



# Guidance Note 14

## Compliance and Penalties (Residential Land)

- Maintaining strong compliance with Australia’s 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).
- Significant penalties (including infringement notices, civil and criminal penalties) may apply for breaches of the foreign investment law in relation to residential land.
- Foreign persons who think they may have breached the law are strongly encouraged to self-disclose this to the Government. Lower penalties may apply if a breach is self-reported.
- Foreign persons who have breached the law by acquiring an interest in residential land without prior foreign investment approval, may apply for retrospective approval of that acquisition.
- Any person that suspects that the foreign investment law has been breached is encouraged to report this to the Government. Such reports can be made anonymously.



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## A: Compliance approach with respect to residential land

See also the *Residential Land* Guidance Note.

Maintaining strong compliance with Australia's 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 Government's compliance efforts with respect to foreign investment in residential land aim to achieve a balance between detecting and remedying non-compliance to provide assurance to the community that the law is being upheld, while limiting the regulatory impact and supporting foreign investors to do the right thing.

The Australian Taxation Office (the **ATO**)<sup>1</sup> has the ability to use comprehensive data matching systems to identify breaches of the law with respect to residential land. This is also supported by information and activities from other regulatory regimes and government regulators.

The Government provides support and education to foreign investors to assist them to meet their compliance obligations in the first instance. If enforcement action is necessary following a breach of the foreign investment law in relation to residential land, the Government will ensure that the pursuit of any penalties is commensurate with the breach and the degree of non-compliance. Consideration is given to factors such as the investor's circumstances, behaviour, and previous compliance history when determining whether penalties are appropriate. Factors such as an inadvertent breach, a self-disclosure, and/or where the foreign person is willing to remediate their breach as quickly as possible are also relevant considerations.

### Self-disclosure of non-compliance

Foreign investors who think they may have breached the foreign investment law in relation to residential land are encouraged to self-disclose this. Lower penalties may apply if a breach is self-reported.

Investors can self-disclose their residential breaches by completing the online [ATO tip-off form](#), phoning 1800 060 062, or emailing [firbcompliance@ato.gov.au](mailto:firbcompliance@ato.gov.au). Please provide as much factual detail as possible, including:

- Your name, address, contact details, and passport information (for example, full legal name on passport, passport number, and place of issue);
- The company or trust details, where applicable;
- Details of the breach;
- The property address, type, date of settlement, ownership details, and contract of sale (including nomination documents, where applicable); and
- Any other factual information about the property (for example, whether the land was initially vacant before being built on).

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<sup>1</sup> Compliance monitoring and enforcement activities relating to residential land are generally conducted by the ATO.

## Reporting suspected non-compliance

Persons that have information about a possible breach of Australia's foreign investment law in relation to residential land are also encouraged to report this. This information will help the Government to safeguard Australia's national interest, businesses and the economy. All reports of suspected non-compliance with the foreign investment law in relation to residential land are investigated if enough information is provided.

Suspected breaches of the foreign investment law in relation to residential land can be reported by completing the online [ATO tip-off form](#), phoning 1800 060 062, or emailing [firbcompliance@ato.gov.au](mailto:firbcompliance@ato.gov.au). Please provide as much factual detail as possible, including:

- Your name, contact details, and email address;
- Details of the suspected breach;
- The property address concerning the suspected breach;
- The name of the property owner or occupant (if known);
- The date of the property purchase (if known); and
- Any other factual information about the property (for example, whether it is vacant, rented or owner occupied) (if known).

Persons can also report a suspected breach anonymously. To do so, please call the foreign investment enquiry line on 1800 050 377, or if you are calling from overseas dial +61 6216 1111 and ask to be transferred to 1800 050 377.

Privacy laws prevent the Government from sharing details of any foreign investment compliance application or investigation in relation to residential land with third parties. The Government will equally respect the privacy of the person reporting the suspected breach, as well as the privacy of the owner of the reported property.

## B: Penalty amounts for non-compliance

See also the *Residential Land* Guidance Note.

Significant penalties (including infringement notices, civil and criminal penalties) may apply for breaches of the foreign investment law in relation to residential land, as outlined in the table below.

The value of a penalty unit is set out in subsection 4AA(1) of the [Crimes Act 1914](#).

The Government will consider each breach of the foreign investment law in relation to residential land on a case-by-case basis to determine the appropriate penalty to pursue.

Breach action	Possible penalty
Failing to notify the Treasurer before acquiring an interest in residential land	<p><b>Maximum criminal penalty (s84 of the <i>Foreign Acquisitions and Takeovers Act 1975 (the Act)</i>):</b></p> <p>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>Maximum civil penalty (s94 of the Act):</b></p> <p>The greatest of:</p> <p>(a) the amount of the capital gain that was made or would be made on the disposal of the relevant residential land;</p> <p>(b) 25% of the consideration; and</p> <p>(c) 25% of the market value of the relevant residential land.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
Acquiring an interest in residential land, after notifying the Treasurer, but before receiving foreign investment approval	<p><b>Maximum criminal penalty (s85 of the Act):</b></p> <p>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>Maximum civil penalty (s94 of the Act):</b></p> <p>The greatest of:</p> <p>(a) the amount of the capital gain that was made or would be made on the disposal of the relevant residential land;</p> <p>(b) 25% of the consideration; and</p> <p>(c) 25% of the market value of the relevant residential land.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p>

Breach action	Possible penalty
	<p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
<p>Providing the Treasurer with false or misleading information in an application for foreign investment approval for residential land</p>	<p><b>Maximum criminal penalty (Part 7.4 of the <i>Criminal Code Act 1995</i>):</b></p> <p>Imprisonment for 12 months.</p>
	<p><b>Maximum civil penalty (when the investor applies for a no objection notification, s98B of the Act):</b></p> <p>The lesser of:</p> <p>(a) 2.5 million penalty units; and</p> <p>(b) the greater of:</p> <ul style="list-style-type: none"> <li>(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation); or</li> <li>(ii) 75% of the value of the investment.</li> </ul> <p><b>Maximum civil penalty (when the investor applies for an exemption certificate, s98B of the Act):</b></p> <p>5,000 penalty units (or 50,000 penalty units if the person is a corporation).</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>

Breach action	Possible penalty
<p>Engaging in conduct that contravenes an order made by the Treasurer under Part 3 of the Act (e.g. an order prohibiting the acquisition of residential land, or an order requiring the disposal of a residential property)</p>	<p><b>Maximum criminal penalty (s86 of the Act):</b></p> <p>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>Maximum civil penalty (s89 of the Act):</b></p> <p>The lesser of:</p> <p>(a) 2.5 million penalty units; and</p> <p>(b) the greater of:</p> <p style="padding-left: 20px;">(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation); or</p> <p style="padding-left: 20px;">(ii) 75% of the value of the investment.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
<p>Engaging in conduct that contravenes a condition applied to a no objection notification, notice imposing conditions, or in an exemption certificate relating to residential land</p>	<p><b>Maximum criminal penalty (s87 and 88 of the Act):</b></p> <p>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>Maximum civil penalty (when the investor fails to notify of an approved acquisition or sale, or fails to advertise the sale in Australia, s97 of the Act):</b></p> <p>250 penalty units</p> <p><b>Maximum civil penalty (when the investor breaches any other condition, s96 of the Act):</b></p> <p>The greatest of:</p> <p>(a) the amount of the capital gain that was made or would be made on the disposal of the relevant residential land;</p> <p>(b) 25% of the consideration; and</p> <p>(c) 25% of the market value of the relevant residential land.</p>

Breach action	Possible penalty
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
<p>Engaging in conduct that contravenes a direction or interim direction given by the Treasurer relating to residential land (e.g. an order to cease a certain activity)</p>	<p><b>Maximum criminal penalty (s88A of the Act):</b></p> <p>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>Maximum civil penalty (s98A of the Act):</b></p> <p>The lesser of:</p> <p>(a) 2.5 million penalty units; and</p> <p>(b) the greater of:</p> <p style="padding-left: 20px;">(i) 5,000 penalty units (or 50,000 penalty units if the person is a corporation); or</p> <p style="padding-left: 20px;">(ii) 75% of the value of the investment.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>



Breach action	Possible penalty
<p>Failing to comply with a national security review notice from the Treasurer relating to residential land (e.g. prohibiting an acquisition of residential land while a national security review is completed)</p>	<p><b>Maximum criminal penalty (s85A of the Act):</b></p> <p>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>Maximum civil penalty (s95A of the Act):</b></p> <p>The greatest of:</p> <p>(a) the amount of the capital gain that was made or would be made on the disposal of the relevant residential land;</p> <p>(b) 25% of the consideration; and</p> <p>(c) 25% of the market value of the relevant residential land.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p>
	<p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
<p>Failing to comply with a notice, given by the Treasurer, to provide information relating to residential land</p>	<p><b>Maximum criminal penalty (s133 of the Act):</b></p> <p>Imprisonment for 6 months, or 250 penalty units, or both.</p>
	<p><b>Maximum civil penalty:</b></p> <p>n/a</p>
	<p><b>Tier 1 infringement notice:</b></p> <p>n/a</p> <p><b>Tier 2 infringement notice:</b></p> <p>n/a</p> <p><b>Tier 3 infringement notice:</b></p> <p>n/a</p>
<p>Failing to lodge a vacancy fee return on time</p>	<p><b>Maximum criminal penalty:</b></p> <p>n/a</p>
	<p><b>Maximum civil penalty (s115D of the Act):</b></p> <p>250 penalty units.</p>

Breach action	Possible penalty
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied if the investor does not self-disclose):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice:</b></p> <p>n/a</p> <p>See s100 of the Act.</p>
Failing to make and keep records relating to residential land	<p><b>Maximum criminal penalty (excluding vacancy fee records, s118 of the Act):</b></p> <p>250 penalty units (or 1,250 penalty units if the person is a corporation).</p>
	<p><b>Maximum civil penalty (applicable only to vacancy fee records, s115G of the Act):</b></p> <p>250 penalty units.</p>
	<p><b>Tier 1 infringement notice (may be applied when the investor self-discloses their breach – applicable only to vacancy fee records):</b></p> <p>12 penalty units (or 60 penalty units if the person is a corporation).</p> <p><b>Tier 2 infringement notice (may be applied when the value of the land is &lt;\$5 million – applicable only to vacancy fee records):</b></p> <p>60 penalty units (or 300 penalty units if the person is a corporation).</p> <p><b>Tier 3 infringement notice (may be applied when the value of the land is &gt;\$5 million – applicable only to vacancy fee records):</b></p> <p>300 penalty units (or 1,500 penalty units if the person is a corporation).</p> <p>See s100 of the Act.</p>
Failing to give register notice to the Registrar of the Register of Foreign Ownership of Australian Assets	<p><b>Maximum civil penalty (s130ZV of the Act):</b></p> <p>250 penalty units</p>

## Penalties for people associated with a breach

Where an officer of a corporation authorises or permits a breach of the foreign investment law in relation to residential land to occur, or fails to prevent such a breach from occurring, that officer may be subject to a penalty (regardless of whether the corporation is also penalised). The maximum penalty that can apply to that officer is the same penalty as if they had committed the breach themselves.

Similarly, if a third party<sup>2</sup> knowingly assists another person to breach the foreign investment law in relation to residential land, that party can be subject to a penalty (regardless of whether the other person is also penalised). The maximum penalty that can apply to that party is the same penalty as if they had committed the breach themselves.

To knowingly assist another person to breach the law may include:

- aiding, abetting, counselling or procuring a contravention;
- inducing (by threat, promise or otherwise) a contravention;
- conspiring with others to effect a contravention; and/or
- being, directly or indirectly, knowingly concerned in, or party to, a contravention.

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<sup>2</sup> A third party may include persons such as: stockbrokers, lawyers, solicitors, conveyancers, real estate agents, and/or any other advisors.

## Example 1

Mr Conveyancer finds out two days before settlement on an existing dwelling that his client, the purchaser, is a foreign person. Mr Conveyancer contacts his client to obtain details of the client's approval under the Act, however, the client tells Mr Conveyancer that they have not sought the Treasurer's approval for their proposed purchase. The foreign person advises they would like to proceed with settlement.

Mr Conveyancer proceeds with settlement, as he is confident the purchaser would have received approval from the Treasurer had they applied for it, as the purchaser is the holder of a temporary resident visa. Failure to give notice of a notifiable action is a breach of the Act.

As Mr Conveyancer may be a third party who knowingly participated in the purchase of residential land by a foreign person in breach of the Act, he may be liable for a civil or criminal penalty.

## Example 2

Mr Conveyancer finds out two days after settlement on an existing dwelling that his client, the purchaser, is a foreign person. He did not know that his client was a foreign person as all correspondence was sent to a local address.

The client tells Mr Conveyancer that they did not know approval was required. Mr Conveyancer tells the client that they do require approval and they should have sought approval before signing the purchase contract. He tells them to go to the Foreign Investment website and find out what is required or they may be subject to significant penalties.

As Mr Conveyancer did not know the purchaser was a foreign person until after the purchase was completed, he did not knowingly participate in the foreign person breaching the Act and so it is unlikely he would be subject to penalty.

Furthermore, if the Treasurer is satisfied that one or more persons has entered into, or carried out, a [scheme](#)<sup>3</sup> to avoid the application of the foreign investment law in relation to residential land, the Treasurer may make an order prohibiting a proposed acquisition of residential land or requiring the disposal of that land if already acquired.

The Treasurer can also make an order specifying persons involved in avoidance of the foreign investment law in relation to residential land to be taken as associates of each other. See the *Key Concepts* Guidance Note.

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3 Section 4 of the Act defines a scheme as either: an agreement, understanding, promise, or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable by legal proceedings; or any scheme, plan, proposal, action, course of action, or course of conduct, whether unilateral or otherwise.

## C: Retrospective approvals (and disposal orders)

See also the *Overview, Residential Land and Fees* Guidance Notes.

Where a foreign person has breached the law by acquiring an interest in residential land without prior foreign investment approval, they may apply for retrospective approval of that acquisition. In some situations, the investor may alternatively choose to self-dispose of their interest.

Applications for retrospective approval are submitted electronically on [the ATO website](#), similar to normal proposed investment applications for residential land. A fee will be payable for most retrospective applications.

The Treasurer will consider retrospective applications in the same manner as applications for proposed investments. That is, the Treasurer will consider the investment in accordance with the national interest test (or national security test, as the case requires) to ensure that it is not contrary to Australia's national interest (or national security).

If the Treasurer is satisfied that the acquisition is not contrary to the national interest (or national security), the investor will be granted foreign investment approval. That approval will be subject to certain conditions (generally, the same conditions that would have applied had the application been approved pre-acquisition, as well as reporting conditions).

The granting of retrospective foreign investment approval (or self-disposal) does not excuse the foreign person from also being liable for penalty for the initial breach of the law.

### Disposal orders

If the Treasurer considers that a foreign person's holding of residential land without approval is contrary to the national interest (or national security, as the case requires), the Treasurer may issue a disposal order, in accordance with section 69 of the Act, which is directed at unwinding the action by requiring the disposal of the interest held.

If a disposal order is issued, the foreign person may be liable to pay a fee, in addition to any penalty imposed and the disposal of the land. The land will generally be required to be disposed of within three months.

Disposal orders are publicly registered on the *Federal Register of Legislation*.

## D: The types of penalties – infringement notices

The Act allows for less serious breaches of the foreign investment law in relation to residential land to be punishable by way of an infringement notice. Less serious breaches are likely to involve circumstances where:

- the breach is inadvertent or administrative in nature;
- the breach is self-reported by the offending person;
- the person is willing to remediate their breach as quickly as possible; and/or
- in circumstances where the investor should have sought approval, but has not, the person would likely have been granted that approval had they sought it.

There are three tiers of possible infringement notices that may be issued<sup>4</sup>. A Tier 1 infringement notice can only be issued when the person self-discloses their breach. If the person fails to self-disclose their breach, a higher Tier 2 or Tier 3 infringement notice may apply<sup>5</sup>.

### Example 3

Peter, who is a foreign person, acquires a new unit without obtaining foreign investment approval.

If Peter had applied for approval (and paid the relevant application fee) it is likely that he would have been approved to purchase the property. This circumstance is considered to involve a less serious contravention of the law and therefore an infringement notice could be appropriate.

If, after acquiring the unit, Peter subsequently realises that he should have sought prior approval for his purchase of the unit, and he immediately notifies the Government of this breach, a Tier 1 infringement notice may be applicable.

If, on the other hand, the Government identifies the breach through its own compliance activities, it is more likely that a higher Tier 2 or 3 infringement notice may be issued.

Peter will also be required to seek retrospective approval for the unit, or dispose of the unit.

### Example 4

Chandler and Joey, who are both foreign persons, acquire a property together as joint tenants in Queensland. Neither applied for foreign investment approval before acquiring the property.

If they had applied for approval (and paid the relevant application fee) it is likely that they would have been approved to purchase the property. This circumstance is considered to involve a less serious contravention of the law and therefore an infringement notice could be appropriate.

If an infringement notice is issued for this breach of the law, both Chandler and Joey will be liable for an infringement notice.

An infringement notice issued to a foreign person<sup>6</sup> in relation to residential land will set out a number of matters, including:

- brief details of the alleged contravention, including the provision of the Act that was allegedly contravened;
- the name and contact details of the infringement officer issuing the notice;
- the amount payable and how that amount is to be paid;

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4 The three tiers of infringement notices are defined in section 101 of the Act.

5 Tier 3 infringement notices can only be issued for breaches occurring on or after 1 January 2021.

6 An infringement notice may only be given within 12 months of the alleged breach occurring.

- a statement that payment of the amount does not constitute an admission of guilt or liability; and
- a statement that if payment is made within 28 days of the notice being given that it precludes court proceedings (seeking a civil penalty order) being brought against the person for the alleged contravention (unless the notice is subsequently withdrawn).

If the person pays the amount payable by the due date, any liability for the contravention of the relevant provision is discharged and proceedings to seek a civil penalty order cannot be sought for the contravention (unless the notice is withdrawn and the amount paid is refunded to the person).

A person who receives an infringement notice may seek an extension of time to pay the amount and can also apply in writing to have the notice withdrawn. These must be submitted before the infringement notice due date.

Where the amount payable by a person under an infringement notice is not paid, the Treasurer can apply to a relevant court for a civil penalty order.

## E: The types of penalties – civil and criminal penalties

Some contraventions of the foreign investment law in relation to residential land can be punishable by a civil penalty. Where the Treasurer (or the Commissioner of Taxation) decides that this is an appropriate penalty, the Treasurer (or the Commissioner of Taxation) can apply to a relevant court for a civil penalty order.

If the court orders that a civil penalty is payable, this is a debt that is due and payable to the Commonwealth.

To help ensure that any person who is ordered to pay a pecuniary penalty actually pays that penalty, in some circumstances a charge may be created over land owned by the person.

### In what circumstances is a charge created?

Broadly, if a court orders that a person must pay a civil penalty because the person contravened a requirement under the Act relating to an acquisition of residential land, a charge is automatically created on that land under section 104 of the Act to secure the payment of the penalty.

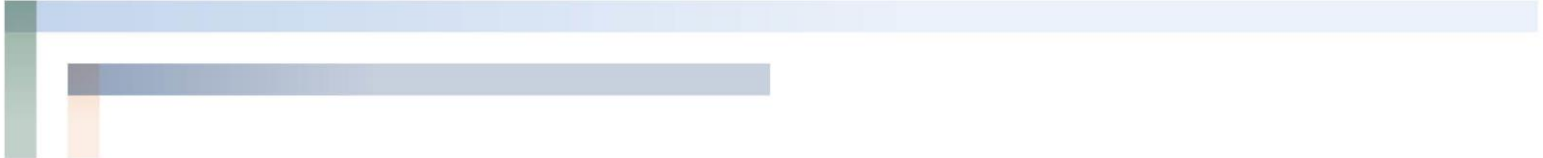
In some circumstances, the Treasurer may also declare under section 105 of the Act that there is a charge on other land owned by a person (including land that was lawfully acquired) who has been ordered to pay a civil penalty, if the Treasurer is satisfied that it is necessary to do so to secure the payment of the civil penalty.

The charge will remain in force until the person pays the civil penalty and certain associated costs. A charge has priority over any other interests in the land, including any registered mortgage, and is not affected by a change in ownership of the land.

If the person still has not paid the civil penalty and certain associated costs by a particular time (usually three months, unless a court or the Treasurer decide on a longer period), the land will vest in the Commonwealth under section 107 of the Act. The Treasurer may then sell the land.

### How to tell if there is a charge over land?

To ensure that any potential purchaser is aware that a charge applies over the land, any charge created under the Act will be registered on the land title register in the state or territory in



which the land is located. This will ensure that a potential buyer of the property is aware that there is a charge over the land.

## Contraventions that can be subject to criminal prosecution

Where the behaviour involved in a breach of the foreign investment law relating to residential land is considered serious enough, this may be able to be referred for criminal prosecution.

If the Treasurer identifies such a breach that is serious enough to warrant criminal prosecution, the Treasurer will refer the matter to the relevant Crown authority (such as the Australian Federal Police or the Director of Public Prosecutions). The Treasurer will continue to assist those authorities as required to prosecute the breach.

Cases of non-compliance with Australia's foreign investment residential law may also be brought to the attention of other Commonwealth agencies, such as the Department of Home Affairs.

## Further information

Further information is available on the [Foreign Investment website](#) by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

**Important notice:** This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.