



Australian Government

Australian Trade and Investment Commission

# Submission from the Australian Trade and Investment Commission

**Inquiry into the Foreign Investment  
Reform (Protecting Australia's National  
Security) Bill 2020 and Foreign  
Acquisitions and Takeovers Fees  
Imposition Amendment Bill 2020**

10 November 2020



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## Austrade Overview

The Australian Trade and Investment Commission (Austrade) is the Australian Government agency with the mandate to win productive foreign direct investment for Australia. Since Australia's foundation, Australia has been a high growth country with a capital deficit. Foreign investment has been vital to grow our economy, create jobs, foster innovation and secure our prosperity. Foreign direct investment will play a critical role in our rapid recovery from the economic impact of COVID-19.

Austrade leads a national strategy for promoting, attracting and facilitating productive foreign direct investment (FDI). Our role includes promoting Australia as an attractive place to invest, targeting and attracting investors to specific opportunities, coordinating investment facilitation across the Australian Government and states and territories and providing aftercare to encourage reinvestment by existing investors.

Austrade focuses on productive FDI that contributes to economic prosperity through creating and retaining Australian jobs, developing new industries, ecosystems and infrastructure, introducing new technologies and skills, encouraging innovation and competition, raising productivity, driving exports and strengthening Australia's overall economic linkages with the world.

In 2019-20, Austrade, along with key partners in state and territory governments, helped win 117 investment outcomes valued at almost \$4.7 billion. This investment saw the creation or retention of approximately 8,240 jobs<sup>1</sup>.

## COVID context and Foreign Investment Framework reforms

The global economy has been significantly altered as a result of COVID-19. The United Nations Conference on Trade and Development (UNCTAD) found FDI had fallen 49 per cent in its October 2020 update, with the biggest drops taking place in developed countries. FDI into developed economies fell 75 per cent in the six-month period, compared with 2019. FDI flows into Australia were down 40 per cent.<sup>2</sup>

Australian Bureau of Statistics data also confirms subdued investment activity. In the six months to June 2020, FDI flows into Australia were \$16.6 billion –

<sup>1</sup> [Austrade Annual Report 2019-20](#)

<sup>2</sup> [October 27 release](#)

down from \$37 billion over the same period in 2019, and \$53 billion in 2018. Globally, FDI has been on a downwards trajectory since 2016<sup>3</sup>. Global investment flows were down by 9.8 per cent in 2019, according to UNCTAD, as geo-political tensions and rising uncertainty created difficult conditions for investment.

In this context, securing FDI and reinvestment is crucial in assisting Australia's economy to rebound more quickly. To attract and secure productive investment outcomes, it is important that Australia has an appropriate foreign investment framework that is clear and provides certainty for foreign investors, while balancing national security considerations.

Currently, a number of economies around the world are implementing significant reforms to their foreign investment settings to adapt to challenges presented by COVID-19 and new and emerging risks. Numerous likeminded countries have been moving to update their investment screening policies in response to national security concerns and risks related to COVID-19 and technological change. According to a recent OECD report, in 2020, 50 per cent of global inward investment is now subject to screening<sup>4</sup>. Numerous OECD members, particularly in the European Union, are introducing FDI screening mechanisms or expanding mechanisms that were previously limited in coverage.

The Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 (National Security Bill) and the Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020 (Fees Imposition Bill) (together, the Bills) update Australia's foreign investment framework by addressing national security risks, strengthening compliance measures, revising the fees framework and streamlining investment in non-sensitive businesses.

Austrade considers that these changes will enable the Government to better address national security risks. Public guidance material on the reforms being developed by the Treasury will help provide confidence, certainty and predictability for investors and business alike. The changes enable Australia to retain an open, welcoming and non-discriminatory approach to ensure we can attract the foreign investment we need. Austrade will continue to work with Treasury and the Department of Foreign Affairs and Trade (DFAT) to communicate the reform framework to investors via our global network.

## Consultation and investor engagement

Austrade gathers insights and feedback from our extensive overseas and onshore investor networks to monitor Australia's attractiveness as an investment destination and track perceived advantages, challenges and impediments to investing in Australia. We share this feedback with policy agencies to inform their decisions. Investor feedback consistently notes that an

<sup>3</sup> [OECD 23<sup>rd</sup> Report on G20 Investment Measures](#)

<sup>4</sup> OECD Freedom of Investment project: Inventory of investment policy developments, 23 October 2020.

unpredictable investment framework has the potential to increase sovereign risk.

Austrade has taken an active role in informing investors, business and stakeholders – both in market and onshore – about the foreign investment reforms, working closely with Treasury and DFAT. Our role has been to communicate the proposed reforms, clearly explain their implications, and provide investor feedback to Treasury.

In particular, since the announcement of the reforms on 5 June 2020, Austrade-led outreach activities have included: direct investor engagement through one on one meetings; coordinating investor consultation with Treasury to explain technical aspects of the reforms; working with business chambers to host webinars to speak directly with wider audiences of investors and other stakeholders; and distributing material through our wide networks of stakeholders both onshore and in market to inform business of the implications of the reforms.

## **Investor feedback**

Investors recognise that these are the most significant reforms to our investment framework in decades. Investors have raised a number of questions as they seek a level of certainty, predictability and transparency to enable investment to proceed.

Most investors were informed about the rationale for change, and were reassured by the fact that Australia's fundamental foreign investment policy settings remain open to foreign investment. This allows companies to plan for the long term to achieve their investment goals and target rates of return.

Investors sought clarity on what constitutes a 'National Security Business' and examples, timeframes and case studies on when the Treasurer might exercise the new 'Call-in' and 'Last resort' powers. A number of investors have identified other government reforms underway such as the *Security of Critical Infrastructure Act* (2018), and have sought clarity on what this means for their future Australian investment strategies.

Investors also queried the reformed fee structure, particularly in cases where fees may rise over current levels. While investors frequently cite fees as a disincentive to investment, they could also understand the Government's policy that Australian taxpayers should not bear the costs of reviewing foreign investment proposals and the relative immateriality overall of fees to an investment. Moreover, investors generally acknowledged that the new fee structure provides a more transparent and consistent basis for assessment.

One particular issue that arose in feedback related to processing times of foreign investment. As a result of temporary changes to the Foreign Investment Framework announced by the Treasurer on 29 March 2020, a zero-dollar threshold has been applied to all foreign investments covered by the

FATA regime. This has placed increased pressure on the Foreign Investment Review Board (FIRB), Treasury and its partner agencies (including Austrade) to assess a higher volume of applications. However, Austrade has been reassured by the Treasury's effective management of increased workload through deploying additional resources to ensure commercial deadlines, where possible, have been met. This approach has ensured the preservation or creation of additional jobs through foreign investment.

Looking ahead, investors are also reassured by advice that, as part of the current reform package, additional resources have been allocated to the FIRB team within Treasury for processing applications and managing compliance. Investors also welcomed indications that normal monetary thresholds are expected to return once the new measures are implemented.

Austrade will continue to work with potential investors and other stakeholders throughout the implementation phase of the proposed reforms.

## Conclusion

Taken together, the Bills and related measures represent an important package of reforms to ensure Australia remains an open and welcoming destination for foreign investment. The package will also implement appropriate measures to modernise and strengthen oversight of national interest and national security considerations. This approach seeks to balance the twin goals of enabling productivity-enhancing investment while maintaining community support for foreign investment and ensuring it is in Australia's national interest. Austrade supports the passage of the Bills.