assets as a foreign person may be approved to make an acquisition and decide not to 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 proposals and multiple competing proposals for the same target.

Changes in net foreign ownership levels in Australia and total foreign investment made in any year are not measured in this report. Trends in actual investment are measured by the ABS.² ABS data provides an overview of the stock of FDI in Australia. However, unlike data included in this report, 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.

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

Approvals Overview

FDI inflows to OECD countries decreased in the second half of 2020 as investor confidence declined from the economic uncertainties surrounding COVID-19. Consistent with this trend, there was a decline in the number of proposals the Treasury considered in this period. However, this did not present a decrease in the total value of investment.

In 2020-21, excluding variations, the total number of proposals considered was 7,614. Of the 6,651 proposals on which a decision was made (not withdrawn or exempt), 6,650 were approved with a value of \$233.0 billion, and one was rejected. This presents a decline of

2 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.

1,571 approvals compared to 8,221 approvals in 2019-20. The value of proposed investment approvals increased by \$37.5 billion, up from \$195.5 billion in 2019-20 (see Tables 3.1 and 3.3).

From 29 March to 31 December 2020, the Government temporarily reduced the monetary screening thresholds under the Act to zero dollars to reduce potential disruptions on business and the economy during COVID-19. During this period, proposed investments were considered zero dollar threshold proposals if they were below the normal monetary thresholds and only required notification because of the temporary arrangements. Proposals valued above the normal monetary thresholds, which would have required notification in the absence of the temporary arrangements, were considered non-zero dollar threshold proposals. The number and value of proposed investments that required approval from the Treasurer because of the temporary arrangements are identified in this report.

The overall decline in the number of proposals considered masks the significant increase in the overall value of proposed investment. Of the 6,650 proposals approved, 5,625 were non-zero dollar threshold proposals with a total value of \$218.5 billion (see Tables 3.2 and 3.4). Compared to 2019-20, this is a 19.1 per cent decrease in the number of non-zero dollar threshold proposals approved and a 19.5 per cent increase in the value of proposals. In the reporting period, 1,025 zero dollar threshold proposals were approved for a total value of \$14.4 billion.

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 2019-20 and 2020-21 excluding the effect of the temporary thresholds.

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

There were 38 approvals valued at \$1 billion or more, with a total value of \$97.9 billion. The number of approvals valued at \$2 billion or more increased by around 14.5 per cent to 17 approvals valued at \$71.0 billion (see Table 3.5).

The United States was again the top source of proposed investment by value in 2020-21, followed by, in order, Singapore, Canada, China and Germany making up the top five sources of proposed foreign investment in 2020-21 (see Table 3.7).

Conditional approvals

Where a proposal raises national interest or national security concerns, such as potential tax risks, conditions can be imposed on the approval to mitigate the risks and ensure the proposed investment is not contrary to the national interest. In 2020-21, the number of approvals made subject to conditions decreased by around 9 per cent to 3,381 proposals, and the value of approvals subject to conditions increased by around 20 per cent to \$167.1 billion.

Rejections and other outcomes

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

In 2020-21, 891 proposals were withdrawn prior to a decision being made, representing an increase of 176 withdrawals compared to 2019-20 (see Table 3.1). The reasons for withdrawal of proposals 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 a proposal, or concerns identified by the investor with the proposed investment.

In 2020-21, 72 proposals were determined to be exempt, seven more than in 2019-20 (see Table 3.1). Exempt refers to where proposals 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: Proposals considered, 2017-18 to 2020-21 (number of proposals)

Outcome	2017-18 No.	2018-19 No.	2019-20 No.	2020-21 No.
Approved without conditions	6,301	4,575	4,508	3,269
Approved with conditions	4,844	4,149	3,713	3,381
Total approved	11,145	8,724	8,221	6,650
Rejected	2	1	3	1
Declined	3	–	–	–
Total decided	11,150	8,725	8,224	6,651
Withdrawn	644	670	715	891
Exempt	61	71	65	72
Total considered	11,855	9,466	9,004	7,614

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

Table 3.2: Proposals considered in 2019-20 and 2020-21, by zero dollar threshold and non-zero dollar threshold proposals (number of proposals)

Outcome	2019-20		2020-21	
	Zero dollar threshold No.	Non-zero dollar threshold No.	Zero dollar threshold No.	Non-zero dollar threshold No.
Approved without conditions	116	4,392	874	2,395
Approved with conditions	21	3,692	151	3,230
Total approved	137	8,084	1,025	5,625
Rejected	–	3	–	1
Declined	–	–	–	–
Total decided	137	8,087	1,025	5,626
Withdrawn	9	706	173	718
Exempt	4	61	27	45
Total considered	150	8,854	1,225	6,389

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

Table 3.3: Proposals decided 2017-18 to 2020-21 (value of proposed investment)

Outcome	2017-18	2018-19	2019-20	2020-21
	\$b	\$b	\$b	\$b
Approved without conditions	40.1	45.9	56.5	66.0
Approved with conditions	123.0	185.1	139.0	167.1
Total approved	163.1	231.0	195.5	233.0
Rejected	0.1	10.0	–	–
Declined	3.0	–	–	–
Total decided	166.1	241.0	195.5	233.0

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

Table 3.4: Proposals considered in 2019-20 and 2020-21, by zero dollar threshold and non-zero dollar threshold proposals (value of proposed investment)

Outcome	2019-20		2020-21	
	Zero dollar threshold \$b	Non-zero dollar threshold \$b	Zero dollar threshold \$b	Non-zero dollar threshold \$b
Approved without conditions	2.2	54.3	9.9	56.1
Approved with conditions	0.5	138.5	4.6	162.4
Total approved	2.7	192.8	14.4	218.5
Rejected	–	–	–	–
Declined	–	–	–	–
Total decided	2.7	192.8	14.4	218.5

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 2017-18 to 2020-21 (number and value of approvals)

Value of approval	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
< \$1 million	7,618	4.1	6,021	3.1	5,665	3.0	3,982	2.0
≥ \$1 million & < \$50 million	2,995	11.3	2,160	10.0	2,062	9.7	1,958	14.3
≥ \$50 million & < \$100 million	103	7.3	103	7.2	88	6.1	141	10.0
≥ \$100 million & < \$500 million	213	44.9	219	47.3	216	50.5	251	56.7
≥ \$500 million & < \$1 billion	53	34.8	49	33.5	48	34.7	78	52.0
≥ \$1 billion & < \$2 billion	22	28.4	14	18.5	21	29.1	21	26.9
≥ \$2 billion	2	32	23	111	11	62	17	71.0
Total	11,006	163.1	8,589	231.0	8,111	195.5	6,448	233.0

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

Table 3.6: Total approvals by value of proposed investment range in 2020-21, 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	397	0.1	3,585	1.9
≥ \$1 million & < \$50 million	504	4.9	1,454	9.4
≥ \$50 million & < \$100 million	36	2.4	105	7.5
≥ \$100 million & < \$500 million	28	4.4	223	52.3
≥ \$500 million & < \$1 billion	4	2.5	74	49.5
≥ \$1 billion & < \$2 billion	0	0.0	21	26.9
≥ \$2 billion	0	0.0	17	71.0
Total	969	14.4	5,479	218.5

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: Share of total value of approvals, by industry sector in 2020-21

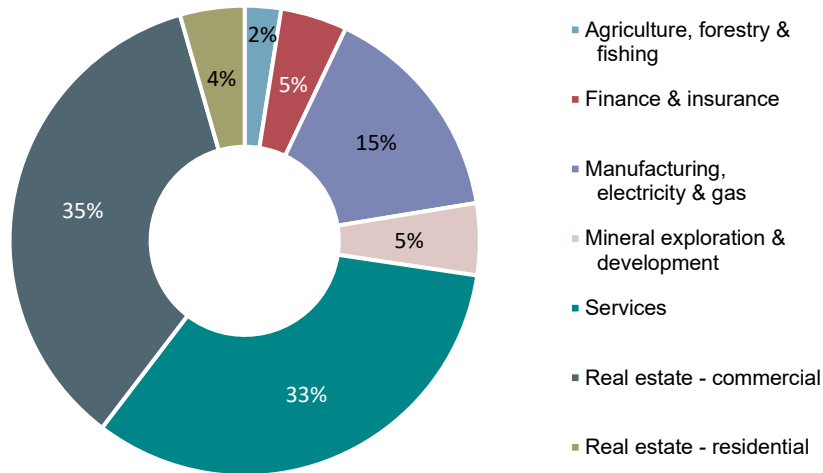
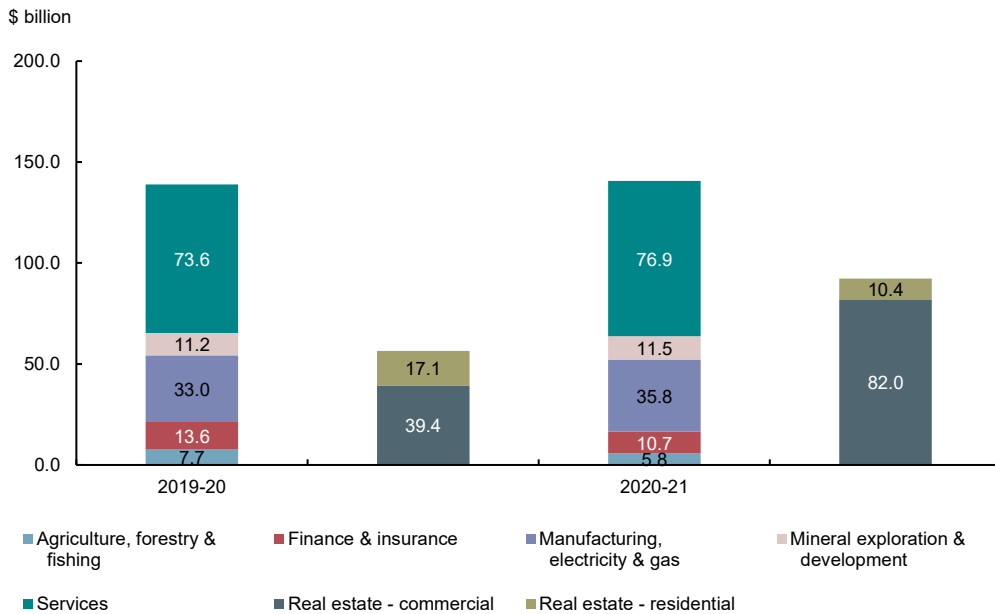


Chart 3.2: Approvals value by industry sector, in 2019-20 and 2020-21



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 2,210 proposals (excluding residential real estate proposals) worth \$222.7 billion were approved in 2020-21 compared to the 1,152 approvals worth \$178.4 billion in 2019-20 (see Table 3.7).

In 2020-21, the commercial real estate sector attracted the highest value of proposed investment, totalling \$82.0 billion, followed by the services sector, totalling \$76.9 billion. In both sectors, the value of proposed investment approvals increased compared to 2019-20 approvals (an increase of \$43.2 billion and \$3.3 billion respectively).

The value of approvals in the manufacturing, electricity and gas sector increased by \$2.8 billion (to \$35.8 billion) compared to 2019-20 and the mineral exploration and development sector increased by \$300.0 million (to \$11.5 billion).

In 2020-21, both the finance and insurance sector and the agriculture, forestry and fishing sector experienced an increase in the number of approvals and a decrease in the value of approvals (a decrease of \$2.9 billion and \$1.9 billion respectively). The number and value of approvals in residential real estate decreased with the value of approvals dropping by \$6.7 billion (to \$10.4 billion). 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, 2017-18 to 2020-21

Industry Sector	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Agriculture, forestry & fishing	201	7.9	197	7.3	174	8.3	190	5.8
Finance & insurance	37	6.0	26	6.3	37	13.6	79	10.7
Manufacturing, electricity & gas	95	16.6	99	36.7	100	33.0	187	35.8
Mineral exploration & development	115	17.4	121	16.9	108	11.2	148	11.5
Services	185	63.2	245	76.0	296	73.6	744	76.9
Real estate – commercial	391	39.5	487	73.0	440	38.8	862	82.0
<i>Sub-total 'Non-residential'</i>	<i>1,024</i>	<i>150.6</i>	<i>1,175</i>	<i>179.5</i>	<i>1,152</i>	<i>178.4</i>	<i>2,210</i>	<i>222.7</i>
Real estate – residential	10,036	12.5	7,513	14.8	7,056	17.1	4,384	10.4
Total	11,060	163.1	8,688	194.3	8,207	195.5	6,594	233.0

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

Agriculture, forestry and fishing

There were 190 approvals of proposed investment worth \$5.8 billion in the agriculture, forestry and fishing sector. The largest source countries of investment by value in this sector were the United States (\$874.7 million) and Canada (\$818.5 million) (see Table 3.17).

Finance and insurance

There were 79 approvals of proposed investment worth \$10.7 billion in the finance and insurance sector. In 2020-21, the value of approvals decreased by \$2.9 billion compared to 2019-20.

The United States was the largest source country of investment by value in this sector (\$2.3 billion), and China was the second largest source country (\$1.9 billion) (see Table 3.17).

Manufacturing, electricity and gas

There were 187 proposals worth \$35.8 billion approved in the manufacturing, electricity and gas sector (see Table 3.8). This represents a \$2.8 billion increase in the value of approvals recorded in 2019-20.

This was the result of an increase in the value of approvals in the electricity & gas supply group (\$12.1 billion). This increase offset the decrease in the value of approvals in the chemical, petroleum & coal products group, the food, beverages & tobacco group, and the 'other' group. Spain was the largest source country of investment by value in this sector (\$5.0 billion), followed by the United States (\$3.9 billion), Canada (\$3.5 billion) and China (\$1.5 billion) (see Table 3.17).

Table 3.8: Manufacturing, electricity and gas sector approvals, 2017-18 to 2020-21

Group	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Chemical, petroleum & coal products	2	0.3	4	4.4	3	0.7	4	0.1
Electricity & gas supply	52	9.3	47	3.7	65	5.6	84	17.7
Food, beverages & tobacco	15	4.6	15	1.3	17	18.5	33	13.5
Water, sewerage & waste disposal	8	0.2	9	2.0	5	0.2	11	0.8
Other (a)	18	2.2	24	25.3	10	8.0	55	3.7
Total	95	16.6	99	36.7	100	33.0	187	35.8

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 an increase in both the number of approvals (from 108 in 2019-20 to 148 in 2020-21), and in the value of those approvals (from \$11.2 billion in 2019-20 to \$11.5 billion in 2020-21).

The United States (\$1.6 billion), China (\$1.5 billion) and the Cayman Islands (\$1.3 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, 2017-18 to 2020-21

Group	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Coal	23	8.5	37	6.5	27	1.3	23	1.0
Oil & gas extraction	20	1.6	17	4.1	14	2.5	21	0.7
Metallic minerals	51	4.9	43	4.6	34	3.1	69	4.5
Non-metallic minerals mining and quarrying	3	–	3	0.8	7	0.1	8	0.0
Exploration and other mining support services	18	2.4	21	0.9	26	4.1	27	5.3
Total	115	17.4	121	16.9	108	11.2	148	11.5

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

Services

The services sector saw an increase in both the number of approvals (from 296 in 2019-20 to 744 in 2020-21), and in the value of those approvals (from \$73.6 billion in 2019-20 to \$76.9 billion in 2020-21). This represents an increase in the value of proposed investment which exceeds pre-pandemic levels (see Table 3.10).

In 2020-21, the United States was the largest source country by value of investment (\$27.3 billion), followed by Canada (\$6.9 billion) and Singapore (\$5.3 billion) (see Table 3.17).

Table 3.10: Services sector approvals, 2017-18 to 2020-21

Group	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Accommodation, food and beverage (a)	8	2.0	17	1.5	16	3.2	105	3.9
Arts and Recreation (b)	14	1.3	8	0.7	11	3.8	26	2.5
Communications (c)	19	2.2	21	17.4	48	21.0	66	10.3
Construction (d)	14	1.3	22	4.1	19	2.9	13	1.1
Health (e)	34	7.3	39	12.4	48	8.5	68	7.2
Property and business services (f)	41	35.1	57	9.1	63	12.3	215	29.3
Trade (g)	24	4.0	24	6.1	27	4.3	122	3.0
Transport (h)	20	5.8	37	18.7	50	14.8	81	16.8
Other (i)	11	4.3	20	5.8	14	2.7	48	3.0
Total	185	63.2	245	76.0	296	73.6	744	76.9

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 2020-21, there was an increase in both the number and value of approvals in commercial real estate. There were 862 proposals worth \$82.0 billion approved compared to 2019-20 where 440 approvals worth \$38.8 billion were approved.

The number of approvals in developed commercial real estate increased significantly (247 in 2019-20 to 657 in 2020-21) and the total value of approvals increased by \$42.2 billion (from \$28.2 billion in 2019-20 to \$70.4 billion in 2020-21).

The majority of approvals by number and value of investment in commercial real estate (both developed and for development) were received by New South Wales and Victoria. New South Wales received 28.0 per cent of total approvals worth \$18.7 billion. Victoria received 24.7 per cent of approvals worth \$8.2 billion (see Table 3.12).

Table 3.11: Commercial real estate approvals, by type from 2017-18 to 2020-21

	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Commercial								
<u>Developed</u>								
Existing commercial property	166	18.3	184	39	220	22.8	596	48.7
– ECs	25	7.1	37	19.2	27	5.5	61	21.7
<i>Sub-total 'Developed'</i>	<i>191</i>	<i>25.4</i>	<i>221</i>	<i>58.3</i>	<i>247</i>	<i>28.2</i>	<i>657</i>	<i>70.4</i>
<u>For development</u>								
– Vacant commercial property	169	6	228	6.8	167	7.4	162	2.3
– ECs	32	8	38	7.9	26	3.2	43	9.3
<i>Sub-total 'For development'</i>	<i>200</i>	<i>14</i>	<i>266</i>	<i>14.7</i>	<i>193</i>	<i>10.6</i>	<i>205</i>	<i>11.6</i>
Total commercial	391	39.5	487	73	440	38.8	862	82.0

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 2020-21

Location	No. of approvals	Commercial		Total \$b
		Developed \$b	For development \$b	
ACT	19	1.2	0.0	1.2
NSW	242	17.4	1.3	18.7
NT	3	0.0	0.0	0.0
Qld	134	2.5	0.5	2.9
SA	30	0.3	0.1	0.3
Tas.	6	0.0	0.0	0.0
Vic.	213	7.9	0.3	8.3
WA	75	1.2	0.1	1.3
Various	140	39.8	9.3	49.2
Total	862	70.4	11.6	82.0

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

Residential real estate

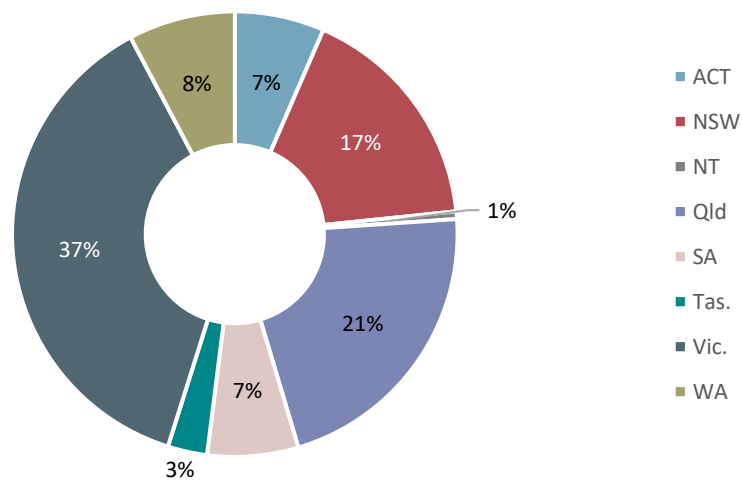
In 2020-21, a total of 4,384 residential real estate proposals worth \$10.4 billion were approved for proposed investment. This represents a 37.8 per cent decrease in the number of approvals from 2019-20 and continues a trend seen since 2015-16. The value of proposed investment in residential real estate in 2020-21 also decreased by \$6.7 billion compared to 2019-20 (See Table 3.13).

Since 2015-16, 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 EC 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 2020-21, Victoria and Queensland received 58 per cent of residential real estate approvals (both developed and for development) for proposed investment (see Chart 3.3). This presents a shift in the majority share of approvals compared to 2019-20 where 62 per cent of approvals were received by Victoria and New South Wales. In the period, the value of real estate approvals in Victoria (\$2.6 billion) decreased by 25.7 per cent compared to 2019-20. Although the number of approvals decreased in New South Wales, the value of investment approvals remained steady compared to 2019-20 (see Table 3.14).

Chart 3.3: Share of residential real estate approvals by state and territory in 2020-21



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.

Existing residential property

In 2020-21, there were 661 approvals for existing residential property (see Table 3.13). Existing residential property (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 existing residential property to house Australian based staff or for redevelopment to add to the housing stock.

In 2020-21, there was a 5.1 per cent decrease in the proportion of existing residential property single purchase ECs (296) that made up all existing residential property 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 2020-21, 3,026 approvals for development were given including combination ECs for new dwellings, vacant land and other residential property for development (see Table 3.13).

Table 3.13: Residential real estate approvals, by type, 2017-18 to 2020-21

	2017-18		2018-19		2019-20		2020-21	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Residential								
<u>Developed</u>								
– Existing residential property								
– Individual purchases	1,075	1.5	995	1.2	769	4.1	365	0.4
– Single purchase EC	538	0.9	317	0.4	312	0.5	296	0.4
<i>Sub-total 'Existing'</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>	<i>661</i>	<i>0.8</i>
– EC	2	0	1	0.1	4	0.1	5	0.0
<i>Sub-total 'Developed'</i>	<i>1,615</i>	<i>2.4</i>	<i>1,313</i>	<i>1.8</i>	<i>1,104</i>	<i>4.6</i>	<i>666</i>	<i>0.9</i>
<u>For development</u>								
– Vacant land								
– Individual purchases	2,281	0.9	1,745	0.7	1,520	0.6	849	0.3
– Single purchase EC	118	0.1	39	0	58	0	121	0.1
<i>Sub-total 'Vacant land'</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>	<i>970</i>	<i>0.4</i>
– New Dwellings								
– Individual purchases	5,494	4.8	3,888	3.1	3,897	3.2	1,573	2.0
– Single purchase EC	166	0.1	60	0.1	135	0.1	300	0.3
– New Dwelling EC	24	2.7	16	1.7	18	1.6	10	1.0
– Near-New Dwelling EC	10	0.0	22	0	22	–	9	0.0
<i>Sub-total 'New dwellings'</i>	<i>5,694</i>	<i>7.7</i>	<i>3,986</i>	<i>4.8</i>	<i>3,897</i>	<i>4.9</i>	<i>1,892</i>	<i>3.3</i>
– Redevelopment	315	0.8	262	0.5	146	0.3	112	0.5
– EC	13	0.8	40	6.8	40	6.3	52	4.5
<i>Sub-total 'For development'</i>	<i>8,421</i>	<i>10.2</i>	<i>6,072</i>	<i>12.9</i>	<i>5,661</i>	<i>12.1</i>	<i>3,026</i>	<i>8.8</i>
Combination ECs								
– established dwelling / vacant land / new dwellings	na	na	126	0.1	291	0.4	692	0.7
Total residential	10,036	12.5	7,511	14.8	7,056	17.1	4,384	10.4

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 2020-21

Location	No. of approvals	Residential		Total \$b
		Developed \$b	For development \$b	
ACT	282	0.0	0.3	0.3
NSW	730	0.2	1.5	1.7
NT	24	0.0	0.0	0.0
Qld	930	0.1	0.6	0.7
SA	286	0.0	0.1	0.2
Tas.	124	0.0	0.0	0.1
Vic.	1619	0.4	2.2	2.6
WA	336	0.1	0.2	0.2
Various	53	2.0	2.6	4.6
Total	4,384	2.8	7.6	10.4

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 2020-21

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	185	0.1	31	0.0	0	0.0	5	0.0	1	0.2	60	0.0
NSW	415	0.6	79	0.2	33	0.3	98	0.1	4	0.3	101	0.2
NT	0	0.0	16	0.0	1	0.0	4	0.0	0	0	3	0.0
Qld	420	0.3	139	0.1	23	0.0	227	0.1	4	0.1	117	0.1
SA	87	0.0	74	0.0	4	0.0	48	0.0	0	0.0	73	0.1
Tas.	12	0.0	30	0.0	0	0.0	40	0.0	0	0.0	42	0.0
Vic.	674	1.2	211	0.4	38	0.2	461	0.2	9	0.4	226	0.3
WA	80	0.1	81	0.1	15	0.0	89	0.0	1	0.0	70	0.0
Various	7	0.8	5	0.0	21	1.9	20	1.8	0	0.0	0	0.0
Total	1,880	3.2	666	0.9	135	2.5	992	2.2	19	1.0	692	0.7

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

(a) 'Developer' includes New Dwelling ECs provided to real estate developers (previously off the plan approvals), as well as Near-New Dwelling ECs.

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.³ In 2020-21, new business approvals in the services sector increased more than three-fold compared to 2019-20. New business approvals in the manufacturing, electricity & gas sector remained stable in 2020-21. While the finance and insurance sector approvals declined compared to 2019-20 approvals (see Table 3.16).

Table 3.16: New business approvals by industry sector, 2017-18 to 2020-21

Industry sector	2017-18	2018-19	2019-20	2020-21
	No.	No.	No.	No.
Agriculture, forestry & fishing	0	1	1	0
Finance & insurance	5	7	4	2
Manufacturing, electricity & gas	3	2	2	2
Mineral exploration & development	1	0	0	0
Services	11	12	4	15
Total	20	22	11	19

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 2020-21, disaggregated by industry sector, for the top 18 countries by the overall value of approvals. The United States and Singapore were the top two source countries of proposed investment by value. Canada, China and Germany were the third to fifth source countries by value.

Key sectors for the United States in 2020-21 included the services sector (\$27.3 billion) and the real estate sector (\$20.8 billion). The value of proposed investment from the United States increased by over \$7.7 billion compared to 2019-20. The value of proposed investment from Singapore increased by over \$5.1 billion with 524 approvals, shifting Singapore to the second largest source country by value. There was significant growth in the value of proposed investment for Singaporean investors in the real estate sector (which increased in value from \$9.9 billion in 2019-20 to \$13.8 billion in 2020-21).

³ 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.

The value of proposed investment from Germany in 2020-21 (\$12.0 billion) increased almost three-fold compared to 2019-20 (\$4.3 billion). Germany was the fifth source country of investment in 2020-21 (up from the tenth largest source country in 2019-20). In 2020-21, the value of proposed investment from Germany increased in every sector listed in this report except the agriculture, forestry and fishing sector.

Table 3.17: Approvals by country of investor, by industry sector in 2020-21

Country	No. of approvals	Agriculture, forestry & fishing \$m	Finance & insurance \$m	Manufacturing, electricity & gas \$m	Mineral exploration & development \$m	Real estate \$m	Services \$m	Total \$m
1 United States	931	874.7	2,350.2	3,958.6	1,622.5	20,831.9	27,321.2	56,959.1
2 Singapore	524	186.0	435.3	1,526.3	21.6	13,848.6	5,327.1	21,344.9
3 Canada	378	818.5	72.6	3,533.5	82.4	7,371.1	6,946.0	18,824.1
4 China	2,733	645.5	1,901.7	1,537.7	1,586.1	6,306.0	1,597.6	13,574.6
5 Germany	156	65.7	203.7	1,281.1	1,081.5	7,572.1	1,866.0	12,070.0
6 South Africa	108	25.6	4.9	2.4	21.2	6,292.3	282.8	6,629.2
7 Spain	23	–	0.1	5,083.6	1,065.7	43.5	0.1	6,193.0
8 United Kingdom	533	518.8	687.7	291.1	596.5	2,402.6	1,191.2	5,687.9
9 Japan	206	81.4	128.4	407.6	78.3	2,646.2	1,756.7	5,098.6
10 Korea, Republic of (South Korea)	159	177.7	571.8	1,083.4	609.2	907.3	1,350.6	4,700.1
11 Netherlands	148	292.2	131.1	297.0	0.2	2,575.8	387.5	3,683.8
12 United Arab Emirates	149	17.7	2.4	1,322.3	3.4	567.1	1,557.7	3,470.5
13 France	107	16.8	410.8	675.1	2.9	654.4	1,266.1	3,026.0
14 Cayman Islands	71	24.1	32.9	422.2	1,330.0	221.0	444.7	2,474.9
15 Sweden	47	2.3	1.2	719.2	695.0	84.4	473.4	1,975.6
16 New Zealand	81	6.5	2.6	100.1	325.0	441.8	980.5	1,856.5
17 Hong Kong	651	76.8	2.5	39.7	20.3	1,419.7	249.6	1,809
18 Switzerland	113	48.3	77.6	465.0	236.4	694.4	215.6	1,737.4
Other Countries	1,858	388.8	865.0	2,686.5	1,447.4	3,525.8	2,726.6	11,640.0
Widely Held	902	931.1	2,186.4	6,562.5	294.8	6,589.7	8,390.6	24,955.1
New Dwelling EC	19					972.3		972.3
Sub-total	9,897	5,198.5	10,069.0	31,994.7	11,120.5	85,968.2	64,331.6	208,682.2
Australia	450	612.0	594.3	3,774.1	391.6	5,683.0	12,599.9	23,655.0
Total	10,347	5,810.5	10,663.3	35,768.8	1,512.1	91,651.0	76,931.5	232,337.2

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, ECs, 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 a proposal 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 proposals 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 proposal or approval will generally require a further proposal. This could include the addition of another foreign person to the proposal or increasing the equity interest in the proposed investment.

In 2020-21, there were 347 variations considered, compared to 341 in 2019-20 (see Table 3.18). Of these, 287 were approved in 2020-21 compared to 272 in 2019-20. Four variations were declined in 2020-21, compared to one variation declined in 2019-20. In 2020-21, there were 45 variations withdrawn, compared to 65 variations withdrawn in 2019-20.

Table 3.18: Variations considered from 2019-20 to 2020-21 (number of variations by type)

Outcome	Variation to EC (a)				Variation to Land approval (b)				Variation to Other approval		Total	
	Acquisition program certificate		New Dwelling EC		Residential		Other		2019-20	2020-21	2019-20	2020-21
	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21				
No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.
Approved	17	23	0	0	211	208	27	29	17	27	272	287
Declined	0	0	0	0	1	4	0	0	0	0	1	4
Total decided	17	23	0	0	212	212	27	29	17	27	273	291
Exempt	0	0	0	0	0	0	0	0	1	0	1	0
Not a variation	1	1	0	0	0	0	1	0	0	4	2	5
Withdrawn	6	11	0	0	42	0	6	23	11	11	65	45
Total considered	24	35	0	0	254	212	34	52	29	42	341	341

Table 3.19: Variations approved from 2019-20 to 2020-21 (number of variations by reason)

Reason	Variation to EC (a)				Variation to Land EC (b)				Variation to Other approval		Total variations	
	Acquisition program certificate		New Dwelling EC		Residential		Other		2019-20	2020-21	2019-20	2020-21
	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21				
No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.	
Longer time to undertake action only	5	3	0	0	68	124	7	9	8	8	88	144
Change to conditions only	9	7	0	0	138	84	13	15	5	7	165	113
Other, or more than one reason	3	13	0	0	5	0	7	5	4	12	19	30
Total approved	17	23	0	0	211	208	27	29	17	27	272	287

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 ECs, Business ECs, and tenements and mining, production or exploration entity certificates.

(b) Comprises: New Dwelling ECs and Residential Land ECs.

These tables only include variations relating to ECs 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 EC 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 investors for more than six months in a 12 month period. The fee was designed to encourage 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.

Investors who apply for investment approval or propose to purchase in a development using a New Dwelling EC 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). Investors holding 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 an investor 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.

As the population of investors liable to the vacancy fee increases, investment was made into the automation and refinement of processes. A proactive and educational approach focuses on helping vacancy fee clients understand their obligations, which is balanced by streamlined administrative processes to deem investors who fail to meet their obligation to lodge an annual return. The 2020-21 figures show the impacts of COVID-19, with an increase in clients exempt from liability where they were unable to occupy their property as a result of pandemic travel restrictions.

Table 3.20: Vacancy fee statistics, 2018-19 to 2020-21

	2018-19		2019-20		2020-21	
	No.		No.		No.	
Occupied 183 days or more	2,037	90.1%	5,077	91.9%	8,066	79.9%
Occupied fewer than 183 days	118	5.2%	231	4.2%	234	2.3%
Dwelling exempt	63	2.8%	105	1.9%	579	5.7%
<i>Subtotal declarations</i>	<i>2,218</i>	<i>98.1%</i>	<i>5,413</i>	<i>98.0%</i>	<i>8,879</i>	<i>88.0%</i>
Deemed unoccupied	44	1.9%	109	2.0%	1214	12.0%
Total	2,262		5,522		10,093	

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

Foreign investment fee collections

The ATO administers the vacancy fee and is also responsible for collecting foreign investment proposal fees. In 2021, the ATO reported in its Annual Report that \$87.9 million in foreign investment fees were collected. This figure includes \$85.6 million in proposal fees and \$2.3 million in vacancy fees (see Table 3.21).

In 2020-21, proposal fee collections saw a decline from 2019-20 due to a decrease in the overall number of proposals considered.

Table 3.21: Foreign investment fee collection, 2017-18 to 2020-21

	2017-18	2018-19	2019-20	2020-21
Fee collections	\$m	\$m	\$m	\$m
Proposal fees	114	92.2	90.3	85.6
Vacancy fees		1.8	3.7	2.3
Total	114	94	94	87.9

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

CHAPTER FOUR: COMPLIANCE

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 2020-21.

Compliance approach

Maintaining strong compliance with foreign investment legislation is a priority for the Australian Government to ensure that proposed investment is not contrary to the national interest (or national security, as the case requires).

The Treasury and the ATO are responsible for compliance and enforcement activities for proposals in their respective areas of screening responsibility. For the Treasury, this includes business, agricultural and commercial land foreign investment proposals, and for the ATO, this includes residential real estate and the vacancy fee, and some commercial land proposals. Both agencies adopt a risk-based approach to compliance, focusing efforts on areas of greatest risk to the national interest. They aim to provide assurance that investors are complying with their obligations and to detect and address non-compliance, while encouraging and supporting investors to do the right thing.

Foreign investment compliance activities are also supported by specialist advice from other agencies as required. These 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

Legislative reforms that took effect on 1 January 2021 introduced new compliance and enforcement powers for the Treasury, accompanied by increased investor reporting obligations. These changes, together with additional resourcing and capability, strengthened the Treasury's ability to prevent, identify and respond to instances of non-compliance with Australia's foreign investment laws. The Treasury has undertaken, and continues to progress, a significant program of work to operationalise its new powers.

In the reporting period, the Treasury's compliance activities were framed according to the Foreign Investment Compliance Framework, updated in December 2020. Broadly, this covers education, compliance assurance, enforcement, and market intelligence. Compliance activities undertaken in the reporting period are outlined below.

Education

The Treasury aims to provide transparency on its approach to foreign investment compliance and enforcement activities, draw attention to offences and civil penalty provisions, and outline the powers that may be exercised. The Treasury's education activities are designed to provide investors and their representatives with information that supports them to meet their obligations under the Act and encourages engagement on compliance-related matters.

Education activities include planned engagement forums on specific issues or engagement as a result of intelligence or compliance assurance activities.

The Board’s website provides information about the Treasury’s approach to compliance, acts as a mechanism for reporting breaches of foreign investment rules and provides Guidance Notes to help investors and other stakeholders understand their obligations under the Act.

Where there has been inadvertent or self-reported non-compliance, or where the non-compliance is not considered serious, the Treasury aims to provide advice and guidance to the investor to correct the errors that led to non-compliance and address any systemic problems that may lead to future non-compliance.

Compliance assurance

Compliance assurance activities provide increased assurance that investors understand and are meeting the requirements of any conditions to which their no objection notification or EC are subject.

In undertaking compliance assurance activities, the Treasury focuses on higher risk investors/investments, including assessing the compliance of investors/investments identified through intelligence activities.

The Treasury’s compliance assurance activities involve a combination of scheduled, proactive, responsive and reactive activities, including:

- investor audits (regulator led and condition-mandated independent audits)
- monitoring compliance with obligations imposed by legislation and conditions
- follow up of matters identified through intelligence.

Audit program

The Treasury’s foreign investment audit program is split across two streams of activity: regulator audits and condition-mandated independent audits.

Table 4.1: Audits completed, 2019-20 to 2020-21

Activity	2019-20		2020-21	
	Audits completed*	Audits identifying non-compliance*	Audits completed*	Audits identifying non-compliance*
Regulator Audit	19	4	7	2
Independent Audit	5	4	11	6

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

*No objection notifications or exemption certificates audited.

Regulator audits

Regulator audits are Treasury-led assurance assessments. In deciding which transactions should be the subject of a regulator audit, the following may be considered:

- whether conditions were imposed on an investment proposal and the nature of those conditions
- the sensitivity of the investment
- previous audit history
- intelligence referrals

The Treasury completed seven regulator audits in the reporting period, with two in progress as at 30 June 2021.

The downward trend in regulator audit numbers was driven by difficulties associated with recruiting and on-boarding staff during COVID-19, the diversion of available resources towards managing and maturing the growing condition-mandated independent audit program, a change in the delivery model of regulator audits to an in-house program (previously outsourced under contract which concluded in expectation of an earlier increase in Treasury staff), and the ongoing capability building of Treasury audit staff.

Condition-mandated independent audits

Condition-mandated independent audits are periodic audits required as a condition on a no objection notification or EC. A condition mandating an independent audit is imposed where the investment is particularly high risk or high value, or otherwise sensitive, and a greater degree of compliance oversight is deemed necessary. The report is prepared by an independent audit firm approved by the Treasury, is based on the financial year cycle, and is conducted to a relevant Australian standard and Treasury-approved assurance level.

During the reporting period, 11 independent audits were completed. On 30 June 2021, an additional 13 audits were in the final stages of completion and 14 were in progress, which represents a significant increase in the Treasury's audit coverage.

Reviews

Reviews by the Treasury of potential non-compliance are often triggered by information received from members of the public regarding suspected breaches of the Act by investors. Investor notifications are also reviewed when they indicate non-compliance with the Act.

During the reporting period, a total of 91 instances of potential non-compliance were reported or identified with assessments being finalised for 74 of the instances. Contraventions of the Act

were identified in 51 of the instances. Compliance action was taken by the Treasury in-line with the Foreign Investment Compliance Framework, and included:

- warning letters sent to the investor
- investors remediating by submitting a notification for assessment, and/or
- increased monitoring and surveillance.

Table 4.2: Assessment of potential non-compliance, 2020-21

Information source	No contravention identified	Contravention identified	Under assessment at 30 June 2021	Total received 2020-21
Report from the public*	21	45	9	75
Identified from other sources	1	0	1	2
Internal referral	1	6	7	14

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

*including self-reports and retrospective notifications received from investors.

Compliance monitoring

Ongoing monitoring of compliance may include investors being requested to report on their compliance with the conditions imposed on their no objection notifications. These reports provide the Treasury with information regarding the level of compliance and provide information about how compliance activities could be targeted in the future. Investor reporting to the Treasury also includes reports made under the new statutory reporting obligations which commenced on 1 January 2021.

The Treasury also conducts its own compliance reviews as part of regular monitoring efforts to proactively monitor investor compliance with conditions.

Condition-mandated reporting

In cases where the Treasury has imposed reporting conditions on an acquisition, the investor is required to submit an investor report detailing information and evidence which demonstrates their compliance. An investor may be required to submit more than one type of report for the same investment. If there are concerns regarding the quality, timeliness or comprehensiveness of the report, the Treasury requests further information from the investor.

In the reporting period, the Treasury received 1,676 condition-mandated reports (see Table 4.3).

Table 4.3: Condition mandated reporting, 2020-21

Investor report in relation to	2020-21 No. of reports
Tax compliance conditions	763
EC conditions (including Advanced Off the Plan Certificates)	728
Conditions designed to address risk(s) specific to proposed investments	69
Conditions associated with notifications made after notifiable actions were taken	52
Conditions requiring notification of actions taken	32
Conditions related to data security (e.g., patient data)	30
Defence related conditions	2
Total	1,676

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

There is no direct correlation between the number of reports received and the number of investments they represent.

Statutory reporting

From 1 January 2021, all investors issued a no objection notification or an EC were required by the Act to notify the Treasurer of certain events or actions taken (such as acquiring an interest in land or a business or starting/ceasing a business). These reports assist the Treasury to identify if regulated actions have occurred. Between 1 January and 30 June 2021, 212 statutory reports were made to the Treasury, of which 200 were made within the relevant legislated timeframe.

Table 4.4: Statutory reporting, 2020-21

Notification in relation to:	No.
Exemption certificate	13
No objection notification	199
Total	212

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

Enforcement

The Act provides several powers to enforce the foreign investment rules, including criminal and civil penalties for non-compliance. For certain non-compliance occurring after 1 January 2021, the Treasury may issue an infringement notice. Infringement notices and penalties may apply to breaches of the Act, including where a foreign person fails to notify the Treasury of notifiable action or notifiable national security actions before taking the action, or breaches a condition imposed on an investment. These measures are designed to deter non-compliance, support the integrity of the framework, and ensure the national interest and national security are safeguarded.

Market intelligence

During the reporting period, the Treasury's market intelligence activities focused on making better use of data to improve monitoring of foreign investment compliance. In collaboration with other government agencies, data-driven surveillance activities were undertaken in

connection with the temporary zero dollar screening threshold to detect potential instances of non-compliance. Over the course of the reporting period, the Treasury assessed more than 400 transactions and engaged 45 investors in its detection program. This engagement resulted in two investors making notifications retrospectively.

The Treasury also established a new market scanning intelligence capability in January 2021 in response to the recent reforms to the Act. The capability utilises internal and external data sources to proactively monitor the market for potential instances of non-compliance or instances in which the Treasurer may want to exercise the call-in power. Over 170 transactions were investigated during the reporting period, however, the call-in power has not been exercised to date.

ATO’s residential real estate compliance activities 2020-21

The ATO is responsible for residential real estate proposals and compliance work associated with those proposals. The majority of proposals are identified through sophisticated data matching and risk profiling. The data reported in this section is based on residential real estate compliance investigations undertaken by the ATO from 1 July 2020 to 30 June 2021. During this period, 480 cases were identified for investigation, a decrease from 746 in 2019-20.

Table 4.5: Residential real estate compliance investigations, 2018-19 to 2020-21

	2018-19	2019-20	2020-21
Investigations	No.	No.	No.
Identified*	1,220	746	487
Completed	1,068	620	404
Properties in breach	600	259	100

The total number of identified cases includes new cases identified in the prior financial year which remained open at the end of that financial year. In 2020-21 there were 126 cases carried forward from 2019-20 year included in the identified count. At the close of the 2020-21 year there were 83 cases that will be carried forward into 2021-22.

Outcomes of residential property investigations

Table 4.6: Outcomes of residential real estate investigations that identified breaches, 2018-19 to 2020-21

Compliance outcome	2018-19		2019-20		2020-21	
	No.	Percentage	No.	Percentage	No.	Percentage
Divestment (a)	83	13.8	70	27	57	57.0
Retrospective approval (b)	79	13.2	49	18.9	24	24.0
Change of conditions (c)	220	36.7	57	22	2	2.0
Retrospective approval during FIRB consideration (d)	213	35.5	62	23.9	17	17.0
Vacancy fee raised*	5	0.8	21	8.1	–	–
Total outcomes	600	100	259	100	100	100.0

Refers to situations where a compliance review was undertaken following the lodgement of a vacancy fee return and a vacancy fee liability was raised for a dwelling that was found to be occupied for fewer than 183 days during a vacancy year.

The downward trend in investigation outcomes in part reflects the complexities around investors (in particular, temporary residents) being unable to comply with approval conditions due to restrictions on movement imposed to counteract the transmission of COVID-19. From March to October 2020, a temporary compliance strategy was implemented with compliance cases paused during this period. Many of the compliance staff who support the ATO's audit program were redeployed to priority COVID-19 response activities, including screening applications generated from the zero dollar threshold arrangements. Work continued on prevention campaigns and the more serious compliance activity, and in July 2020, the Commissioner of Taxation applied to the Federal Court for the first civil penalty order under the Act.

Aside from COVID-19, the downward trend in investigations also reflects a strategic shift to implement a refined risk assessment and more sophisticated treatment framework to acknowledge the learnings from five years of intense compliance activity in this sector. The ATO's risk-based approach identifies the greatest threats to the framework and targets resources accordingly. Less sophisticated investors who are ignorant of the system and demonstrate willingness to do the right thing will be assisted to comply with their obligations with minimal penalties. This educational approach enables the ATO to focus resources on the most serious behaviours requiring firmer compliance action, with concentrated compliance treatments targeted to the highest risk, sophisticated investors who are contravening the rules.

Investigations by source

The ATO identifies properties for investigation using a range of sources including community information, data matching and self-disclosures (see Table 4.7 and 4.8).

Table 4.7: Source of residential real estate compliance investigations, 2018-19 to 2020-21

Source of Case	2018-19		2019-20		2020-21	
	No.	Percentage	No.	Percentage	No.	Percentage
Community information	88	7.2	22	2.9	129	26.5
Data matched	939	77	645	86.5	313	64.3
Self-disclosure	107	8.8	28	3.8	18	3.7
Other referrals	86	7	51	6.8	27	5.5
Total identified*	1,220	100.00	746	100.00	487	100.00

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 2020-21 there were 126 cases carried forward from 2019-20 year.

Table 4.8: Outcomes of completed residential real estate compliance investigations, 2018-19 to 2020-21, by source

Source	2018-19		2019-20		2020-21	
	No. of completed investigations	No. of breaches	No. of completed investigations	No. of breaches	No. of completed investigations	No. of breaches
Community information	86	12	18	2	125	0
Data matching	810	484	537	236	248	76
Self-disclosure	103	76	21	8	17	6
Other referrals	69	28	44	13	14	1
Total	1,068	600	620	259	404	83

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.

During 2020-21, there was an increase in the number of investigations sourced from the community. This increase may be attributed to the Treasurer's Tip Off campaign which encouraged the community to alert the ATO of any concerns about investors doing the wrong thing. Investigations identified from data sources continue to produce the highest number of breaches.

Infringement notices

For the period up to 31 December 2020, there were 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. A third tier of infringement notice for alleged contraventions was introduced with legislative reforms on 1 January 2021 but has not yet been applied.

Table 4.9: Infringement notices issued in relation to residential real estate, 2018-19 to 2020-21

Penalty type	2018-19		2019-20		2020-21	
	No.	Total value \$	No.	Total value \$	No.	Total value \$
Tier 1 infringement	346	1,288,000	140	499,360	37	375,336
Tier 2 infringement	169	2,267,320	36	804,600	20	1,217,040
Total	515	3,555,320	176	1,303,960	57	1,592,376

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

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

The decline in infringement notices issued in 2019-20 and 2020-21 reflect both the impact of the pause on compliance cases during the peak of COVID-19 and a shift to using more educative tools to generate compliance. In addition, the figures reflect a specific one-off shift away from penalising both joint tenant parties in one transaction.

Education and preventative work

The ATO's risk assessments and treatment frameworks acknowledge that education may be the most appropriate compliance tool and may also foster future compliance with foreign investment and broader government obligations. During 2020-21, resourcing was also invested into developing and refining the ATO's use of automated and proactive campaign style products to communicate with investors. A number of targeted compliance prompter campaigns achieved successful outcomes during the period, including the *residential vacant land conditions prompter campaign*.

Residential vacant land conditions prompter campaign

The ATO has developed a *residential vacant land conditions prompter campaign* to remind investors of their foreign investment obligations and encourage investors to seek a variation to their foreign investment approval if they will not be able to comply with development conditions nearing expiry. The communication outlines the penalties for non-compliance with conditions and includes instructions assisting clients on how to seek a variation. The campaign is now conducted at regular intervals throughout each year and captures all foreign investors who acquired vacant land who have not yet complied with development conditions.

Analysis of campaign results for those investors who received foreign investment approval between 1 December 2015 and 30 June 2017 indicates a pleasing majority of recipients (94 per cent) were compliant with development conditions, having completed construction within the required four-year time period. This offers assurance that the time period provided by conditions is adequate in length, with 2,382 investors building at least one new dwelling on vacant land to increase Australia's housing stock. Further to this of those who had not yet completed construction, 56 (2 per cent) responded to the ATO's prompt to action email and voluntarily applied for a variation to extend their construction period. A common reason for needing more time was that the land had not yet been registered with the relevant state/territory land titles office, preventing construction from commencing. This population will

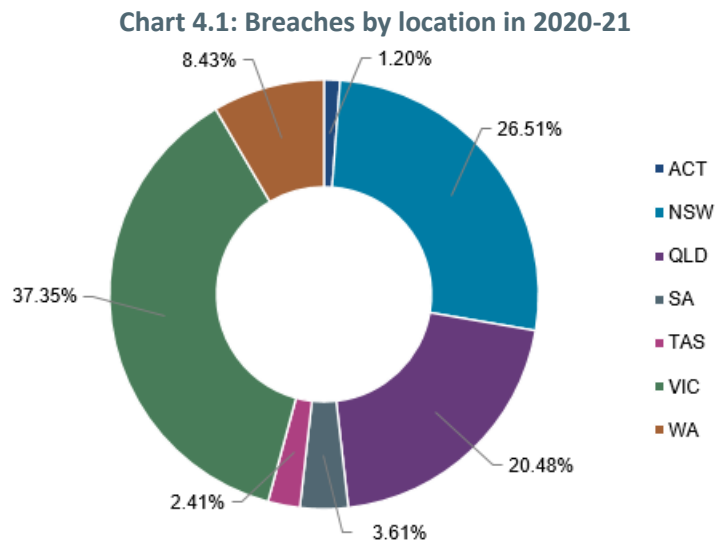
be monitored to ensure new dwellings are completed. The remaining portion (4 per cent) will be subjected to compliance action by the ATO, including penalties for non-compliance.

Dealing with this population efficiently in this proactive campaign style has significantly reduced the resources that would otherwise have been required to handle compliance cases, with the campaign issuing over 2,500 emails negating the need for compliance investigations in all but 109 instances. This is one way the ATO is taking a preventative approach to enable resources to be directed to more serious investigations.

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 2020-21.

The proportion of breaches in New South Wales increased from 24.7 per cent in 2019-20 to 26.5 per cent in 2020-21. The proportion of breaches recorded in Victoria decreased.



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

APPENDIX A: BOARD MEETINGS DURING 2020-21

Table A.1: Board meeting attendance during 2020-21

	No. of meetings attended	No. of meetings eligible to attend
David Irvine (Chair)	11	11
David Peever	8	8
Cheryl Edwardes	11	11
Teresa Dyson	11	11
Nick Minchin	10	11
Margaret (Meg) McDonald	11	11
Steven Skala	9	9
Tom Hamilton	7	7

Where possible, the Board continued to hold its monthly meetings in person, however, due to COVID-19 travel restrictions, also used teleconference.

APPENDIX B: METHODOLOGICAL AND DATA CAVEATS

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
 - proposed investment programs covered by an EC, 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 Treasury. The revenue recognised is based on the receipt of the application and/or payment during the reporting period (including fees paid under New Dwelling ECs 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
- 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
 - 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 ECs 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 are likely to take place over multiple years during the sale phase of the covered development. Also, as of December 2015, ECs 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 ECs 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 ECs 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 EC 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 EC 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 EC.
- Throughout this report '0.0' indicates a figure of less than \$50 million.

Policy changes

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

In this context, the data for the first two quarters of 2020-21 captures intended foreign investments that were below the ordinary screening thresholds that would normally apply under the Act because of the 29 March 2020 introduction of the temporary zero dollar screening thresholds for all investment categories. Data from the third and fourth quarters of 2020-21 reflect those proposed investments captured under the screening thresholds of the post-reform framework.

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. Recent changes include:

- temporary measures in 2020 in response to COVID-19 (application review timeframes, fee and exemption certificate changes, and zero dollar screening of investments)
- the major 1 January 2021 reforms which included:
 - powers to protect national security through mandatory screening of investments in sensitive businesses at zero dollars, the ability to call in other investments that may pose national security concerns, and a last resort power to be used only in exceptional circumstances
 - stronger compliance and enforcement powers, such as expanded infringement notices and higher civil and criminal penalties, in line comparable foreign investment regulators;
 - measures to streamline certain non-sensitive investments, particularly by investment funds with passive foreign government investors
 - a new Register of Foreign Ownership of Australia Assets to record all foreign interests acquired in Australian land, water entitlements and contractual water rights, and

business acquisitions that require foreign investment approvals (including acquisitions reviewed under the national security test)

- new fees that ensure the cost of administering the framework continues to be borne by foreign investors, not Australian taxpayers.

Timeline of Methodology and Policy Changes

2016-17

- In 2016-17 exemption certificates were expanded to cover purchase by any method.
- Additionally, the limiting foreign ownership in new developments reform announced in the 2017-18 Budget had immediate effect from Budget night, 7.30pm on Tuesday 9 May 2017.

2017-18

- Residential land approvals began including a condition to register on the Residential Land Register. Where this is the only condition of the approval, for reporting purposes the approval has been classified as Approved without conditions.
- ECs for the certificate holder to purchase one lot of vacant land or one new dwelling were introduced from 1 July 2017.
- From 2017-18, the source country(s) of proposed investment is generally allocated based on the known or disclosed ultimate underlying ownership of the investor proposing to make the investment. Hence, the data is not comparable to that of 2016-17 and earlier years.

2019-20

- On 29 March 2020, the Treasurer announced that for the duration of the COVID-19 crisis all foreign investment screening thresholds would be reduced to zero, resulting in an increase in the number of proposed investments that would require approval.

2020-21

- Major reforms to the framework commenced on 1 January 2021 – alongside the removal of the temporary zero dollar screening thresholds that were introduced to safeguard the national interest during the COVID-19 crisis.

APPENDIX C: EXAMINATION AND APPROVAL PROCESS

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 2020-21. 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 (protected information) may be used or disclosed. Circumstances in which protected 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 non-identifying information 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.

APPENDIX D: GLOSSARY⁴

Act	The <i>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.
Call in power	The Treasurer can ‘call-in’ for review actions which are not otherwise notified, if the Treasurer considers that the action may pose national security concerns. The review can occur when the action is still proposed or up to ten years after the action has been taken.
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.

⁴ 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.
Last resort power	<p>The last resort power gives the Treasurer an opportunity to review actions notified after 1 January 2021 for which a no objections notification, an exemption certificate, deemed approval or a notice imposing conditions has been given, if exceptional circumstances arise.</p>

National security business	<p>A business is a national security business if it is carried on wholly or partly within Australia, whether or not in anticipation of profit or gain, and it:</p> <ul style="list-style-type: none"> • is a responsible entity (within the meaning of the <i>Security of Critical Infrastructure Act 2018</i> as enacted) for an asset; or • is an entity that is a direct interest holder in relation to a critical infrastructure asset (within the meaning of those terms in the <i>Security of Critical Infrastructure Act 2018</i> as enacted); or • is a carrier or nominated carriage service provider to which the <i>Telecommunications Act 1997</i> applies; or • develops, manufactures or supplies critical goods or critical technology that are, or are intended to be, for a military use, or an intelligence use, by defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or • provides, or intends to provide, critical services to defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or • stores or has access to information that has a security classification; or • stores or maintains personal information of defence and intelligence personnel collected by the Australian Defence Force, the Defence Department or an agency in the national intelligence community which, if accessed, could compromise Australia’s national security; or • collects, as part of an arrangement with the Australian Defence Force, the Defence Department or an agency in the national intelligence community, personal information on defence and intelligence personnel which, if disclosed, could compromise Australia’s national security; or • stores, maintains or has access to personal information on defence and intelligence personnel that has been collected as part of an arrangement with the Australian Defence Force, the Defence Department or an agency within the national intelligence community, which, if disclosed, could compromise Australia’s national security.
National security land	<p>National security land means:</p> <ul style="list-style-type: none"> • defence premises (within the meaning of section 71A of the <i>Defence Act 1903</i>, excluding subparagraph (a)(iii) of the definition of that expression); or • land in which the Commonwealth, as represented by an agency in the national intelligence community, has an interest that: <ul style="list-style-type: none"> – is publicly known; or – could be known upon the making of reasonable inquiries.
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>
Notifiable national security action	<p>An action is a notifiable national security action if the action is taken, or proposed to be taken, by a foreign person and the action is any of the following:</p> <ul style="list-style-type: none"> • to start a national security business; • to acquire a direct interest in a national security business; • to acquire a direct interest in an entity that carries on a national security business; • to acquire an interest in Australian land that, at the time of acquisition, is national security land; or • to acquire a legal or equitable interest in an exploration tenement in respect of Australian land that, at the time of acquisition, is national security land.

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.
Reviewable national security action	<p>Reviewable national security actions are actions to give foreign persons potential influence and rights, such as the ability to influence or participate in the central management or policy of an entity or business, or the right to occupy Australian land. This includes instances where a foreign person is already in a position to influence or participate in the central management or control of the entity, but as a result of the reviewable national security action gains further power to influence or participate.</p>
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); or2. 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; or3. 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>
