



Australian Government  
The Treasury

TSY/AU

# Foreign investment: Compliance framework policy statement

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# Foreign investment: Compliance framework policy statement

## Objective of the framework

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

The Foreign Investment Compliance Framework (the framework) has been developed to provide strengthened assurance that foreign investors are meeting their compliance obligations, including by supporting foreign investors to understand their compliance obligations, while minimising the regulatory burden.

## Scope of the framework

The framework outlines the foreign investment compliance and enforcement objectives and draws together the different compliance and enforcement activities undertaken by Treasury and other entities, in the administration and support of Australia’s foreign investment regime. This document provides an overview of the framework, roles and responsibilities, and Treasury’s approach to compliance and enforcement activities within its area of responsibility.

**Figure 1: The Foreign Investment Compliance Framework**

<b>FOREIGN INVESTMENT COMPLIANCE FRAMEWORK</b>			
<i>Foreign Acquisitions and Takeovers Act 1975</i> <i>Foreign Acquisitions and Takeovers Regulation 2015</i> <i>Regulatory Powers (Standard Provisions) Act 2014</i> <i>Australia’s Foreign Investment Policy</i> <i>Register of Foreign Ownership of Water or Agricultural Land Act 2015</i>			
<b>COMPLIANCE AND ENFORCEMENT</b>			
<b>Objective</b>	<b>To provide strengthened assurance that foreign investors are meeting their obligations while minimising the regulatory burden</b>		
<b>HOW</b>			
<b>EDUCATION</b>	<b>MARKET INTELLIGENCE</b>	<b>COMPLIANCE ASSURANCE</b>	<b>ENFORCEMENT</b>
educating foreign investors and their advisers on their obligations under the foreign investment legislation	using data and information to target potential non-compliance	assessing and assuring compliance, which includes audits, monitoring and assessing information provided by foreign investors	undertaking enforcement action under the foreign investment legislation

## Foreign investment compliance roles and responsibilities

Treasury is responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and some commercial land foreign investment proposals. Further information on how Treasury approaches these activities is included below.

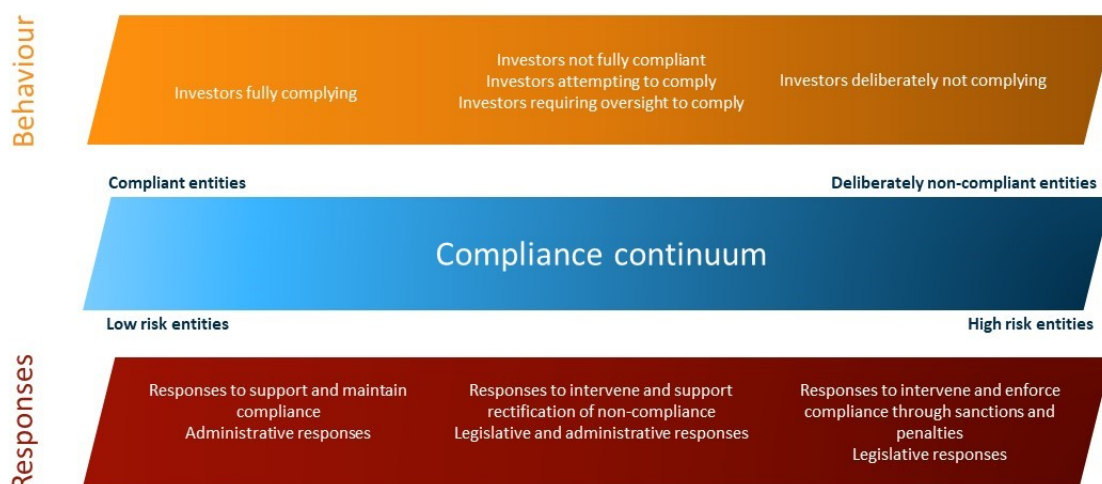
The Australian Taxation Office (ATO) is responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and some commercial land proposals. Further information on how the ATO approaches these activities can be found in the *Compliance – Residential Guidance*.

Foreign investment compliance and enforcement activities may also be supported by other regulatory regimes and specialist advice from other entities, including Australian Government regulators, as required.

## How does Treasury undertake compliance activities under the framework?

The Treasurer and the Treasury have a range of tools available to assess whether obligations under Australia’s foreign investment legislation are being complied with and to respond to non-compliance.

We seek to understand the risk posed by investors and others in our regulatory framework along a compliance continuum. This helps direct the posture of our regulatory and compliance responses which may range from education to criminal prosecution.



The primary tool is educating investors on their obligations under the *Foreign Acquisitions and Takeovers Act 1975* (the Act). Treasury aims to ensure that, for those seeking to invest in Australia, their obligations under the Act are clear and easy to understand. If you have questions on your foreign investment compliance obligations, please contact [firbcompliance@treasury.gov.au](mailto:firbcompliance@treasury.gov.au).

Treasury also uses intelligence sources to target potential non-compliance. This enables pro-active detection and allows for early intervention to mitigate any risks to the national interest (or national security, as the case requires).

Treasury’s compliance assurance activities include audits, monitoring and assessing information provided by foreign investors. These activities aim to achieve a balance between ensuring strong

compliance with the foreign investment legislation and supporting foreign investors to do the right thing. These activities may involve the use of legislative powers to:

- compel information and documents
- enter premises (either by consent or by court issued warrant) and exercise monitoring powers to determine whether the provisions of the Act are being complied with and that information provided is correct. Monitoring powers are standard powers under the *Regulatory Powers (Standard Provisions) Act 2014* (RPA).

Treasury seeks to undertake these activities in a way that is professional, transparent, risk-based and proportionate to the level of risk, in accordance with the [Regulator Performance Framework](#).

## How does Treasury respond to non-compliance?

Where non-compliance is identified or suspected, a risk-based and proportionate response will be taken to rectify non-compliance and may include enforcing compliance through penalties and sanctions. The Act includes criminal and civil penalties for non-compliance. Details of these offences and civil penalties (other than those relating to residential real estate) are outlined in **Attachment A**.

Where necessary and appropriate, authorised officers may use legislative powers to enter premises (either by consent or by court issued warrant) and exercise investigation powers to gather material, relating to offence and civil penalty provisions of the Act. Investigations powers are standard powers under the RPA.

The Act provides a broad range of enforcement powers to enable a proportionate and scalable response to non-compliance taking into account matters such as the nature of the breach, the extent of the non-compliance, the investor response to non-compliance (including previous instances of non-compliance) and the behaviour of the investor.

Enforcement in this context is not limited to taking court-based action but rather refers to the use of these legislative powers. These powers are set out in **Attachment B** and are designed to deter non-compliance and ensure the national interest (or national security, as the case requires) is protected.

Treasury strongly encourages voluntary disclosure of non-compliance. In general, Treasury may prefer to work with the foreign investor to achieve compliance in cases where non-compliance is inadvertent, self-reported by the investor, the breach is administrative, and the investor is willing to remediate the breach as quickly as possible.

## Further information

For further information on foreign investment compliance obligations, please see [firb.gov.au](http://firb.gov.au) or email [firbcompliance@treasury.gov.au](mailto:firbcompliance@treasury.gov.au).

## Related documents

*Foreign Acquisitions and Takeovers Act 1975*

*Foreign Acquisitions and Takeovers Regulation 2015*

*Register of Foreign Ownership of Water or Agricultural Land Act 2015*

*Regulatory Powers (Standard Provisions) Act 2014*

*Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015*

*Australia's Foreign Investment Policy*

## Attachment A: Offences and penalties under the *Foreign Acquisitions and Takeovers Act 1975* (except in relation to residential real estate)

\* On or after 1 January 2021

Breach	Maximum criminal penalty amount	Maximum civil penalty amount
Failure to provide notice under section 81 of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (the Act) before taking a notifiable action or *notifiable national security action.	<p><b>Section 84 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 91 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.</p> <p><b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Failure to provide notice of a notifiable action or a notifiable national security action deemed under section 18A of the Act to have been a passive increase in securities held in an entity.*	<p><b>Section 85 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 92 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.</p> <p><b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Take before the relevant day mentioned in section 82 of the Act, a significant action, notifiable national security action* or reviewable national security action* that has been notified to the Treasurer.	<p><b>Section 85 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 92 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.</p> <p><b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Take an action after being advised by the Treasurer that the action may pose a national security concern.*	<p><b>Section 85 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 92 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.</p> <p><b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>

Attachment A: Offences and penalties under the Foreign Acquisitions and Takeovers Act 1975 (except in relation to residential real estate)

Breach	Maximum criminal penalty amount	Maximum civil penalty amount
Take an action that is under review and has been prohibited by the issuing of a notice of review (last resort powers).*	<p><b>Section 85A of the Act</b>  <u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 92A of the Act</b>                      On or after 1 January 2021                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Engage in conduct contravening an order prohibiting proposed actions, interim order or disposal order.	<p><b>Section 86 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 89 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Engage in conduct contravening conditions applied to a no objection notification, notice imposing conditions (on or after 1 January 2021) or in an exemption certificate.	<p><b>Section 87 of the Act</b>  <u>Before 1 January 2021</u>                      Imprisonment for 3 years or 750 penalty units (or 3,750 if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Section 93 of the Act</b>  <u>Before 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).</p> <p><u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Engage in conduct that contravenes a direction or interim direction given under the Act.*	<p><b>Section 88A of the Act</b>  <u>On or after 1 January 2021</u>                      Imprisonment for 10 years, or 15,000 penalty units (or 150,000 penalty units if the person is a corporation), or both.</p>	<p><b>Subsection 98A(1) of the Act</b>  <u>On or after 1 January 2021</u>                      5,000 penalty units (or 50,000 penalty units if the person is a corporation).  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>



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Breach	Maximum criminal penalty amount	Maximum civil penalty amount
Give the Treasurer information or documents that are false or misleading that relate to a no objection notification for core Part 3 actions.*	Refer to Part 7.4 of the <i>Criminal Code Act 1995</i> .	<p><b>Subsection 98B(1) of the Act</b>  <u>On or after 1 January 2021</u>                      The greater of 5,000 penalty units (or 50,000 penalty units if the person is a corporation) or 75% of the value of the investment to a maximum monetary value of 2.5 million penalty units.  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Give the Treasurer information or documents that are false or misleading that relate to an exemption certificate.*	Refer to Part 7.4 of the <i>Criminal Code Act 1995</i> .	<p><b>Subsection 98B(4) of the Act</b>  <u>On or after 1 January 2021</u>                      5,000 penalty units (or 50,000 penalty units if the person is a corporation).  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Failure to notify the Treasurer of taking of action specified in no objection notification and exemption certificate or failure to notify of action specified in section 98E of the Act. *	Not applicable.	<p><b>Subsections 98C(2), 98D(2), 98E(2) of the Act</b>  <u>On or after 1 January 2021</u>                      250 penalty units (or 1,250 penalty units if the person is a corporation).  <b>Note: An infringement notice may be given for contraventions that occur on or after 1 January 2021.*</b></p>
Failure to make and keep records.	<p><b>Section 119 of the Act</b>  <u>Before 1 January 2021</u>                      30 penalty units, or 150 penalty units if the person is a corporation.</p> <p><u>On or after 1 January 2021</u>                      250 penalty units, or 1,250 if the person is a corporation.</p>	Not applicable.
Unauthorised record, disclosure or use of information that is not authorised by Part 7 of the Act.	<p><b>Section 128 of the Act</b>                      Imprisonment for 2 years or 120 penalty units (or 600 penalty units if the person is a corporation), or both.</p>	Not applicable.

Attachment A: Offences and penalties under the Foreign Acquisitions and Takeovers Act 1975 (except in relation to residential real estate)

Breach	Maximum criminal penalty amount	Maximum civil penalty amount
Failure to comply with a notice, given by the Treasurer, to provide information.	<p><b>Subsection 133(5) of the Act</b></p> <p><u>Before 1 January 2021</u></p> <p>Imprisonment for 6 months or 30 penalty units (or 150 penalty units if the person is a corporation), or both.</p> <p><u>On or after 1 January 2021</u></p> <p>Imprisonment for 6 months, or 250 penalty units (or 1,250 penalty units if the person is a corporation), or both.</p>	Not applicable.

## Attachment B: Overview of enforcement powers under the *Foreign Acquisitions and Takeovers Act 1975*

Power	Description
Order to prohibit proposed actions and interim orders	Prohibits an investor from taking all or part of a proposed action. Interim orders are temporary orders that made by the Treasurer for the purposes of considering whether to make an order to prohibit all or part of a proposed action.
Disposal order	If an action has already been taken and the Treasurer is satisfied the result of the action is contrary to the national interest, the Treasurer may make an order requiring the investor to effectively dispose of their investment. A disposal order is directed at unwinding the action.
Variation or revocation of exemption certificates due to false or misleading information or documents	An exemption certificate may be varied or revoked where the Treasurer is satisfied that a person has given false or misleading information or documents, or omitted a material fact or a thing where this information is relevant and given before the exemption certificate was given.
Revocation of no objection notification due to false or misleading information or documents	A no objection notification may be revoked where the Treasurer is satisfied that a person has given false or misleading information or documents, or omitted a material fact or a thing where this information is relevant and given before the no objection notification is issued.
Treasurer's directions	If there is reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention of the <i>Foreign Acquisitions and Takeovers Act 1975</i> (the Act), the Treasurer may direct an investors to address or prevent a contravention of the Act (or prevent a similar or related contravention).
Interim directions	If there is reason to believe that a person has engaged, or is engaging, in conduct that constitutes a contravention of the Act, the Treasurer may direct an investors to address or prevent a contravention of the Act (or prevent a similar or related contravention) in circumstances where any delay in giving the direction would be contrary to the national interest.
Infringement notices	An infringement notice is a financial penalty that an infringement officer may impose for certain breaches of the Act where there are reasonable grounds to believe that a contravention has occurred.
Civil penalty orders	A civil penalty order can be made by a court for the payment of a financial penalty where the person is found by the court to have contravened a civil penalty provisions of the Act.
Enforceable undertakings	An enforceable undertaking can be entered into by the Treasurer with a person in order to prevent, or respond to non-compliance with the Act.
Compelling documents or information relevant to the exercise of the Treasurer's powers	The power allows the Treasurer to request information and documents from an investor, which supports desktop and paper based auditing and compliance monitoring.