Private & Confidential

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30 August 2021

Evaluation of the 2021 foreign investment reforms

We welcome the opportunity to provide comments on the recent reforms, as well as Australia's foreign investment framework more broadly. As an organisation that supports and advises many internationally based companies on investment opportunities in Australia, we see the huge interest from international investors in finding opportunities to develop long term investments in Australia with mutual benefits for both themselves and the Australian economy.

We appreciate the complexity of managing the risks around foreign investment, particularly against a backdrop of a changing geopolitical environment and the upheaval in the global economy caused by the COVID-19 pandemic. However, we also see the value that foreign investment can bring to Australia's economy and therefore we welcome the government's focus on reforming the foreign investment framework. We see many of our clients experience a number of hurdles when trying to invest in Australia, and we believe many of these hurdles can be overcome through careful consideration of alternative approaches, and an appreciation of the context in which an investor is operating in.

In March 2021, together with the American Chamber of Commerce in Australia, we released a report titled *Attracting US Investors to Australia: The Opportunity is Now* (see attachment 1 to this letter). This report includes a series of observations and recommendations on impediments to foreign investment, designed through a lens of inbound investment from our largest foreign investor country, the United States. These observations and recommendations are closely aligned to the questions asked within the consultation paper.

With respect to questions in the consultation paper, we make an observation with respect to Q3.1, *what are investors' key considerations when choosing to invest in Australia, and where foreign investment screening fits among these considerations?:*

- In our view, the foreign investment framework regime, whilst sometimes challenging and complex for clients, in and of itself is not a first order consideration when investing in Australia. Choosing Australia as a destination is primarily driven by other factors including access to markets, assets, natural resources and macroeconomic stability. To encourage foreign investment, we believe broader regulatory reform should focus on

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industrial relations, energy and taxation. The foreign investment screening process will have a lower priority on the list of investor concerns.

- By far, the biggest frustration expressed by investors with respect to the foreign investment screening process is **timing**. In recent years there has been a notable increase in requests by FIRB to extend statutory deadlines (and in a number of cases, multiple extension requests) resulting in adverse consequential affects such as transaction uncertainty, lost fundraising opportunities, delays to the implementation of strategic plans and increased or wasted costs.

- In particular, we are regularly seeing requests for extended statutory deadlines for internal corporate restructures for clients with global operations which do not involve any new third party investors. The reason for such extension requests is often due to the need for further consideration of the matter by FIRB consult partners such as the Australian Taxation Office.

- The interaction with consult partners at times blurs the line between FIRB's role as an investment gatekeeper versus a broader regulatory role. This creates uncertainty where consult partners adopt policy positions in addition to their powers under relevant legislation. Greater clarity and certainty could be achieved for investors if these policy positions became part of, and were limited to, the legislative framework that is administered by those agencies.

- FIRB Guidance note 12 does provide welcome and valuable guidance to foreign persons on the role of the ATO in considering tax aspects of matters which are notified to FIRB. One area where we see potential room to improve transparency and process outcomes is in the allocation of a risk rating by the ATO to the action that has been notified. Where there is a divergence of opinion between the ATO and the applicant in relation to tax risk or a lack of transparency about the nature of the tax risk that is of concern to the ATO, our clients would welcome the opportunity for more contact with the ATO to discuss such matters as contemplated on page 5 of Guidance Note 12. Our experience has been that the ATO has been reluctant to engage on certain apparently 'high' risk matters where additional tax conditions have been sought, notwithstanding requests being made via FIRB for such engagement to occur.

We would like to take this opportunity to thank the Treasury for the opportunity to contribute to the consultation process. Should you require any further detail on our submission, please reach out to Andrew Wheeler on 0400 260 021.

Yours sincerely,

Andrew Wheeler
PwC Australia Partner

ATTRACTING U.S. INVESTORS TO AUSTRALIA

THE OPPORTUNITY IS NOW

MARCH 2021

AmCham
access to opportunity

pwc

EXECUTIVE SUMMARY

The ambition of this report is to effect regulatory change which will see investment from the United States to Australia increase. Firm action is needed now to remove unnecessary regulatory burdens on business and incentivise US investors to choose Australia as their preferred destination. This report outlines practical recommendations to remove these burdens and drive forward the Government's deregulatory agenda.

These recommendations reflect the views of a diverse group of members of the American Chamber of Commerce in Australia (AmCham) who were consulted in their preparation; with representation across the technology, financial services, advanced manufacturing, advisory services, pharmaceutical and resources sectors.

THE TIME IS NOW TO PURSUE DEREGULATION AND ENCOURAGE US INVESTMENT INTO AUSTRALIA

Foreign investment plays a vital role in Australia's economic prosperity by bridging the gap between what Australia saves and invests every year. As Australia's largest source of foreign investment, the success of the US and Australian economies are tightly intertwined - in 2019, around 7 per cent of total economic output was a direct result of US business activities in Australia. This positions the United States as arguably Australia's most trusted, strategic ally.

In 2021, economic uncertainty is widespread and a confluence of events is motivating US businesses to reevaluate their organisational structures and foreign operations. Recent developments include: the COVID-19 pandemic, from which Australia is emerging as a global leader in health outcomes; increased competition for a declining pool of foreign direct investment (FDI) globally; and geopolitical events highlighting the importance of the Indo-Pacific region to Australia and its allies. Australia should capitalise on this changing environment and effect regulatory change to position itself as a prominent destination for US investment and to increase our share of outward US investment.

The urgency to act now is exacerbated by issues closer to home. Unprecedented fiscal expenditure and revenue measures mean the Federal Budget will not return to balance until 2040-41. As Government debt swells, the Australian economy needs to grow itself out of trouble to pay down debt. Australia's weak productivity growth is also cause for concern and deregulation is critical to incentivising the productive investments which will drive future economic growth and Australian living standards. Australia needs investment and the associated economic risk-taking, innovation and digitisation it comes with. The direct cost of regulatory compliance is estimated to be 5 per cent of GDP annually - Australia can't afford to get this wrong.

THE GOVERNMENT SHOULD PRIORITISE A NATIONWIDE SHIFT IN REGULATORY CULTURE AND MICRO-REFORMS WHICH REDUCE RED TAPE THAT HAMPERS INVESTMENT

Initially, a wide range of areas of importance to US investors was considered; this included many issues such as regulatory culture, the corporate tax rate, the cost and supply of energy and industrial relations. These issues are varied in nature but can broadly be placed into one of three categories: economy-wide reform, micro-reform and regulatory culture.

By their nature, economy-wide reforms require greater effort, consensus and therefore time to implement. This makes them potentially less effective when rapidity is required, such as now when Australia looks to continue the transition from a COVID-19 management phase to recovery (however, the difficulty of implementing economy-wide reform has no correlation with the importance or urgency of reform in the longer term). In contrast, micro-reforms and regulatory culture are often easier to change, easier to obtain cross-agency and departmental support, and faster in delivering their intended outcomes. For these reasons, the focus of this report is on regulatory culture and micro-reforms. The recommendations in this report provide government a list of clear, distinct changes that could effect significant positive change for US investors in Australia.

A CHANGE IN REGULATORY CULTURE IS REQUIRED TO ALIGN REGULATORS' ACTIONS WITH THE GOVERNMENT'S DEREGULATORY AGENDA

Even the most fit for purpose regulation relies on the regulator implementing the intent of that regulation and ensuring the burden that regulated entities experience is proportionate to the risk being mitigated. In the current environment, enhanced risk tolerances to encourage investment should be reflected in the everyday decisions made by regulators - leading to significant positive impacts in aggregate. There are already some promising examples where COVID-19 has created urgency to drive regulatory culture change. However, there are examples where regulators can be too risk averse and hesitate to make timely, investment friendly decisions.

TARGETED MICRO-REFORMS CAN DRIVE A STEP CHANGE FOR INVESTMENT AND ECONOMIC GROWTH IN AUSTRALIA

During the COVID-19 pandemic and prior, Australia's regulators have lent into the challenge of balancing protecting communities with minimising business impediments. However, now is the time to revisit their mandates and functions to ensure they are still fit for purpose. Proposed reforms span four main areas; the Foreign Investment Review Board, talent, tax policy, and regulatory simplification and the removal of duplication. Together, these have the potential to attract more investment from Australia's trusted strategic ally, the United States. Specific reforms, outlined in more detail in the report, include: Fringe Benefits Tax (FBT) reform to revitalise CBDs; maximum timeframes for regulator-business interactions; a passporting system for trusted, credentialed US investors; and a Federal mandate to remove inefficient and outdated regulation.

01

AUSTRALIA'S FOREIGN **INVESTMENT** LANDSCAPE

FOREIGN INVESTMENT PLAYS A VITAL ECONOMIC ROLE IN AUSTRALIA

Investment is an integral part of any well-functioning market economy. It is essential to drive innovation, increase economic output and create employment opportunities. Investors purchase capital goods (such as buildings, machinery and vehicles) to create products which, when sold, provide a profit on their initial outlay. Investment, and an associated degree of risk taking, is required to grow and increase Australia's productive capital base which ultimately increases the wealth and standard of living of all Australians. The essential nature of investment was recently highlighted by the Reserve Bank of Australia (RBA) who noted 'becoming too risk averse' was one of the biggest threats to Australia's post-COVID-19 economic recovery.[1]

While the role of domestic investment is clear, foreign investment attracts considerable public attention - often in a negative light. So what is foreign investment and why is it important to the Australian economy?

Foreign investment refers to the amount of foreign-owned capital in Australia. Australia is a resource-rich country with a high demand for capital and relatively small population. Foreign investment bridges the gap between what Australia saves and invests every year - this gap has been equivalent to ~4 per cent of GDP on average over the last few decades.[2] By supplementing domestic savings, foreign investment moves Australia closer to its productive potential by providing capital to fund new business and industry opportunities. The economic activity enabled by foreign investment benefits Australians through employment opportunities, improved export performance and tax revenues which help fund public services.

Significant second-order benefits include the creation of connections with novel markets and bolstered productivity through increased competition and innovation. It is important to note Australia's continued commitment to the free movement of capital is integral to supporting the rules-based international order. By being open to foreign investment (and international trade), Australia strengthens its ability to advocate for others to be open.

The key mechanisms through which foreign investment impacts the economy are outlined in Figure 1.

It is important to note some concerns regarding foreign ownership of particular Australian assets are, and will remain, valid. To ensure foreign investment proposals are consistent with Australia's national interest, the Australian Government reviews foreign investment proposals on a case-by-case basis through the Foreign Investment Review Board (FIRB) (see section 4.1 for further detail on the role of FIRB). Notwithstanding, since the mid-1980s successive Australian governments have pursued the liberalisation of foreign investment policy. This policy shift acknowledges the foreign exchange controls and restrictive policies pursued in the two decades prior were economically inefficient; the estimated impact of these restrictions was a decline in capital productivity of around 30 per cent over the period.[3]

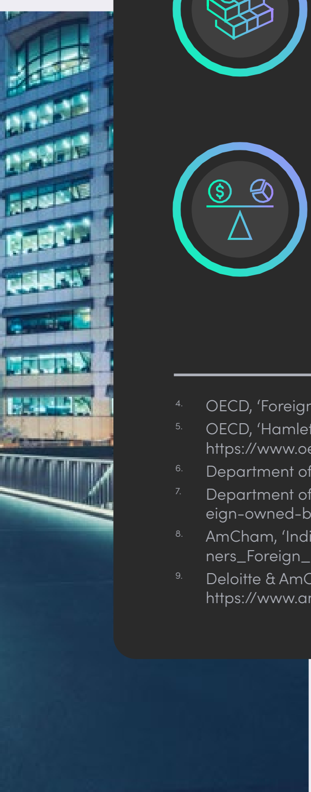
While some level of oversight is required, foreign investment is a significant net benefit to the Australian economy. It is recommended a new level of review, conducive to encouraging investment from the United States and other trusted allies, be implemented.

1. Lowe, P., Reserve Bank of Australia, 'COVID, our changing economy and monetary policy', 2020. https://www.rba.gov.au/speeches/2020/sp-gov-2020-11-16.html
2. Department of Foreign Affairs and Trade, 'Benefits of trade and investment', 2018. https://www.dfat.gov.au/trade/investment/the-benefits-of-foreign-investment
3. Evans, E.A., University of Queensland School of Economics, 'Economic nationalism and performance: Australia from the 1960s to the 1990s', Ninth Annual Colin Clark Memorial Lecture, 1999.

FIGURE 1: MECHANISMS THROUGH WHICH FOREIGN INVESTMENT PRIMARILY IMPACTS THE AUSTRALIAN ECONOMY

MECHANISM	DESCRIPTION
PRODUCTIVITY	Foreign investment is associated with increased productivity in recipient countries.[4] This occurs due to innovation, increased competition, human capital development and knowledge transfers; all of which enable high-productivity, better paid jobs domestically.
TRADE OPPORTUNITIES	Trade and investment are complementary and the increasing complexity of global value chains has increased the interdependencies between them. Often, differing costs across locations drive businesses to vertically integrate their production activities. For example, Australia's mining exports increased by over $150 billion since the start of the mining boom while foreign direct investment (FDI) in the sector increased by ~9 times in the same period. Foreign investment is also undertaken by future customers who will benefit from new products - for example investment to develop new resources capacity that investors plan to subsequently import.
KNOWLEDGE TRANSFER	Foreign investors bring more than just capital; they bring a combination of intellectual property, international networks and proprietary research and development which directly benefits Australian business. This often results in secondary or 'spillover' effects, such as technology and innovation leaking into the rest of the economy which enhances the productivity of unrelated, domestic firms.
HOUSEHOLDS	Households benefit from access to novel products as well as employment opportunities from foreign-affiliated operations. Around 20 per cent of businesses in Australia with 200+ employees are more than 50 per cent foreign owned.[7] US investment alone accounted for more than 335,000 jobs with an average salary of over $115,000 in 2016.[8]
CONSUMPTION EFFECTS	The domestic economy benefits from new consumption as a result of foreign operations in Australia. Local businesses, which form part of foreign operations' supply chains, directly benefit from increased demand for their products. While other local businesses experience indirect benefits as a result of increased demand from businesses who fall in these supply chains and employees who otherwise may have had lower, or no, incomes had foreign investment not occurred.
FISCAL FINANCES	Foreign owned operations in Australia are subject to domestic state and federal tax regulation. This can result in higher tax receipts for local governments which in turn benefits Australians through the provision of additional or enhanced public services. Eleven US companies combined paid almost $2 billion to the Australian Government in 2017-18.[9]
BALANCE OF PAYMENTS	The net impact of foreign investment on a country's balance of payments is largely determined by the balance of incoming investment and repatriated profits. Foreign investment also impacts the stability of a country's balance of payments. Direct investment tends to be more stable than portfolio and other investment forms over time; therefore as FDI comprises a greater proportion of total foreign investment, stability tends to increase.

4. OECD, 'Foreign direct investment for development', 2002. https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf
5. OECD, 'Hamlet without the Prince of Denmark: can we talk about trade policy without considering investment?'. https://www.oecd.org/trade/topics/trade-and-investment/
6. Department of Foreign Affairs and Trade, 'How trade benefits Australia', 2018. https://www.dfat.gov.au/sites/default/files/benefits-of-trade-and-investment.pdf
7. Department of Foreign Affairs and Trade, 'Economic activity of foreign-owned businesses in Australia in 2014-15', 2018. https://www.dfat.gov.au/sites/default/files/foreign-owned-businesses-2014-15-australia.pdf
8. AmCham, 'Indispensable Partners: Foreign Direct Investment Report', 2018. https://amcham.com.au/web/Advocacy/Papers_and_Submissions/Indispensable_Partners_Foreign_Direct_Investment_Report.aspx?hkey=92247126-6e6e-4bbc-98d1-993fa9e630fd
9. Deloitte & AmCham, 'Building prosperity, the importance of the United States to the Australian economy', 2020. https://www.amcham.com.au/Web/Information/News/Building_Prosperity_the_importance_of_the_United%20States_to_the_Australian_economy.aspx

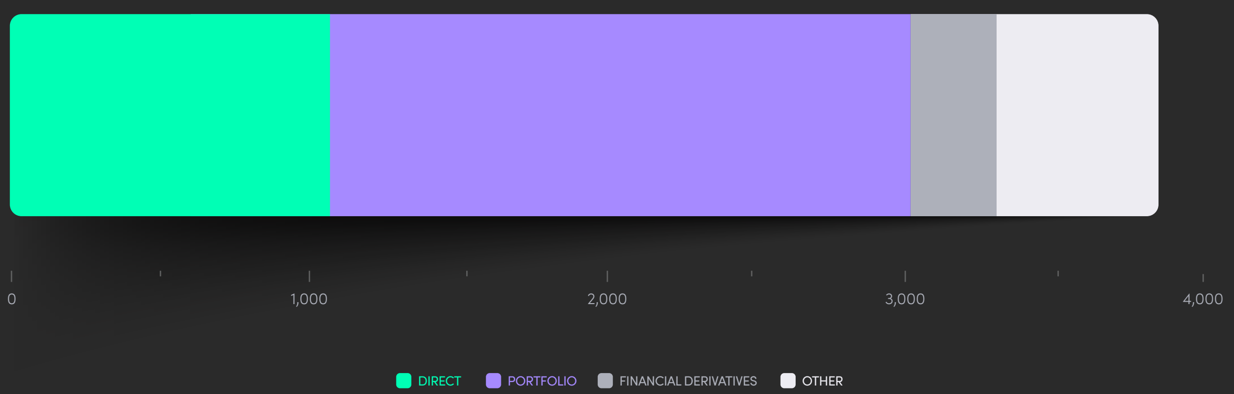


Broadly, foreign investment can be classified as one of four types:

- **Foreign direct investment:** investment with a degree of foreign controlling interest, defined by foreign ownership of at least 10 per cent of voting stock.
- **Portfolio investment:** investment with no degree of influence on business operations; the foreign entity is a common creditor or non-decision making shareholder. Unlike FDI, portfolio investment can be recalled relatively quickly.
- **Financial derivatives:** foreign ownership of financial derivatives. These are financial instruments which are linked to other instruments, indicators or commodities through which specific financial risks can in their own right, be traded in financial markets.[10] This includes equity, commodity price, credit and foreign exchange risk.
- **Other investment:** a residual classification which captures all other foreign investment such as reverse investment (when a direct investment acquires a financial claim on its direct investor),[11] trade credits and loans.

At the start of 2020, the stock of foreign investment in Australia totalled $3.84 trillion – an increase of 8 per cent on 2019 levels. As seen in Figure 2, portfolio investment comprised more than half (52 per cent) of this with the remainder made up of direct (27 per cent), other (14 per cent) and financial derivatives investment (7 per cent).

FIGURE 2: FOREIGN INVESTMENT IN AUSTRALIA, STOCKS ($B)

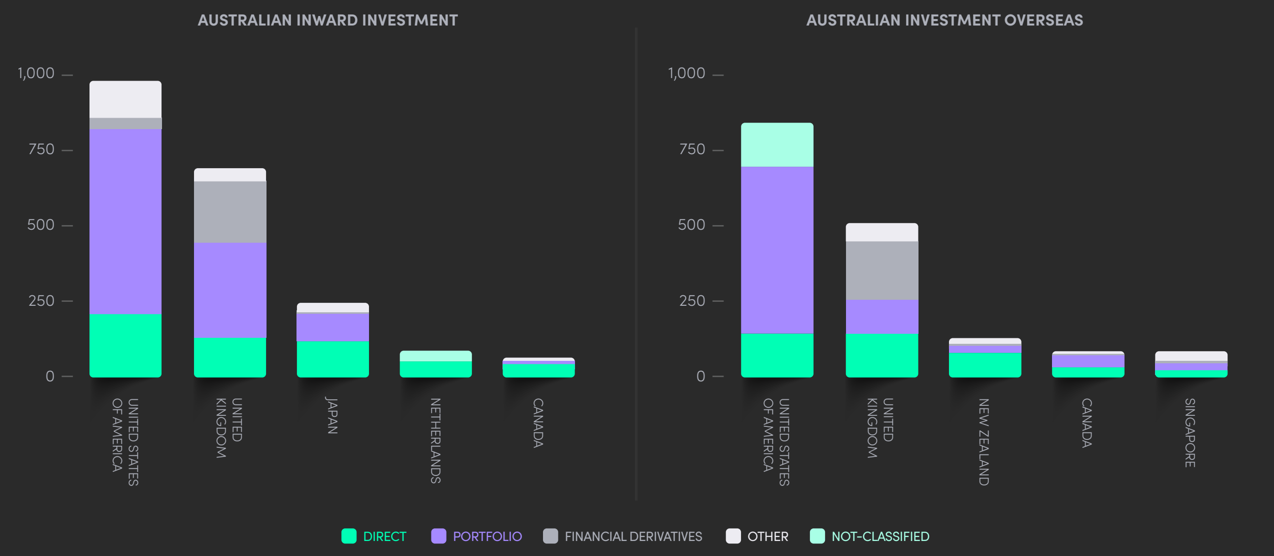


Source: ABS, International Investment Position, Australia: Supplementary Statistics[12]

10. International Monetary Fund, 'Financial derivatives, a supplement to the 5th edition of the balance of payments manual', 1993. https://www.imf.org/external/pubs/ft/fd/2000/finder.pdf
11. Joisce, J., International Monetary Fund, 'IMF Committee on balance of payments statistics and OECD workshop on international investment statistics', 2004. https://www.imf.org/External/NP/sta/bop/pdf/diteg7-8.pdf
12. Australian Bureau of Statistics, 'International investment position, Australia: supplementary statistics', 2020. https://www.abs.gov.au/statistics/economy/international-trade/international-investment-position-australia-supplementary-statistics/latest-release

For the purposes of measuring economic integration, FDI provides the clearest picture of enduring relations. Of Australia's investment partners, the United States is Australia's single largest source of FDI. As of the start of 2020, US investment of $205 billion comprised 20 per cent of total FDI stocks. This is a reflection of the strong, multi-faceted two-way investment relationship between the two countries which provides jobs, economic growth and tax revenue for the Australian Government. The UK (13 per cent) and Japan (11 per cent) are Australia's second and third largest investors followed by the Netherlands and Canada (both 5 per cent).[13]

FIGURE 3: FOREIGN INVESTMENT, INWARD AND OUTWARD BY DESTINATION, STOCKS ($B)[14]



Source: ABS, International Investment Position, Australia: Supplementary Statistics[15]

Australia is a net recipient of foreign investment, however there are significant investment outflows from Australia to the rest of the world every year. As of January 2020, Australians held $827 billion of FDI overseas (in comparison with $1.02 trillion of FDI in Australia). The United States is the leading outward destination of FDI comprising around 18 per cent, or $146 billion of the total stock of Australian FDI abroad. This is narrowly followed by the UK, then New Zealand and Canada respectively (17, 10 and 4 per cent, respectively).

THE UNITED STATES-AUSTRALIA RELATIONSHIP RUNS DEEPER THAN SOLELY INVESTMENT

The United States' role as the largest investor in Australia is just one facet of the deep and diverse relationship which binds the two countries together.

The United States is Australia's second-largest trading partner, in terms of total exports and imports, with over $80 billion worth of goods and services crossing borders in 2019-20. This comprised 9.2 per cent of total Australian trade and was a 5 per cent increase on the previous year.[16] Imports from the United States of $53.4 billion (13.4 per cent of total imports) comprise a majority of this figure, with exports of $27.4 billion (5.8 per cent of total exports) making up the rest.[17] Many Australian exports are in high value-add goods such as medical and engineering goods however services have comprised a growing proportion of total exports since the Australia-US FTA became active in 2005. Travel related services, including education - which have been particularly impacted by COVID-19 and global lockdowns - comprise almost two thirds of Australia's global services exports. In contrast, Australian travel related services exports to the United States comprised less than one-quarter of services exports - a reflection of the diversity and breadth of the economic relationship.[18]

13. Ibid, footnote 12.
14. The ABS does not classify investment in instances where privacy concerns exist ('not classified').
15. Ibid, footnote 12.
16. Department of Foreign Affairs and Trade, 'Trade in goods and services', 2019-20. https://www.dfat.gov.au/trade/resources/trade-statistics/trade-in-goods-and-services/Pages/trade-in-goods-and-services
17. Ibid, footnote 16.
18. Ibid, footnote 9.

Combined, exports to the United States and income generated by US investment in Australia were worth $131 billion in 2019. This figure is equivalent to 7 per cent of Australia's GDP, or around $5,000 per Australian.[19] However, even this number does not fully account for the economic, social and cultural connections which bind the two countries. 2021 marks one such connection with the 70th anniversary of the Australia, New Zealand, United States Security (ANZUS) Treaty - a collective security agreement to cooperate in the Pacific Ocean region.

AUSTRALIA-US ECONOMIC, SOCIAL AND CULTURAL LINKS

01 **Research and development:** The 1968 Agreement on Science and Technology Cooperation has underpinned significant partnerships, exchanges in data and the protection of intellectual property between Australia and the United States for over half a century. In 2018, US R&D spend in Australia surpassed $1 billion, and 42 per cent of the Australian Research Council's (ARC) 1,272 projects funded in 2020 included collaboration with the United States.

02 **Education and human capital:** Australia's high calibre education institutions attracted 8,490 American students per year (in 2020). With around 1,000 formal collaborations between US and Australian universities, and the associated significant professional and personal connections, significant education and human capital exchanges occur between the two nations.

03 **Tourism and culture:** Pre-COVID-19, Americans were the second largest spenders and third largest tourism market in terms of visitors to Australia. This affinity is reflected in many common values, ideals and cultural similarities which contribute to links such as the United States being Australia's second largest audio-visual importer (only behind the UK).

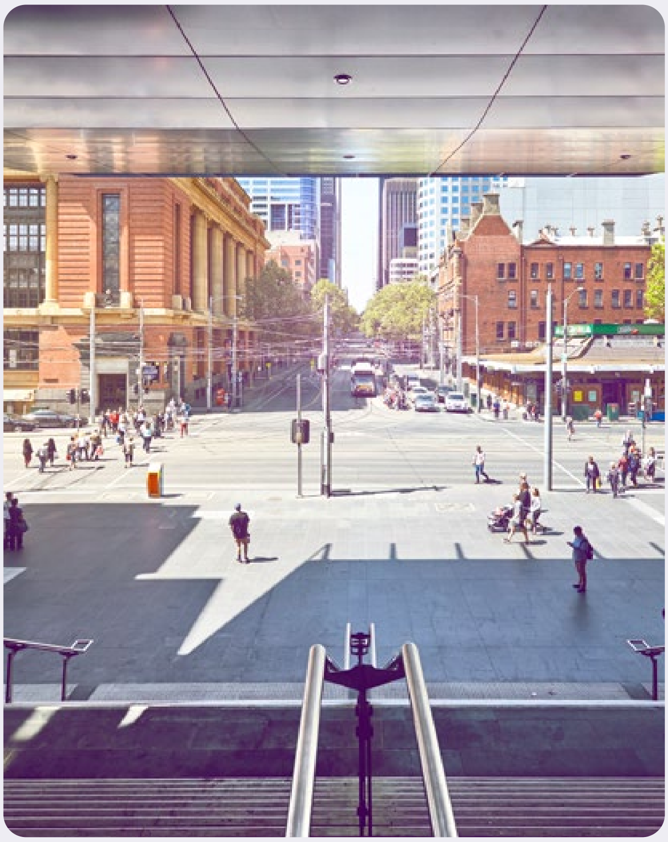
04 **Digital economy:** The total value Australian consumers placed on digital activities and products, including value over and above the actual price paid, was $44 billion in 2018. This included $3.5 billion for Google's search engine and over $1 billion for Facebook alone. While this figure accounts for the entire technology sector, not solely US products, it is probable a significant proportion of this value is derived from US technology firms.

AUSTRALIA HAS CHARACTERISTICS WHICH ARE ATTRACTIVE TO GLOBAL INVESTORS

Australia is a major destination for global foreign investment. Of the 15 largest global economies (of which Australia is 13th), only three nations have larger foreign investment stocks relative to total economic output.[20] Historically, Australia has been attractive due to:

- **Institutions and governance:** as a stable parliamentary democracy, Australia has a track record of consistent, strong governance. This breeds confidence and is conducive to long term investment decision-making.
- **Talent:** Australia is home to a large, culturally diverse workforce alongside high-ranking schools and universities. A readily accessible, local talent pipeline is key to sustainable overseas business operations.
- **Infrastructure:** Well designed air, rail, sea and road networks make for efficient logistics chains for businesses to facilitate the movement of both products and people.
- **Geography:** Australia provides a bridge between the major time zones of the Americas and Europe, while its geographic location facilitates strong trade and investment links within the Asia-Pacific region.
- **Wealth:** Australia is an advanced economy with well developed consumer markets. GDP per capita of over US$54,300 makes it the world's 11th richest economy in US dollar terms.[21]

19. Ibid, footnote 9. Australian Bureau of Statistics, 'National, state and territory population', 2020. https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/jun-2020 Estimated national population as of June 30 2019 used.
20. UNCTAD, 'World Investment Report', *UNCTAD*, https://unctad.org/topic/investment/world-investment-report. IMF, 'World Economic Outlook', October 2020. The UK, Canada and Spain have the three largest foreign investment stocks as a proportion of nominal GDP (2019) respectively. GDP ranking based on 2020 GDP in USD current prices terms.
21. IMF, 'World Economic Outlook', 2020. https://www.imf.org/en/Publications/WEO/weo-database/2020/October GDP ranking based on 2020 GDP per capita in USD current prices terms.



The vital role foreign investment, primarily from the United States, continues to play in Australia's economic prosperity is clear. Building on this, the Federal Government has made significant progress in championing Australia as a valuable trading partner. Success in recent years include the signing of free trade agreements (FTAs) with Malaysia (2013), Japan, China (both 2015), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018), Hong Kong, Peru and Indonesia (all 2020).

In November 2020, Australia was one of 15 countries who signed the Regional Comprehensive Economic Partnership (RCEP); a landmark agreement which reduced trade barriers across a region representing around a third of global economic output.[22]

This report builds on these successful policies by focusing on the regulatory settings that enable these FTAs to maximise the economic benefits of US investment in Australia.

22. Department of Foreign Affairs and Trade, 'Regional comprehensive economic partnership',, accessed 6 March 2021. https://www.dfat.gov.au/trade/agreements/not-yet-in-force/rcep Signatories include Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam.

CASE STUDY
ELLUME

As a pandemic swept across the globe, one physician working in a busy emergency department saw dozens of patients present with symptoms of influenza. The several days it took to turnaround laboratory test results and a limited range of rapid influenza tests which lacked accuracy and reliability, meant misdiagnosis was often unavoidable. This led to both the inappropriate prescribing of antivirals and antibiotics, and their non-prescribing for influenza infected patients. It was then Dr. Sean Parsons realised there was a clear need for a faster, simpler and more accurate way to diagnose influenza and other infectious diseases – so he founded Ellume.

The story may sound contemporary, but Ellume was founded in 2010 during the swine flu (H1N1 influenza virus) pandemic. Ellume was founded to address the threat infectious diseases pose to humanity through innovative approaches to diagnosis and treatment accessibility. Ellume develop, manufacture, and commercialize next generation digital diagnostic products for healthcare professionals and consumers. Their focus is the accurate diagnosis of common infectious diseases and their products improve healthcare outcomes for individuals, their families, and their communities.

The global COVID-19 pandemic has reinforced the critical role of rapid, accurate diagnostics. Rapid diagnostic tests help to reduce disease burden, manage outbreaks and community transmission, and reduce pressure on healthcare systems. Accessible, reliable, and fast diagnostics are proving to be an integral part of the first line of defense to COVID-19.

In the past 12 months Ellume has developed a suite of COVID-19 products including antigen tests, serology (antibody) tests and self-swab (swab+drop) nasal sample kits. In December 2020, the US Food and Drug Administration (FDA) issued an Emergency Use Authority for Ellume's COVID-19 Home Test which gives users accurate results via their smartphone in 15 minutes.

Ellume has been able to fast-track the development of its range of COVID-19 diagnostic tests with the support of a US$30 million WP-2 grant from the U.S. National Institutes of Health (NIH)'s Rapid Acceleration of Diagnostics (RADx) initiative. In February 2021, the U.S. Department of Defense (DoD) awarded the company US$232m to fast track construction of a U.S. manufacturing facility.

Closer to home, Ellume has expanded its manufacturing base in Brisbane, the largest of its kind in the Southern Hemisphere, and is rapidly expanding its manufacturing efforts and supply chain within the United States. Production has already commenced and Ellume plans to manufacture and deliver 20 million Ellume COVID-19 Home Tests to the United States by the end of 2021.

NOW IS THE TIME TO ATTRACT US INVESTORS TO AUSTRALIA

In 2021, the stakes are higher than ever. A confluence of events, most notably the COVID-19 pandemic, has motivated businesses to reevaluate their organisational structures and foreign operations - Australia should capitalise on this.

The current international and domestic environments present a once-in-a-generation opportunity for Australia to position itself as a prominent destination for US investment and to increase our share of outward US investment, particularly in the Asia-Pacific region. This is due to:

- **COVID-19:** Australia has emerged as a world leader in responding to COVID-19 (see Figure 4). Unlike several other high-income, developed economies, Australia has been relatively successful in containing the pandemic. Despite localised outbreaks in Victoria, South Australia and New South Wales, a majority of businesses are now returning to or at full operation nationally. This is attractive to investors in the short to medium term, as a 'safe-haven' market.

- **Competition:** The UN estimates Australia's FDI inflows declined by 46 per cent in 2020, greater than the 42 per cent decline, to US$859 billion, seen in global flows. A further decline of 5-10 per cent is expected globally in 2021.[23] Only a modest uptick is expected in 2022, as global value chains restructure and capital stock is gradually replenished.[24] In an environment where competition for global flows is heightened for several years to come, it is vital Australia is proactive in attracting foreign investment and makes doing business easier.

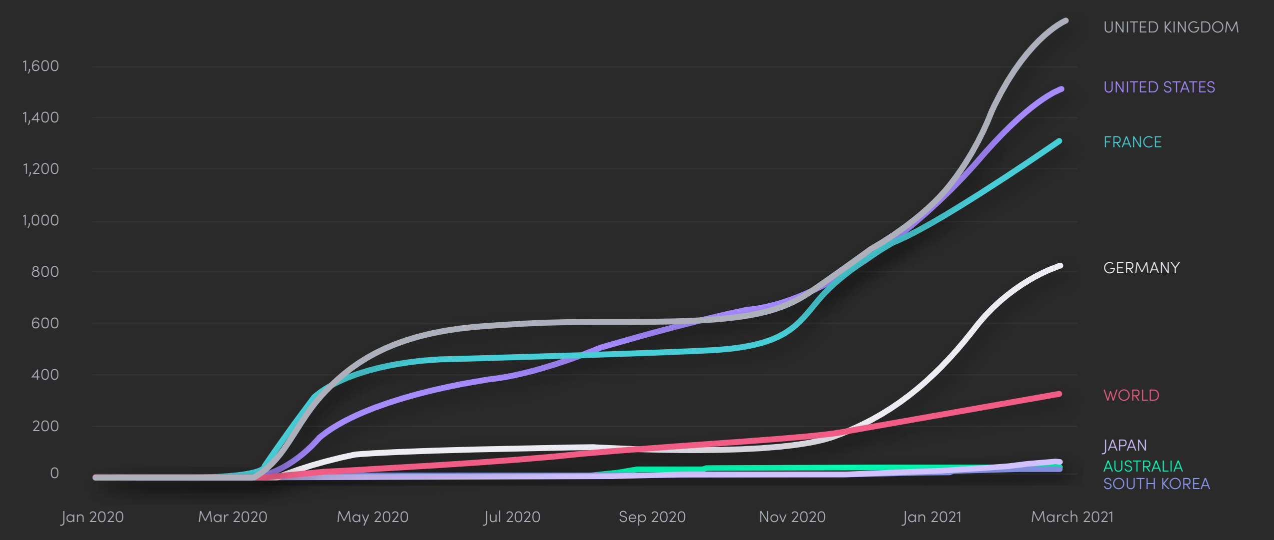
- **Geopolitics:** Rising populism and tensions between China and the United States has coincided with a gradual shift from a United States-led global order to an increasingly complex, diverse, and multipolar operating environment. This issue has been exacerbated by political instability in the Indo-Pacific region, as seen in Hong Kong, Myanmar, Malaysia and the Philippines among others, and in heightened Chinese influence in the region such as proposals for Papua New Guinea's Ihu Special Economic Zone (ISEZ) which could see significant Chinese investment in Australia's closest neighbour. If economies continue to move away from the rules-based international order, the regulations governing investment and trade are poised to become increasingly cumbersome obstacles.

Australia should act now to position itself as the preeminent destination for trusted investors exploring Asia-Pacific opportunities. As evidenced recently by corporates including Tesla, HPE and Oracle - US executives are willing to move operations where policy settings provide incentives. The sense of urgency is exacerbated in Australia by the need for economic growth to plug the gap left by unprecedented fiscal stimulus in response to COVID-19. At the federal level, over $267 billion (equivalent to 14 per cent of GDP) of expenditure and revenue measures have been announced through 2023-24. These include the JobMaker program comprising $73 billion of new measures and JobKeeper wage subsidies equivalent to around 5 per cent of GDP.[25] PwC modelling projects the Commonwealth Budget will not return to balance until 2040-41 and zero net debt is forecast for 2062-63.[26] This means the Commonwealth will likely need to earn increased revenue to pay down its debt and interest for at least the next four decades.

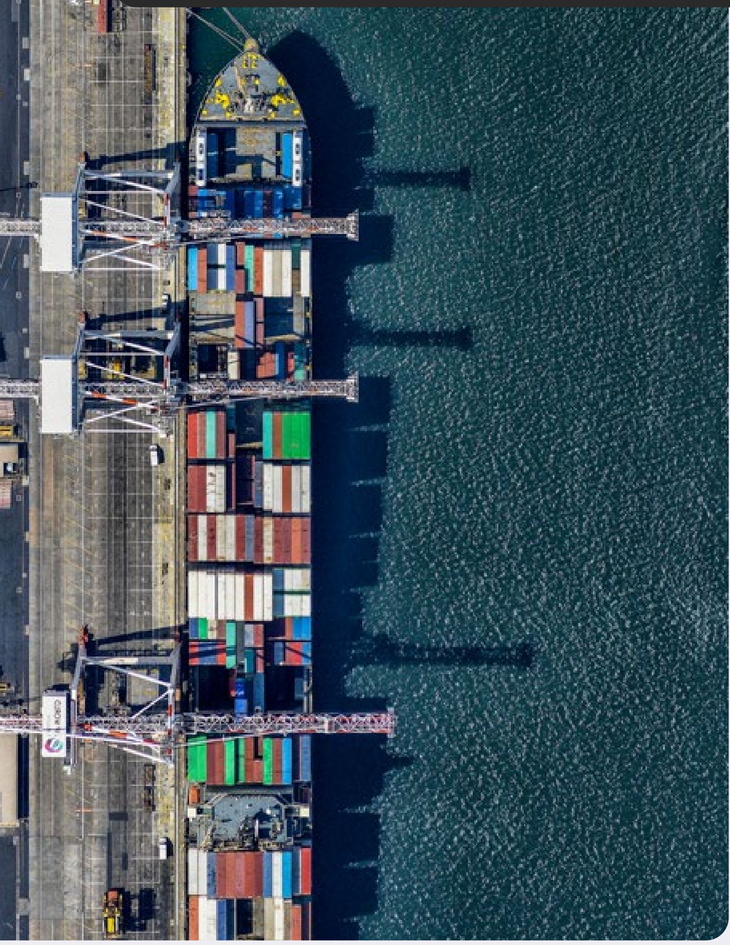
PwC's 'Australia Rebooted' modelled alternate recovery scenarios of which a deregulatory approach was the sole scenario which projected Australia's economy to return to its pre-COVID-19 trajectory. An increase in productivity, driven by investment and digitisation, is critical to any recovery. Since 2005, Australia has had relatively weak productivity growth and this is cause for concern. While the slowdown was partially offset by significant investment during the mining boom, the Federal Government should prioritise removing regulatory impediments, productivity growth and digitisation as policy imperatives. The fastest route back to a pre-COVID-19 sized economy (in terms of GDP) requires less regulation with faster timeframes, and digitisation which enables private industry to grow Australia out of trouble.

23. UNCTAD, 'Investment Trends Monitor', 2021. https://unctad.org/system/files/official-document/diaeiainf2021d1_en.pdf
24. UNCTAD, 'Global Foreign direct investment projected to plunge 40% in 2020', 2020. https://unctad.org/news/global-foreign-direct-investment-projected-plunge-40-2020#:~:text=Global%20foreign%20direct%20investment%20(FDI,UNCTAD's%20World%20Investment%20Report%202020.&text=In%20addition%2C%20FDI%20is%20projected,in%202022%2C%20the%20report%20says
25. IMF, 'Policy responses to COVID-19', accessed 6 March 2021. https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19 More detail available at: Commonwealth Treasury, 'Budget 2020-21', 2020. https://budget.gov.au/2020-21/content/overview.htm#:~:text=Economic%20and%20fiscal%20outlook,-The%20once%2Din&text=At%20the%202019%2D20%20MYEFO,0.3%20per%20cent%20of%20GDP
26. PwC Australia modelling of the long term fiscal position based on Budget 2020-21.
27. PwC Australia, 'Australia Rebooted', 2020. https://www.pwc.com.au/important-problems/australia-rebooted-resetting-economy-after-covid-19.html
28. Productivity Commission, 'Productivity Insights', 2020. https://www.pc.gov.au/research/ongoing/productivity-insights/recent-productivity-trends/productivity-insights-2020-productivity-trends.pdf

FIGURE 4: CUMULATIVE CONFIRMED COVID-19 DEATHS PER MILLION POPULATION BY COUNTRY



Source: Our World in Data, University of Oxford[29]



The Federal Government has been clear about the industries they are prioritising for growth. For example, the October Budget's $1.3 billion Modern Manufacturing Initiative (MMI) is aligned to the National Manufacturing Priorities of: resources technology and critical minerals processing, food and beverage, medical products, recycling and clean energy, defence and space.[30]

To support the supply of skilled labour, the Department of Home Affairs has prioritised 18 occupations for entry to Australia. These include chief executives, medical and nursing roles and several IT roles including software engineers and developer programmers.[31] These policy settings are welcome, however it is not yet clear what support for inward investment in these sectors will be provided. Australia's ongoing ability to undertake nation-building activities is enabled by the United States and other foreign investment bridging the gap between domestic savings and investment opportunities.

The Australian Government should act now to encourage further US investment to fund domestic investment opportunities to support our post-COVID-19 economic recovery. The following sections outline the key regulatory areas US investors consider when choosing an investment destination – and how Australia can build on its strong proposition.

29. Our World in Data, 'Coronavirus (COVID-19) Deaths', accessed 25 February 2021. https://ourworldindata.org/covid-deaths?country=AUS

30. Department of Industry, Science, Energy and Resources, 'Modern manufacturing initiative and national manufacturing priorities announced', 2020. https://www.industry.gov.au/news/modern-manufacturing-initiative-and-national-manufacturing-priorities-announced

31. Department of Home Affairs, 'Priority migration skilled occupation list', accessed 6 March 2021. https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/pmsol

02

REGULATORY **ISSUES** IN AUSTRALIA

REGULATORS MUST FIND A BETTER BALANCE BETWEEN THE PROTECTION OF COMMUNITIES AND ENABLING BUSINESS ACTIVITY AND GROWTH

Regulations set the rules of play for businesses and, when appropriately used, help ensure positive market outcomes such as market integrity, the correction of market failures, and healthy competition. In this sense, regulation is one component of the business environment that makes Australia an attractive proposition for foreign investors.

All regulators face the challenge of balancing the protection of the community with minimising burdens for industry. This responsibility is held by both legislators and a number of domestic Federal, State and Territory government agencies who implement regulatory requirements; some areas are also subject to international agreements which Australia has entered into.

Austrade lists four main areas where regulators play a critical role in investment.[32] To these four, the areas of tax and foreign investment review have been added based on consultation with AmCham members.

32. Australian Trade and Investment Commission, 'Guide to investing', accessed 6 March 2021. https://www.austrade.gov.au/International/Invest/Guide-to-investing/Running-a-business/Understanding-Australian-business-regulation

AREA	DESCRIPTION	EXAMPLES OF REGULATORS, AGENCIES AND OTHER RELEVANT FACTORS
INTELLECTUAL PROPERTY	Patent and trademark protection, domain name registration and design and copyright protection laws.	Australian Copyright Council, IP Australia.
BUSINESS AND ENVIRONMENT	Competition and consumer laws, product liability, environmental legislation and privacy laws.	Australian Competition and Consumer Commission (ACCC), Department of Agriculture, Water and the Environment, Access Canberra, various state fair trading administers.
INTERNATIONAL TRADE	Tariffs, duties, free trade agreements (FTAs) and other regulations pertaining to the international flow of goods and services.	Department of Foreign Affairs and Trade (DFAT), Australian Border Force and various FTAs including the United States (AUSFTA).
FINANCIAL STANDARDS AND REPORTING	Business registrations, minimum capital requirements, financial reporting requirements, accounting standards and Business Activity Statements (BASs).	Australian Accounting Standards Board (AASB), Australian Securities and Investments Commission (ASIC).
TAX	Corporate tax rate, the research and development tax incentive and the ATO's role as a consulted agency in Foreign Investment Review Board (FIRB) review processes.	Australian Taxation Office (ATO), AusIndustry, and various state revenue offices.
FOREIGN INVESTMENT REVIEW	Examination of foreign investment proposals under Australia's foreign investment policy.	Foreign Investment Review Board (FIRB) and the ATO (plus other consulted agencies).

Often special economic zones (SEZs) are used to incentivise inward investment. They achieve this by providing incentives across these six areas and more broadly; for example through time-limited tax holidays, favourable quotas and customs conditions, and supportive labour regulations. Currently there are no SEZs in Australia, this is in part due to constitutional issues such as the limited ability to make concessions at a state level.

FDI REGULATORY RESTRICTIVENESS – INTERNATIONAL COMPARISON

The OECD's 'FDI Regulatory Restrictiveness Index' measures statutory restrictions on FDI across 69 global economies. The index considers the four major types of restrictions on FDI:

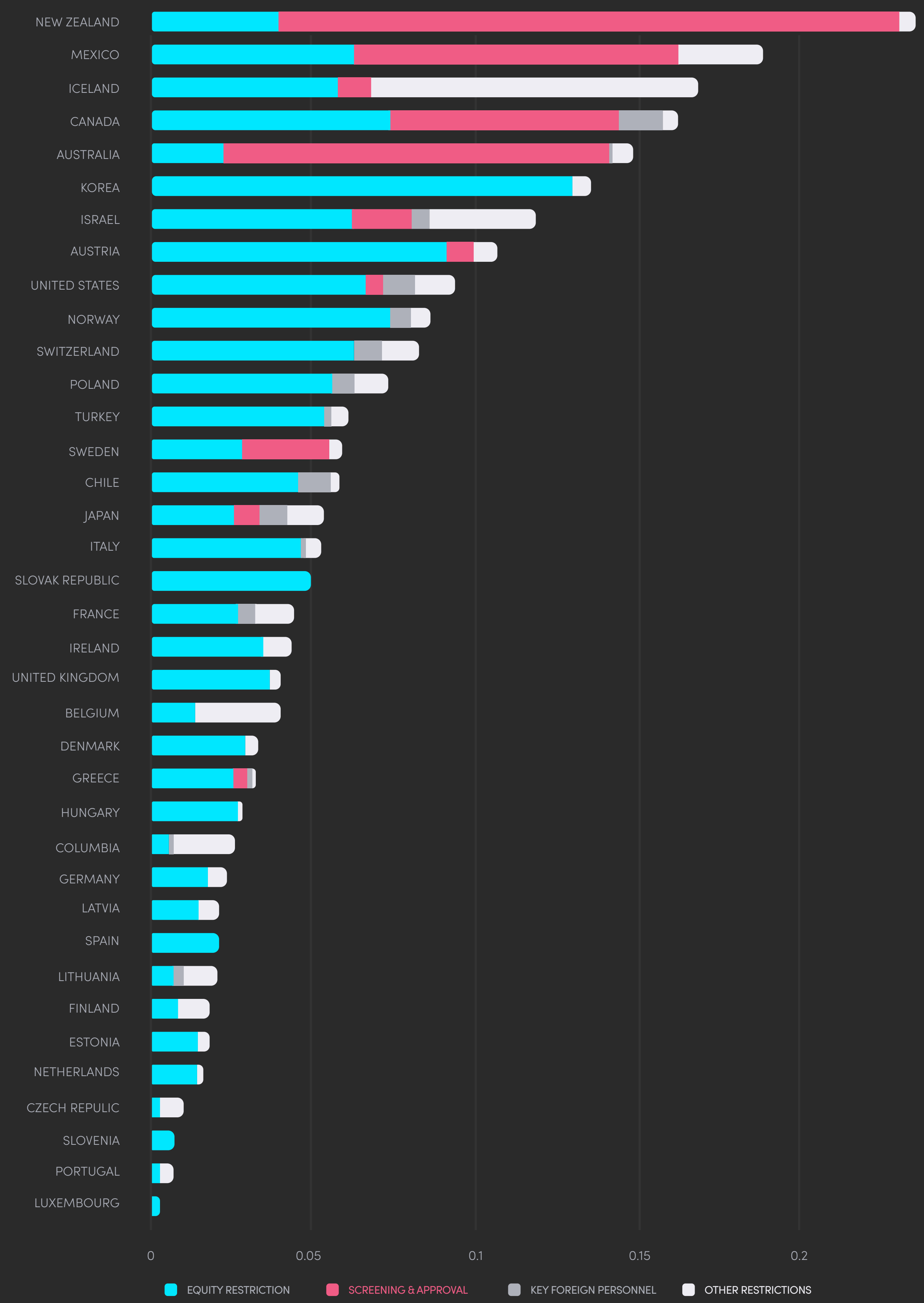
- Foreign equity limitations
- Screening or approval mechanisms
- Restrictions on the employment of foreigners as key personnel
- Operational restrictions (including restrictions on branching, capital repatriation and land ownership).

It is important to note a country's investment climate is a complex issue with influencing factors not captured within the index. For example, regulatory culture and how the rules are applied can vary greatly between countries as well as entry barriers such as state ownership of specific sectors. The index value ranges from 0 to 1, with 1 being the most restrictive.

As of the latest data available for 2019, Australia (0.149) had the fifth highest level of restrictions among OECD countries (OECD average of 0.064). Australia's index has declined from 0.2 in 1997, in alignment with a broad trend of declines across the OECD.

The vast majority of Australia's index was a result of screening and approval mechanism restrictions (~80 per cent). Of the 69 global economies tracked, only New Zealand and Libya have higher levels of restriction by the screening and approvals measure. The air, real estate and communications sectors faced the largest restrictions, as could be expected due to national security concerns.

FDI RESTRICTIVENESS INDEX BY MEASURE, OECD COUNTRIES[A]



[A] OECD, FDI Regulatory Restrictiveness Index, 2020. https://www.oecd.org/investment/fdiindex.htm

PROGRESS HAS BEEN MADE BUT TARGETED DEREGULATION IS REQUIRED TO FURTHER STIMULATE THE ECONOMY

Regulation, and protecting communities, does not come without cost. In 2014, Treasury estimated the direct cost of compliance with regulation across Australia was equivalent to more than 5 per cent of GDP each year.[33] This demonstrates the need to place the burden of proof on regulators to evidence the positive outcomes of market interventions. Where deregulation has been successful in Australia it has protected the community while increasing economic freedom, opening up new markets, increasing competition and enabling flexibility throughout the economy.[34]

The Government's identification of deregulation as a key focus area, and the establishment of the Deregulation Taskforce within the Department of Prime Minister and Cabinet, is welcome. COVID-19 has seen greater urgency and the application of pragmatism in cutting through red tape. Some progress has been made across areas such as simplifying business registers, streamlining export documentation and easing compliance burdens on sole traders and micro-business to hire employees.[35]

More broadly, the Federal Government is actively communicating with the Australian business community through the National COVID-19 Commission Advisory Board. The Commission represents a range of sectors with the purpose of 'providing timely and direct advice from a business perspective to support the Government's management of COVID-19 and its plans for economic recovery.'[36] Developments to date include calls for the government to underwrite new investment in gas pipelines from the manufacturing sector, active business participation in the roll out of COVID-19 vaccinations, and a return of workers to city CBDs.

REGULATORY CULTURE AND MICRO-REFORM ARE CENTRAL TO DELIVERING GOVERNMENT'S DEREGULATORY AGENDA

Key deregulatory levers can be broadly classified into one of three groups:

- **Economy-wide reform:** these are complex policy changes which require significant input, coordination and consensus between multiple governmental departments, agencies and regulators. This includes tax policy, energy policy and industrial relations reform. These issues are politically difficult to address and often require bipartisan support to succeed.
- **Micro-reform:** these are changes which are more precisely focused and narrower in their impacts. This includes changes to FIRB processes, talent and labour regulation and areas of regulatory duplication and complexity. Timely decisions, accountability from senior individuals and regulators evidencing regulations are fit for purpose (as opposed to business evidencing regulations are superfluous) are required.
- **Regulatory culture:** this covers the implementation of regulation as opposed to the law itself. Ensuring the regulatory burden that regulated entities experience is proportionate to the risk being mitigated is vital to well-functioning markets.

33. Douglas, J., Commonwealth Treasury, 'Deregulation in Australia', 2019. https://treasury.gov.au/sites/default/files/2019-03/04_Douglas.rtf#:~:text=Deregulation%20in%20Australia,-Justin%20Douglas1&text=Where%20deregulation%20has%20been%20successful,enhance%20productivity%20through%20deregulation%20remain
34. Ibid, footnote 33.
35. Morrison, S., 'Prime Minister of Australia Address - CEDA's State of the Nation Conference', 2020. https://www.pm.gov.au/media/address-%E2%80%93-ceda%E2%80%99s-state-nation-conference
36. National COVID-19 Commission Advisory Board, Department of the Prime Minister and Cabinet. https://pmc.gov.au/ncc

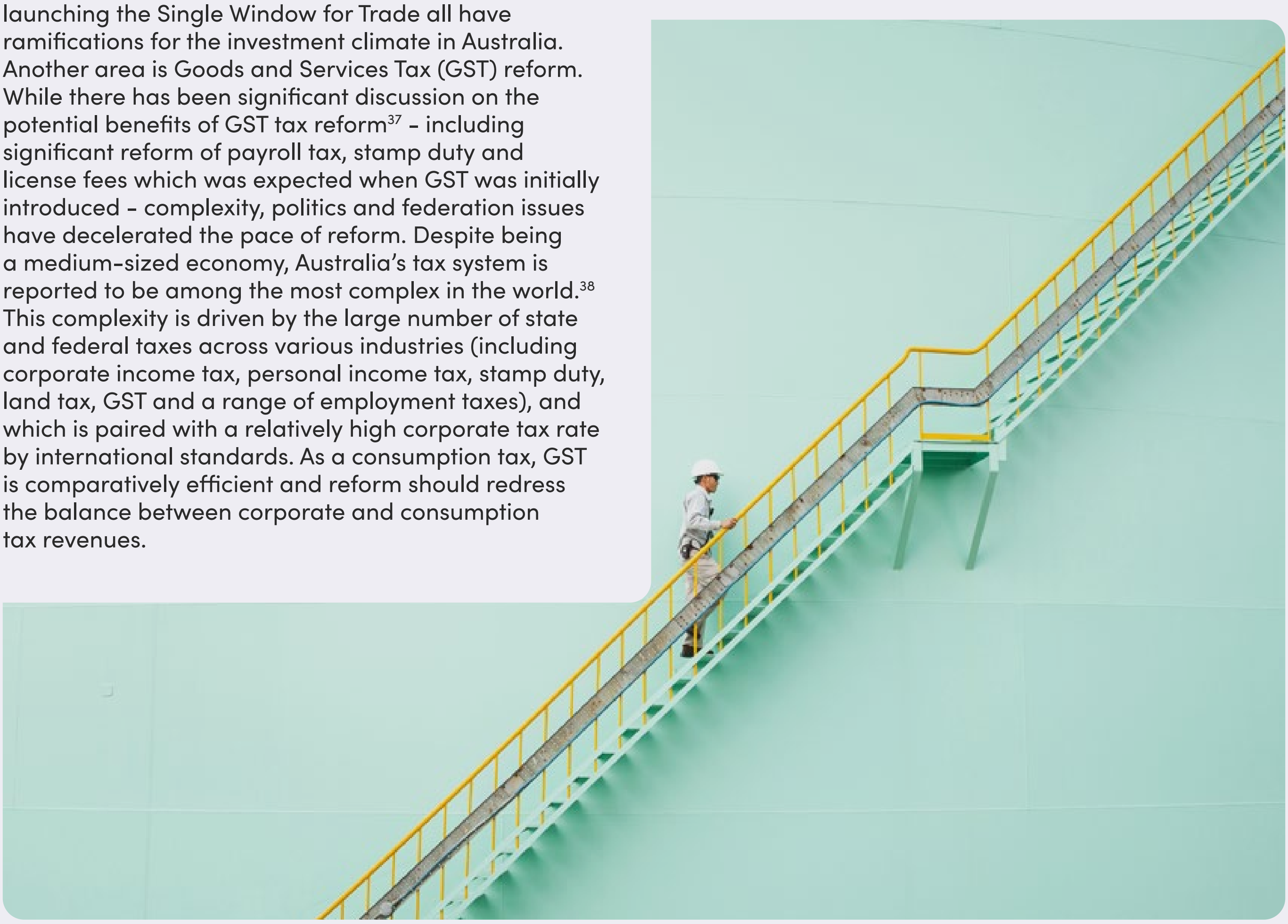
By their nature, economy-wide reforms require greater effort, consensus and therefore time to implement. This makes them potentially less effective when rapidity is required, such as now when Australia looks to continue the transition from a COVID-19 management phase to recovery (however, the difficulty of implementing economy-wide reform has no correlation with the importance or urgency of reform in the longer term). In contrast, regulatory culture and micro-reforms are often easier to change, easier to obtain cross-agency and departmental support and faster in delivering their intended outcomes. For these reasons, the focus of this report is on regulatory culture and micro-reforms. The recommendations in this report provide government a list of clear, distinct changes that could effect significant positive change for US investors in Australia. Many of the specific measures highlighted could also include sunset clauses to reflect the unusual and transitory nature of the current global environment.

However, when considering regulation and the impact it has on foreign investment, it would be remiss to not address economy-wide reforms which generally have greater, enduring impacts in the long term. Changes to energy policy, industrial relations (IR) reform or launching the Single Window for Trade all have ramifications for the investment climate in Australia. Another area is Goods and Services Tax (GST) reform. While there has been significant discussion on the potential benefits of GST tax reform[37] - including significant reform of payroll tax, stamp duty and license fees which was expected when GST was initially introduced - complexity, politics and federation issues have decelerated the pace of reform. Despite being a medium-sized economy, Australia's tax system is reported to be among the most complex in the world.[38] This complexity is driven by the large number of state and federal taxes across various industries (including corporate income tax, personal income tax, stamp duty, land tax, GST and a range of employment taxes), and which is paired with a relatively high corporate tax rate by international standards. As a consumption tax, GST is comparatively efficient and reform should redress the balance between corporate and consumption tax revenues.

While it is not analogous with decreasing headline rates, addressing the complexity of Australia's taxation system is a worthwhile ambition with the potential to impact US corporates' foreign investment decisions in Australia's favour.[39]

Systems with a high headline rate, like Australia's, typically have concessions and deductions that result in a lower effective tax rate. Replacement of these ad hoc deductions with a lower rate for specific types of transactions, or specific to particular industries, could reduce significant complexity. For example, industries particularly negatively impacted by COVID-19 (e.g. hospitality and entertainment) and the six National Manufacturing Priorities sectors (i.e. resources technology and critical minerals processing, food and beverage, medical products, recycling and clean energy, defence and space) could be targeted.

The remaining sections of this report consider areas of regulation which impact US investors, outlining issues and proposed solutions. It is important to note that some of the reforms outlined in this report stand to benefit domestic, US and other foreign investors equally.



37. PwC Australia, 'Where next for Australia's tax system? How GST reform can help reboot prosperity for Australia,' 2020.
38. Hoppe, T., 'Tax complexity in Australia: a survey-based comparison to the OECD average', 2020.
39. OECD, 'Tax effects on Foreign direct investment', 2008. https://www.oecd.org/daf/inv/investment-policy/40152903.pdf. On average, a one percentage point increase in the tax rate on FDI in OECD countries results in a decrease of cross-border flows by around 3.7 per cent.

03

REGULATORY **CULTURE** IN AUSTRALIA

An often overlooked aspect of deregulation is the culture within the regulators themselves. The Prime Minister's sentiment that focus should be applied as much 'to the culture of regulators as it does to the content of regulation' is crucial.[40] Even the most fit for purpose regulation relies on the regulator implementing the intent of that regulation and ensuring the regulatory burden that regulated entities experience is proportionate to the risk being mitigated. The presence of a market failure alone is not enough to justify any and all regulation - regulation needs to be appropriate and not create worse outcomes than the market failure itself. In the current environment, enhanced risk tolerances to encourage investment should be reflected in the everyday decisions made by regulators - small changes leading to large system wide impacts when viewed in aggregate.

THERE IS STILL WORK TO DO WHERE OLD CULTURAL NORMS ARE DELAYING OR IMPEDING BUSINESS ACTIVITY

There are already promising examples where COVID-19 has created urgency to drive regulatory culture change. One such example is the shift from reactive enforcement to a proactive culture of compliance seen in Workplace Health and Safety (WHS) regulators. A focus on education and working alongside industry to improve compliance has been welcomed by business groups. Similarly, statements of intent, such as that issued by Safe Work Australia, have helped provide clear and consistent messaging regarding risk-proportionate approaches and signalled activities for deprioritisation or cancellation.

However, there are examples where regulators can sometimes be too risk averse and shy away from making a decision or at least, a timely decision. Concern that a public servant can make the wrong decision or be blamed for unexpected or unintended consequences can impede efficiency and lead to decisions being delayed, excessive reviews and assessments, or calls for longer than necessary information requests, analysis or consultation.

Two shifts from regulators are required. First, a bias to action is needed; a regulatory culture of 'yes you can... subject to' rather than 'no you can't... unless we say so'. That is, even before specific changes are made to any law or regulation, the culture within regulators needs to move to a positive bias in favour of action subject to the necessary controls and protection being observed. Second, a reduction of regulatory burdens which reduce the cost of compliance for regulated entities is needed. The regulatory burden to industry, including delays, resource intensity and financial costs, should not outweigh the risk to citizens and public servants should be made available where matters are contested.

[40] Department of Prime Minister and Cabinet, 'The Morrison Government's Deregulation agenda', 2020. https://ministers.pmc.gov.au/morton/2020/morrison-governments-deregulation-agenda

FIGURE 5: FRAMEWORK FOR ALIGNING THE CULTURE OF REGULATORS TO THE DEREGULATION AGENDA

REGULAR REVIEW OF THE ROLE AND REMIT OF REGULATORS TO ENSURE THEY REMAIN FIT FOR PURPOSE

REGULATORY CULTURE

01

DEFINE THE 'WAY TO REGULATE' AND ENSURE RELEVANT CAPABILITIES ARE MATURE

- Define the 'way to regulate'
- Align regulator capabilities with role, remit and way to regulate
- Provide government sponsorship of changing behavioral norms

02

ALIGN REGULATOR(S) WITH INTENDED REGULATORY OUTCOMES

- Construct appropriate risk infrastructure
- Exemplify positive traits through best practice examples
- Address the root cause of old culture and unintended reinforcing mechanisms

03

IMPROVE REGULATORY EXPERIENCES

- Solicit feedback from regulated entities to understand compliance burden
- Utilise user journeys to identify priority areas
- Share better practice among regulators

INSTITUTIONALISING URGENCY, PRAGMATISM AND RISK-APPROPRIATE REGULATORY BURDENS

Source: PwC analysis

ACHIEVING POSITIVE ECONOMIC OUTCOMES REQUIRES A FRAMEWORK WHICH ALIGNS REGULATOR CULTURE WITH RISK APPETITE

A regulator's raison d'etre is to produce a market outcome which the free market does not produce independently. This could include remedying a market failure, protecting the environment or increasing competition. These reasons for intervention are defined by government policy and, generally, regulators are created through an Act of Parliament or legislative amendment, under which their terms of reference are defined. In today's ever-changing economic environment, it is vital that regulators' roles and remits are revisited on a regular basis. Does the need for intervention still exist? If so, to what extent? Are the same regulatory mechanisms still fit for purpose? While Government's policy objectives are of paramount importance to answer these questions, it is also important to consider public expectations, the voice of regulated entities and the regulators themselves, when defining the role and remit of regulatory bodies.

Once the role and remit of a regulator has been defined, the issue of regulatory culture should be addressed. An organisation's culture can be defined as "the self-sustaining patterns of behaving, feeling, thinking and deciding, that determine 'how we do things around here".[41] Culture drives behavioural norms and, as evidenced through consultation with industry, there is an underlying belief that the culture in Australian regulators does not support prosperity, productivity and community outcomes to the extent it could.[42] This misalignment can be addressed through three sequential steps, as outlined in Figure 5.

41. PwC Strategy&, 'The Katzenbach Center', accessed 6 March 2021. https://www.strategyand.pwc.com/gx/en/insights/katzenbach-center.html

42. Consultations were carried out with no less than 12 member organisations of AmCham in the production of this report.

01 DEFINE THE 'WAY TO REGULATE' AND ENSURE RELEVANT CAPABILITIES ARE MATURE

The role and remit of regulators defines both the intended market outcomes and the mechanisms available to regulators to achieve these outcomes. However, regulators often have discretion in their 'way to regulate', or in other words, how they carry out their duties. Ways to regulate can take many forms such as enforcement of conduct and compliance, education and capability building, standard setting or a blend of these. Regulation can be applied ex-ante, to prevent unwanted behaviour, or ex-post, to punish behaviour after it has occured.

The answers to these 'way to regulate' questions have ramifications on the capabilities required of a regulator. To illustrate, a regulator whose focus is on setting standards will require proactive 'sensing' capabilities with regard to the sort of community risks that could emerge as market dynamics change, while a regulator whose focus is on enforcement requires deep investigative capabilities. While the 'way to regulate' is likely to be multi-faceted, the resource constraints regulators face will force greater prioritisation of investment in capabilities. An assessment of these capabilities is critical for them to play the role that is required and to do so with effectiveness and efficiency. Poor capability undermines a bias to action and increases inefficiency of interactions with regulated entities.

Lastly, government sponsorship is required to enable regulators to carry out their duties in alignment with their role, remit and 'way to regulate'. When inevitably something goes wrong and an adverse outcome occurs, how government reacts to these failures and responds in the face of stakeholders' dissent is pivotal. Regulators need to operate in an environment where fear of repercussions does not hamper their ability to institutionalise urgency and pragmatism in their processes.

02 ALIGN REGULATOR(S) WITH INTENDED REGULATORY OUTCOMES

Regulators require an appropriate risk framework which is aligned with the policy outcomes set by government, and considerate of public expectations and regulated entities. This should include a risk appetite statement that clearly defines the risks the regulator is willing to accept to achieve its objectives. It should also articulate the regulator's tolerance for variations from these objectives and risk settings, establishing clear expectations for regulated entities and all stakeholders.

To exemplify positive regulator behaviours, government and/or regulators should identify decisions that have illustrated the refreshed risk appetite of regulators. Providing better practice examples is an important step for regulators to understand how the deregulatory agenda translates into tangible differences in decision making and can lead to increased uptake from other parts of the regulatory ecosystem. For example, the statements of intent issued by various regulators over the course of 2020, such as Safe Work Australia on 1 April, provided clear and consistent messaging to industry. Outlining changes to key principles (e.g. a risk-appropriate approach) and signalling which activities would be prioritised, cancelled or less actively enforced, has helped provide both clarity and certainty to businesses.

To instil a new culture, it's important to understand and counteract the root causes of unwanted behaviour. To do so requires an understanding of the current cultural realities that hinder actions which are consistent with both the risk appetite statement (RAS), policy and the regulators role and remit, before determining how these can be counteracted. For example, any inherent risk aversion of regulators will impede a bias to yes, and in fact, creates a tendency for more detailed compliance processes, justification of compliance, checks and balances. Cultural context helps get to the root cause of current behaviours and norms, and will provide clues around how to unlock decisions and actions more aligned to the deregulation agenda.

Feedback from regulated entities is an important data point to understand the compliance burden regulators impose. This feedback is vital because while regulatory systems are set up to protect citizens (e.g. food hygiene standards), most often it is regulated entities and not citizens who interact with regulators (e.g. interactions occur between restaurant owners and Food Standards Australia New Zealand, not restaurant customers). Engaging with regulated entities can enhance clarity, action and ultimately serve as a feedback loop to inform whether regulators are balancing risks and regulatory burdens appropriately. An outcome from this could involve placing time constraints and targets on key processes highlighted as critical by investors.

When soliciting feedback, regulators should be wary of regulatory capture – the process where regulators may not act in the public's best interest due to concerns from interest groups that have vested interests in regulatory outcomes. This is most common where financial stakes are high and there are a large number of customers, resulting in minimal incentives and abilities to influence on a per person basis. Safeguards to minimise regulatory capture include:

- **Increasing the burden of proof to introduce regulation:** where the potential net benefit of regulation is minimal, the costs of regulatory capture will often result in a net cost to society. In these instances, it is better for regulators to not intervene.
- **Simplicity:** where regulations are complex, special interest groups have more influence as regulators rely on industry knowledge to understand key issues. Complexity also reduces the ability of third parties, such as the general public, to scrutinise regulatory outcomes.
- **Openness:** notice and comment rulemaking has the potential to be influenced by special interests, however clear notification and intentional consultation with the broader public are critical to obtaining views beyond narrow industry groups.
- **Judicial review of regulatory decisions:** while reviews do not address regulatory capture ex ante, judicial reviews provide a forum for weaker interest groups to be heard and are particularly effective where the evidence base for enacting regulation is weak.[43]

User journeys should be used to identify key interactions and processes that could be simplified. Not every interaction between regulators and regulated entities needs to be refined so user journeys are instructive for highlighting priority areas. Streamlining symbolic processes has the potential to reduce burden elsewhere in the user journey by setting a precedent.

While Australia's regulators vary broadly in role and remit, all regulators should serve the citizens of Australia. To this end, regulators should liaise with one another, sharing improvements and better practice. This allows for knowledge transfer which can expedite deregulation and allow improvements to be embedded faster than otherwise would have occurred.

While it is important not to preempt any outcomes from applying the risk alignment framework, there are four additional, immediate steps which the Government should take to help close the gap between the current deregulatory agenda and risk cultures pervading Australian regulators.

REGULATORY CULTURE – KEY RECOMMENDATIONS

01 Apply the framework for aligning the culture of regulators to the deregulation agenda to drive positive regulatory outcomes.

02 Gather feedback from current and potential US investors confidentially. Currently, feedback is solicited by regulators on their own activities – usually after decisions are made (e.g. ATO rulings). Government can and should play an independent, third party role and listen to industry. This will enable the identification of priority areas for deregulation and highlight areas where Australia's international competitiveness lags.

03 Reduce uncertainty for investors and improve the consistency of how regulations are applied by placing time constraints and targets on key processes (e.g. a maximum FIRB approval time for US investors).

04 Increase the transparency of regulatory decisions by providing more detailed, timely feedback on the rationale underpinning rulings and key decisions. This should include public servants in key decision making processes being made available where matters are contested.

05 Develop closer Australia-US relations via bilateral meetings between regulatory counterparts from both nations. Regulators could be held accountable to evidence change through annual progress reports to the Treasurer and Parliament.

43. Moss, D.A. & Carpenter, D., Cambridge University Press, 'Preventing regulatory capture – special interest influence and how to limit it', 2014.

04

PROPOSED **MICRO-REFORM**

While appropriate culture is a key determinant of regulatory outcomes, it can not compensate for inadequate, outdated or punitive obligations placed on regulators. In these instances, change in the underlying regulation or legislation is required to achieve intended outcomes. Treasury's expectation of a 9.5 per cent reduction in business investment in 2020-21, and only a partial recovery in 2021-22 of 6 per cent growth, highlights the need for reform which will support investment.[44]

Proposed areas for micro-reform in this report fall into four categories:

4.1	4.2	4.3	4.4
FOREIGN INVESTMENT REVIEW BOARD (FIRB)	TALENT (i.e. human capital)	TAX POLICY	REGULATORY SIMPLIFICATION AND REMOVAL OF DUPLICATION

4.1 FOREIGN INVESTMENT REVIEW BOARD (FIRB)

THE CURRENT REGULATORY REGIME FOR FOREIGN INVESTMENT INTO AUSTRALIA WAS PUT IN PLACE TO PROTECT NATIONAL INTERESTS

The Australian Government assesses investments proposed by foreign persons to determine whether they are contrary to Australia's national interest. The Foreign Acquisitions and Takeovers Act 1975 (FATA) provides the legislative framework for this screening regime. For most business investments, FATA prescribes that government approval is required for acquisitions that involve acquiring a substantial interest (generally 20 per cent or more) of an Australian corporation or business valued above $281 million[45] and any acquisitions by foreign government owned entities. The threshold for investors from certain free trade agreement partners, such as the United States[46], sits higher at $1,216 million.

However nationally sensitive sectors are subject to the lower threshold (including media, transport, telecommunications and various military applications) and all national security business investment are screened irrespective of amount.

The regime was amended by the Government when COVID-19 struck in March 2020 to give it greater control over foreign investment, by removing the monetary thresholds so that the Government had oversight of all foreign investment into Australia, regardless of size or sector. This was primarily to avoid the predatory purchasing of Australian assets during a time of economic distress. Due to the resulting dramatically increased workload of FIRB, evidence from AmCham members shows some investors experienced the timeframe for making decisions extended from ~30 days to up to six months.

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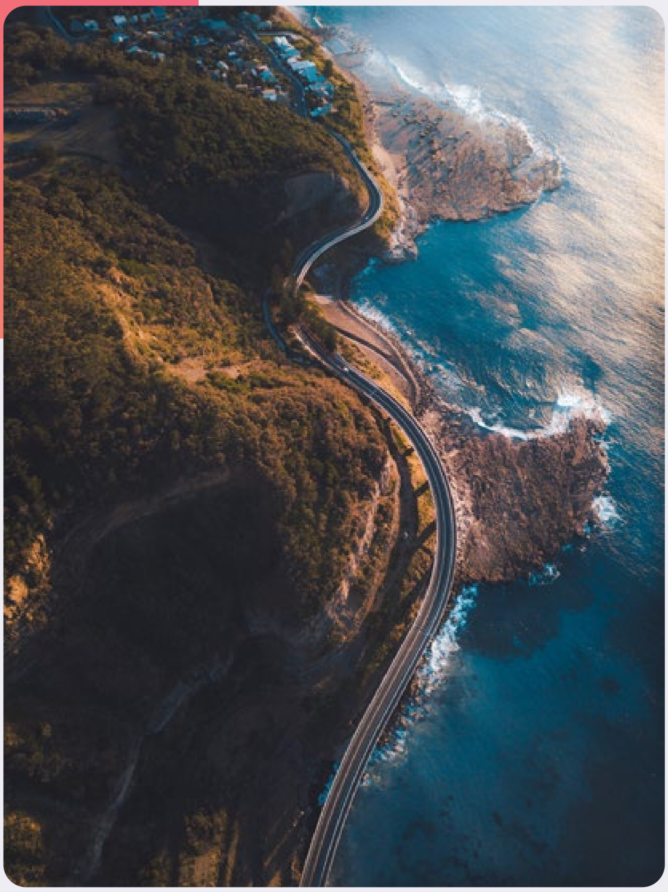
44. Commonwealth of Australia, 'Budget Strategy and Outlook Budget Paper No. 1 2020-21', 2020. *https://budget.gov.au/2020-21/content/bp1/download/bp1_w.pdf*

45. The Treasury, 'Australia's Foreign Investment Policy', 2021 https://firb.gov.au/sites/firb.gov.au/files/2021-01/Australias_foreign_investment_policy.pdf.
Note, for private investors (except those from Chile, New Zealand, Thailand and the United States), a cumulative $15 million threshold applies to agricultural land.

46. The certain FTA partners are: Chile, China, Hong Kong, Japan, New Zealand, Peru, Singapore, South Korea, the United States of America, and any other countries not otherwise listed (other than Australia) for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), done at Santiago on 8 March 2018, is in force (i.e. Canada, Mexico, and Vietnam).



THE CURRENT REGULATORY REGIME CAPTURES A BROAD RANGE OF INVESTMENTS

Australia's current foreign investment framework casts a wide net but ultimately lets a majority of investment pass through. The latest FIRB data shows in 2018-19 over $231 billion of investment was approved, with $103 billion across the commercial ($73 billion) and residential ($15 billion) real estate sectors and $76 billion in the services sector.[48] However, it is not so much the ultimate outcome of the framework that is of concern to US investors, but the process required to reach that outcome. Frustration with the process has been increasing, even before the COVID-19 temporary measures.

Some of the key issues with the current regime include:

- Consultation by FIRB with a range of other regulatory agencies ("consulted agencies") as a standard part of its review process, including the ATO and ACCC among others. In circumstances where the foreign investment decision is based in policy not in law, this allows agencies to reach beyond their usual powers to make decisions for policy reasons, rather than based on the application of the relevant laws governed by that agency. If FIRB moves from its intended gatekeeper role to that of a regulator it removes the usual rights of appeal against decisions which domestic investors avail of; requiring US investors to obtain ex-ante approval from consulted agencies without the ability to legally challenge rulings.
- The fact that approval decisions can be policy based and not based on specific legislative criteria creates uncertainty that criteria might move unexpectedly. Further, as the decision is made by politicians, decision making is capable of being influenced by broader political factors.
- Global transactions where Australia plays a minimal role generally still require FIRB approval, meaning that global deal activity can be hampered by the need for foreign investment approval in Australia. This also has negative impacts on Australia's perceived openness to investment from the United States if it is too regularly seen as an impediment (as evidenced by AmCham member feedback).
- Transactions that do not cause an effective change in ultimate beneficial ownership can still be caught by the regime, for example restructures that transfer ownership to a different group member or pre-IPO restructuring.
- The detailed and unlimited tracing provisions in the FATA for interests in a company where investors do not have a controlling stake in the company broadens the reach of the framework.

As of 1 January 2021, the pre-COVID-19 monetary thresholds for 'notifiable actions' and 'significant actions' were reinstated, with the exception of a new 'notifiable national security actions' category. Further permanent changes with effect from 1 January 2021 included[47]:

- A new 'national security business' category which significantly expands the Critical Infrastructure Centre's (CIC) scope of business coverage.
- Narrowing the 'money-lending' exemption.
- 'Call-in' powers which grant the Treasurer the ability to review actions, where FIRB approvals were not obtained, within a ten year period, irrespective of value.
- 'Last resort' powers which grant the Treasurer the ability to review actions, where FIRB approvals were previously obtained. This introduces aspects of retrospectivity to the approval process.

47. As per the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020.
48. Foreign Investment Review Board, 'FIRB Annual Report', 2018-19. https://firb.gov.au/sites/firb.gov.au/files/2020-05/FIRB-AR-2018-19.pdf

- The higher foreign investment screening threshold, available for countries with whom Australia has entered into FTAs, do not apply if there are entities inserted between the Australian company and the ultimate parent company, even if the ultimate parent company (or its controllers) are residents of a free trade country. For a trusted ally such as the United States, this is a disproportionately prohibitive restriction.
- The expansive definition of foreign government investor means that many private US investors (e.g. private equity funds) can be considered to be foreign government investors where the US government invests in their fund.
- Continuing change in the regulatory environment, particularly the circumstances in which approval is required and the ability to allow retrospective consideration of past transactions, creates uncertainty for investors about the exit alternatives that might be available. This uncertainty affects valuations of assets today.
- The high fees required when submitting an application, particularly in light of the fact that not all of the fee revenue collection is used for the operation of FIRB, means that the fee is more akin to a tax on investment rather than a fee for service (fees raised over seven times the revenue required to fund FIRB in 2017-18).[49] The new maximum fee of $500,000 (as of 1 January 2021) is an increase of 367 per cent from the previous cap of $107,100. The high level of fees is exacerbated when there is a competitive auction process and the seller requires all bidders to seek FIRB clearance as part of the auction process, leading to FIRB receiving multiple fees for a single transaction.
- New 'call in' powers permit the Government to review foreign investments that did not require approval at the time of investment, for up to 10 years from when the investment in question was undertaken. The length of time exacerbates uncertainty and risk for investors, particularly for long term and capital intensive investment propositions. Similarly, the introduction of 'last resort' powers permits review of a decision approving an investment for national security reasons where there has been a material change in circumstances. Both of these powers introduce significant uncertainty and sovereign risk to foreign investors in Australia which are likely to be a significant deterrent to foreign investment.

The impact of these issues drive three potential outcomes:

- The inclusion of a wide range of transactions that are highly unlikely to raise any policy issues.
- Uncertainty due to policy basis for decision making, changing regulatory landscape and retrospective application of the call in and last resort powers.
- Elongated time frames and costs to comply.

The Australian Government states that it welcomes, and needs, foreign investment and that it is vital to Australia's long term economic success and capability. However, the current regime introduces elements into deals that are often seen as the two biggest barriers to successfully getting deals done: uncertainty and time. In a global market for capital, Australia must look at ways to reduce these barriers and ensure that its regulation of foreign investment is not seen as an undue impediment to US investment in Australia.

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49. Productivity Commission, 'Foreign Investment in Australia Productivity Commission Research Paper', 2020. "In 2017-18, the government collected $114 million in fee revenue, while the operational costs of FIRB and its secretariats in the Treasury and the ATO totalled only $14.7 million."
The new fee framework is comparable to some other international jurisdictions. For example, maximum filing fees in the United States are US$300,000 (~$390,000). A $1 billion acquisition would cost the full fee in the United States in comparison to approximately $277,200 in Australia.

STEPS COULD BE TAKEN TO ENSURE US INVESTMENT IS NOT UNDULY DETERRED WHILE NATIONAL INTERESTS ARE STILL PROTECTED

FIRB plays a critical role protecting Australia's national interests and this important function must continue unimpeded - but there are opportunities to recalibrate the work of the Board so that it is targeting the types of foreign investments Australia ought to be avoiding, while ensuring more appropriate investments aren't unduly delayed.

A very high proportion of investment applications are approved without comment and only standard conditions. However, it is clear that in the market, FIRB requirements do place a significant burden (in terms of certainty of outcome and time to complete deals) on foreign investment, as well as reducing flexibility for foreign investors after they have made an investment. There are a range of measures that the government could pursue that would improve Australia's competitive position as a destination for US investment, and other trusted allies, without materially reducing the government's ability to screen concerns from a national interest perspective for investment from other destinations. Measures should include steps that reduce the breadth of transactions caught by the regime, reduce the timeframe for dealing with less contentious transactions and improve the ability of parties to assess the risk of a particular transaction.

In practice, there are a number of possible improvements:

- **Reduce unnecessary uncertainty caused by processes being driven by policy considerations rather than legislative or regulatory principles:** The Government could provide significantly more guidance around the application of its foreign investment policy to assist US investors to meaningfully assess the risk of significant issues or delays in transactions or with particular investors. The recent introduction of guidance notes has been helpful in this regard, but could go further. The blurring of lines between regulator and gatekeeper that is caused when FIRB consults with other agencies also creates uncertainty as those agencies adopt policy positions in addition to their powers under relevant legislation. Greater clarity and certainty could be achieved for US investors if these policy positions became part of the legislative framework that is administered by those agencies, rather than unwritten policy positions.

- **Introduce a pre-approval process so that US sellers could seek FIRB's pre-approval for the sale of an asset to specific types of investors:** This would create more certainty for US sellers and significantly reduce deal timeframes. It could also stimulate greater participation by global investors in sale processes as it would reduce risk and timeframes.

- **Introduce materiality thresholds for Australian components of global deals:** There have been examples of large international deals, with as little as 1 per cent Australian component, which have been delayed due to FIRB's elongated timelines in the past six months. While it is necessary to test incoming investment for national interests, how Australia is perceived abroad is also important. There is a growing perception among US dealmakers that Australia does not welcome investment or is not an easy place to do business. While these conclusions are incorrect, FIRB may be an investor's first or only interaction with the Australian Government and perceptions are important - delays, complexity and expense for approvals are not conducive to investment.

- **Explore bilateral country solution:** FATA discriminates based on an investor's resident country. For example, a $1,216 million threshold applies to certain FTA countries (except for prescribed sensitive sectors) instead of the standard $281 million threshold.[51] However, the utility of the higher threshold is often lost due to investment structures which involve entities in non-FTA countries. The increased thresholds should apply based on the US residence of the ultimate controller regardless of the other jurisdictions through which the investment is made.

  Bilateral solutions could also be extended in magnitude to existing higher-threshold countries and extended in breadth to other trusted nations. Given the current geopolitical climate, FTAs may no longer be as appropriate an identifier of bilateral solutions as they once were. Consideration of a country's current international relations and investment history with Australia should be central to identifying partners. Given this, the United States is a clear first candidate for any proposed passporting or pre-vetting solutions.

- **Create a passporting system for regular US investors:** Where investment firms have a demonstrated track record of appropriate and prudent decision making, a lighter touch regulatory approach could suffice. For example, a system which facilitates US vendors obtaining passporting/pre-clearance rights on an annual basis, as opposed to deal-by-deal, could reduce the time cost for both investors and FIRB. The current exemption certificate process does achieve this to a degree, however the time and effort involved in obtaining the certificate, as well as the restrictions on size and nature of deals that can be done under the certificate, limit its effectiveness. Fast track approvals are appropriate in non-defence related investments or where minority investment in defence occurs and Australian entities retain management control.

50. Ibid, footnote 48. In 2018-19, 8,725 of 9,466 applications considered, excluding variations, were approved. Of these 8,725, only one was outright rejected. While there was only one formal rejection, applications which are not likely to be approved can be withdrawn rather than formally rejected.

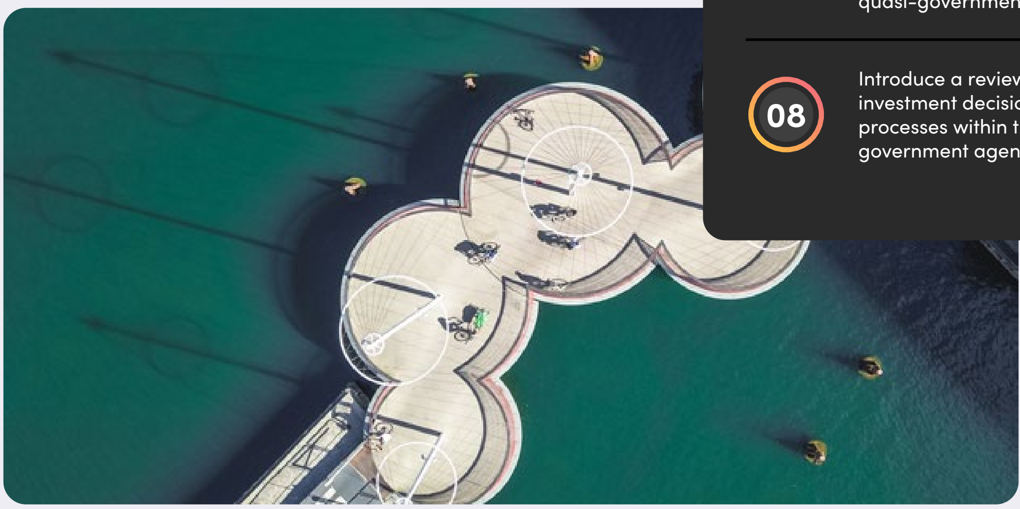
51. Ibid, footnote 45. The United States of America, New Zealand, Chile, Japan, the Republic of Korea, China, Singapore, Peru, a country (other than Australia) for which the Comprehensive and Progressive Agreement for Trans Pacific Partnership, done at Santiago on 8 March 2018, is in force (CPTPP) (as at 1 January 2020, the CPTPP is in force for: Canada, Japan, Mexico, New Zealand, Singapore and Vietnam), and the region of Hong Kong, China.

- **Limit the need for approvals of restructures with no effective change of control:** FIRB approval is required for restructures of foreign investments irrespective of changes of control or their potential impacts on the domestic economy. A recent example of this inefficiency, drawn from the AmCham membership, occurred when a United States-owned company, which owned an Australian asset, was seeking to move under a wholly-owned subsidiary prior to an Initial Public Offering (IPO) on the ASX. This transition required FIRB approval, adding time and cost to the deal, with no effective change of control and that was facilitating a transaction that would ultimately reduce foreign ownership of the company through the IPO.
- **Amendment of the treatment of quasi-government funds:** Section 17 of the Foreign Acquisitions and Takeovers Regulation 2015 defines 'foreign government investors' for the purposes of FIRB.[52] A strict reading of the regulation means quasi-government funds (such as US public service pension funds) can be classified as foreign government investors and therefore fail to obtain exemptions which non-government funds achieve. As part of the broader FIRB reform package, the Government relaxed this stance.[53] This should see exemptions for certain investors previously classified as foreign governments where no foreign government has or could be perceived to have influence or control. How this is implemented in practice is not yet clear. What is clear however is that many market-standard US private equity funds will not fall within the new exemptions, meaning they may have little practical application.

Building on this, a review process should be implemented as there is currently no appeal or review process against FIRB decisions. Similarly if tax conditions set by FIRB are breached, there are significant potential consequences including divestment of the asset. In many cases, the matters addressed through FIRB and the conditions imposed could be appropriately addressed through normal ATO review activity after the acquisition has occurred.

FIRB - KEY RECOMMENDATIONS

01	Provide clarity and certainty through the provision of guidance about the application of foreign investment policy, for example, by outlining types of investments and investors that are unlikely to raise national interest concerns and by enacting as law the policy positions of consulted agencies.
02	Introduce a pre-approval process to allow US sellers of specific assets to seek pre-clearance for sale to particular types of investors.
03	Introduce materiality thresholds for Australian components of global deals and recognise the significance of Australian components of deals.
04	Introduce new and expand existing bilateral country agreements with the United States (and other trusted nations where appropriate). Make existing agreements more effective by allowing investment structures involving entities in countries outside of the agreement without losing the benefit of the agreement.
05	Introduce a passporting system for regular US investors which enables an expedited process for firms with a reliable track record.
06	Limit the need for approvals of restructures with no effective change of control.
07	Ensure the treatment of US quasi-government funds does not unnecessarily restrict capital flows, particularly as global investment capital is increasingly being deployed through funds in which quasi-government investors invest.
08	Introduce a review process, or combine foreign investment decisions with existing review processes within the ATO and other relevant government agencies.



52. Australian Government, 'Foreign Acquisitions and Takeovers Regulation', 2015. https://www.legislation.gov.au/Details/F2020C00820
53. The Treasury, 'Foreign investment reforms', 2020. https://treasury.gov.au/sites/default/files/2020-06/p2020-87595_0.pdf

4.2 TALENT

Deep talent pools are a prerequisite for most multinationals before investing in a foreign country. Without an adequate number of skilled people to perform business activities, US multinationals will be reluctant to locate in Australia. As technological advancement accelerates, and manual, unskilled tasks increasingly become automated, this relationship will only strengthen in nature and access to skilled talent will become an increasing restraint on investment activities. Recent data from the United Nations and World Economic Forum confirms this; as average skill and education levels within a workforce rise, countries tend to attract a greater number of greenfield FDI projects.[54]

Investment in training and education is a vital part of building Australia's skilled workforce. Another aspect is encouraging labour mobility, which enables the flow of talent between industries and sectors. Encouraging mobility also benefits the recipient country through reducing inequality. As FDI projects often attract global talent and inflate wages in hot labour markets - widening the wage gap between skilled and unskilled in the recipient country - flexible labour markets with high absorptive capacities can help mitigate this risk and ensure all Australians benefit from FDI.[55]

ACCESS TO FOREIGN TALENT IS CRITICAL TO GROWTH

Australia is a nation with a rich migration history. Since World War II, the Australian Government has used migration as a vehicle to grow the population and build the economy through job creation, trade and foreign investment. In the 1990s, the Government recognised the need to use Australia's temporary migration program as a way of sourcing the skills and talent required to meet industry needs across such a resource-rich country. The Temporary Work (Skilled) visa (subclass 457) program was introduced in 1996 to drive this agenda and offer business a pathway to employ foreign labour and grow foreign investment. The subclass 457 program underwent many changes during its 22 years in existence, largely sparked by political debate around protectionism and ensuring jobs for Australians, until its recent replacement in 2018 by the Temporary Skill Shortage (otherwise known as subclass 482 or TSS) visa program.

54. United Nations Conference on Trade and Development (UNCTAD), 'World Investment Report', 2020. World Economic Forum (WEF), 'Global Competitiveness Report', 2019.
55. Becker, B., Driffield, N., Lancheros, S. et al., 'FDI in hot labour markets: The implications of the war for talent', 2020.

It is vital that a migration program supports a country's foreign investment strategy offering the versatility needed to drive government and commercial agendas. A consistent philosophy by Australian governments has been to largely rely on a single visa subclass for most roles and employment arrangements. While various regulatory permutations have been introduced over the years to address some of the specific needs for particular industries and occupations, most long term foreign workers are effectively taken through the same process, assessed against the same criteria and obtain the same Australian work visa irrespective of the intended employment arrangement.

Australia needs to upskill and attract talent to remain competitive to US investors in a global environment and existing government initiatives, such as the Global Business and Talent Attraction Taskforce, reflect this. Prior to COVID-19, 75 per cent of businesses in Asia-Pacific reported a significant digital skills gap within their industry.[56] Traditionally Australia has helped grow its skilled workforce through immigration; COVID-19 exposed issues with this reliance but additionally complications in the system don't make it easy to attract and retain international talent.

This multifaceted agenda on the part of government, business and the individual can not be met through a visa program adopting traditional notions of employment structures, role classifications and talent.

It is important for an immigration program to be applied in a consistent manner for expediency and fairness. However, this needs to be balanced with the context of the world we live in; an era characterised by disruption and increasing competition for talent with companies vying to claim their industry edge; a volatile geopolitical environment where safety, security and stability are now high on the employee's agenda; innovation and the need for governments to attract the necessary talent for economic growth; and a new post COVID-19 virtual work environment adopting new ways of working.

At a minimum, Australia should reciprocate special considerations afforded by the United States and other trusted nations. For example, the E-3 visa provides Australian citizens the opportunity to immigrate to the United States with limited restrictions and indefinite renewability (on a 24 monthly basis). While Australia's subclass 482 or TSS extend Americans similar rights, these visas are open to all nationalities and there is no priority for US citizens.

RESTRICTIONS AROUND EMPLOYMENT RELATIONSHIPS UNNECESSARILY RESTRICT MOBILITY

The regulations and policy underpinning the TSS visa program have been unable to keep up with the pace at which new roles are being created, the need for new flex employment arrangements, and the complexity of how businesses operate through structures such as joint ventures and strategic alliances.

- **Creation of new roles:** The Australian Government has been driving the conversation around talent attraction and upskilling over the last year, which has been accelerated by the fallout of COVID-19 and its impact on the Australian jobs market.

  In order to sponsor a foreign worker to work in Australia on a TSS visa, employers must nominate the individual in an occupation that appears on the relevant skilled occupations list. The occupation codes are derived from the Australian and New Zealand Standard Classification of Occupations (ANZSCO) which was first released in 2006. While there have been minor revisions to this list since its inception, the list does not offer the elasticity required by companies that are looking to innovate, diversify or take on talent to work in new and emerging roles.

  The traditional approach of matching a job description to an occupation on an outdated list is not conducive to the workforce that exists today or the pace at which it is evolving. For example by 2026, it is estimated that Australia will require an additional 17,000 cybersecurity professionals to ensure Australia's digital security.[57] Narrowing this gap is a vital step to attracting US investors, particularly in the technology sector, to Australia.

  Government should rethink its approach to occupation classifications and to offer a degree of flexibility so that Australia is not losing critical talent due to an outdated assessment of skills. As an example, New Zealand has limited the role of ANZSCO in the assessment of sponsored work visa applications. While it is still used to classify jobs in New Zealand, ANZSCO is no longer used to determine if a role is low, medium or highly skilled. Instead, the skill level of a role is determined by a median wage calculation, which also informs the duration of the visa. The use of a median wage to determine the eligibility and length of visas would allow the TSS visa program to be more responsive to labour market fluctuations than a skilled occupation list allows. Closer to home, the Global Talent Visa Program provides a streamlined pathway for highly skilled professionals to work and live permanently in Australia without ties to a specific occupation or employer. This program provides a base for government to build on, with an income threshold of $153,600 meaning only 4 per cent of skilled immigrants utilised this pathway in 2019-20.

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56. Asia-Pacific Economic Cooperation (APEC), 'Close the Digital Skills Gap by 2025 through Collaboration', 2019. https://www.apec.org/Press/News-Releases/2019/0719_Digital
57. IBM, 'Unique Partnership in Australia Will Foster the Next Generation of Cyber Security Experts', 2020. https://newsroom.ibm.com/2020-10-28-Unique-Partnership-in-Australia-Will-Foster-the-Next-Generation-of-Cyber-Security-Experts

- **Employment structures:** As competition increases in the business market, so does the complexity in how employment relationships manifest. This is particularly relevant in the context of large infrastructure and engineering projects where ownership, funding and risk is spread across multiple parties through the creation of a new legal entity in the form of a joint venture or similar relationship. Skills may need to be sourced from a talent pool that sits outside of the contracting parties. This creates a myriad of issues when it comes to the sponsorship of that individual, under Australia's immigration program, due to the need for an employment relationship to exist (under a written contract) between sponsor and visa holder.

  The need for a nexus between the sponsoring entity and the 'employer' of the visa applicant is an outdated concept when it comes to such complex employment relationships. That does not mean the skills of the individual are not needed in Australia or the role is not at the requisite skill level to qualify for a visa. Rather, this is an example of where Australia's immigration program needs to keep up to speed with the pace at which employment relationships and structures are evolving. This need should be tempered with appropriate protections to guard against the exploitation of visa holders.

Linking visa applicant's skill levels to media salary calculations would provide better data on visa holders in the lower skill category that is arguably most susceptible to exploitation. Increased monitoring could then be dedicated to this cohort to safeguard them from risk.

In the competitive search for global talent, employers are also adopting new ways of attracting the best and brightest through incentives, such as flex work arrangements and offering a pathway to Australian permanent residence. Australia's employer nominated permanent residence program is premised on the requirement for an employee to have worked in the same role for at least three years with their nominating employer. At a time where the Government is driving the message for employers to upskill, reskill and innovate their workforce, this immigration requirement is counterintuitive to the wider agenda around workforce planning. There is a need for Australia's immigration program to play into the Government's wider policy initiatives in order to attract further US investment and global talent.

PROMOTION OF THE QUALITY OF LOCAL TALENT AND OUR EDUCATIONAL STANDARDS IS REQUIRED

Australia has a rich and diverse blend of tertiary academic institutions which, pre-COVID-19, equipped around 4 million students each year.[58] No less than seven of Australia's universities are ranked in the top 100 globally, and their ability to stand on the global stage has been a key factor in attracting foreign students in recent years. The tertiary education sector generates almost $40 billion of exports annually and employs around 200,000 people.[59]

However, the sector is experiencing significant financial challenges due to COVID-19 related travel restrictions. Estimates of lost international student income in 2020 have been as high as $3.5 billion.[60] This is before indirect impacts such as consumption and tourism related spending are considered. Notwithstanding these challenges, the sector clearly provides a well educated talent pool that should be attractive to US investors. Among the 37 OECD nations, only seven have a higher percentage of tertiary educated (i.e. bachelor's degree and above) 25- to 34-year-olds than Australia.[61]

In the recent past, the Federal and State Governments, alongside universities, have marketed themselves primarily to potential overseas students and their parents. The fact education services are Australia's fourth largest export category, behind only commodities, reflects their relative success.[62] While the export revenue generated is welcome, not enough is being done to promote the quality of Australia's university system, talent pool and research facilities.

This is particularly important in light of initial indications of international student enrolment declining by ~10 per cent in 2021 – a more than 20 per cent decline on pre-COVID-19 projections.[63] A steady talent pool and access to leading facilities is often a key consideration for potential investors from the United States. Government should consider increasing the focus on marketing our talent and our world class research as part of a campaign to attract US investment.

SIMPLER AND MORE CONSISTENT RECOGNITION OF OVERSEAS PROFESSIONAL QUALIFICATIONS CAN EASE ADMINISTRATIVE BURDENS

While Australia's vocational and higher education system are among the world's best, many talented and skilled migrants remain under-utilised in the local employment market as their qualifications from their country of origin are not recognised here. For US organisations wishing to relocate or extend into Australia and bring employees with them, navigating these requirements can be complex and difficult.

At present, an individual wishing to have their overseas qualifications recognised in Australia as part of a visa application is faced with a myriad of regulatory challenges. These include different organisations offering qualification assessment services, differences between how qualifications and licenses are recognised in the various states and territories, and different licensing requirements in the states and territories depending on the industry body and state regulatory requirements. Many organisations are accredited to undertake qualification assessment and fees vary depending on type of qualification, sector and level.

58. PwC Australia, 'Where next for tertiary education?', 2020. https://www.pwc.com.au/government/where-next-for-tertiary-education.pdf
59. Reserve Bank of Australia, 'The COVID-19 Outbreak and Australia's Education and Tourism Exports', 2020. https://www.rba.gov.au/publications/bulletin/2020/dec/the-covid-19-outbreak-and-australias-education-and-tourism-exports.html. The employment estimation comprises an estimated 130,414 FTE in Higher Education and estimated 71,379 VET employees who are trainers and/or assessors.
Department of Skills, Education and Employment, '2020 Staff Numbers', 2020. https://www.dese.gov.au/higher-education-statistics/resources/2020-staff-numbers.The QS World University Rankings for 2021 placed The Australian National University, The University of Sydney, The University of Melbourne, The University of New South Wales, The University of Queensland, Monash University and The University of Western Australia within the top 100.
60. University of Melbourne, 'Modelling Individual Australian Universities Resilience in Managing Overseas Student Revenue Losses from the COVID-19 Pandemic', 2020. https://melbourne-cshe.unimelb.edu.au/__data/assets/pdf_file/0009/3392469/Australian-Universities-COVID-19-Financial-Management.pdf
61. OECD, 'Population with tertiary education', 2019. https://data.oecd.org/eduatt/population-with-tertiary-education.htm 25-34 year olds with a tertiary education. percentage in 2019
62. Ibid, footnote 16.
63. University of Melbourne, 'University announces preliminary financial results for 2020', 2021. https://about.unimelb.edu.au/newsroom/news/2021/february/university-announces-preliminary-financial-results-for-2020

For individuals from overseas who are already living in Australia, and want to have their qualifications recognised, each state has its own unit specialising in this and its own, different process to follow. It is difficult for individuals to know where to start, how much to pay, who provides the best service, and what the requirements are for their particular job role, industry, state and type of qualification.

While these requirements are essential for maintaining a high quality and professional workforce, for US organisations wishing to relocate or extend into Australia and bring employees with them, navigating these requirements can be complex and difficult. If US investors could access the full range of talent available in Australia, including allowing those with overseas qualifications to operate at full value, then Australia would stand to benefit from additional economic activity.

Government should consider streamlining and accelerating the processes for qualification recognition from trusted, reputable institutions. With advances in technology, artificial intelligence (AI) is now being used to assess similarities between qualifications, in terms of content and level. A new system for qualification recognition, which leverages this technology upfront followed, where necessary, by practical demonstration of skill, could both simplify and accelerate this process and remove one of the complexities for organisations wishing to access a skilled and qualified talent pool.

For individuals wishing to move from one state to another in Australia, there are often regulatory and licensing differences, particularly in heavily regulated industries such as mining, that mean that reassessment and re-licensing to practise is necessary. While each state has an overseas qualification recognition unit, these provide high level equivalence checking to assess the level of a qualification against Australia's standards. They do not address technical capability or compliance with regulation. Once again, individuals have to approach another body to further investigate and assess the compliance of their qualifications, this time with state policy. Consideration should be given to achieving parity across states, such that industry-specific regulation and licensing requirements are aligned, and states have a common qualification recognition policy.

TALENT - KEY RECOMMENDATIONS

01 Australia should reciprocate special considerations afforded by the United States, and other trusted nations. This should include the E-3 visa program.

02 The government needs to reconsider the efficacy of the occupation classification requirement under the TSS visa program in a setting rife with competition for US investment and characterised by reskilling, upskilling and rapidly emerging new jobs.

03 Immigration policy needs to reform to take into consideration new forms of employment relationships, business structures and workforce arrangements.

04 The government should consider decoupling the assessment of skills from ANZSCO and instead adopt median wage calculations to assess skill level and determine visa duration.

05 Regulatory criteria around pathways to permanent residence needs to reform and coexist with talent attraction strategies so that the best and brightest are incentivised to relocate to Australia and encouraged to diversify rather than remain static for purposes of meeting outdated eligibility criteria.

06 Increase proactivity and advocacy of Australian academic institutions and the strong pipeline of skilled labour Australia produces which can support US businesses in Australia.

07 Streamline and accelerate the processes for qualification recognition to enable US talent mobility and mobility within Australia.

4.3 TAX POLICY

As outlined in section 2, wholesale tax reform including GST is a politically arduous process. While this difficulty has no correlation with the importance or urgency of broader tax reform, the focus of this section is to provide government with recommendations for reform which have the potential to effect change now for US investors.

THE TAX APPROVAL FRAMEWORK REQUIRES STREAMLINING

The important and necessary role of FIRB, and how largely safe and beneficial US investment should be streamlined, is outlined in detail in section 4.1. Specifically regarding the overlap between FIRB and tax policy, the increasing use of the Australian Tax Office (ATO) as a consulted agency is an increasing impediment to timely approvals.

Most often the impediment is a result of an onerous information request. Providing details of the tax consequences of each individual step in a transaction, details of the tax consequences of any distribution that may be made by an Australian entity following a transaction (including foreign tax consequences), and consideration of a number of taxpayer alerts can prove demanding for potential US investors and are often subject to significant uncertainty prior to business activities actually being set up. Responding to these questions often takes up significant management time, and the risk of delay through this process can impact both commercial decisions and the competitiveness of transactions.

In place of the existing list of questions, a streamlined FIRB process could be introduced in respect of certain types of investor or investments from the United States. Under this process, a set of tax conditions could be agreed by the applicant up front, with the ATO being able to follow up with the investor after the FIRB process, post-acquisition. The goal of such a regime would be to ensure that tax administration does not become an unnecessary impediment to US investment in Australia and that tax matters can largely be examined outside of the FIRB process (without any disagreement resulting in a penalty or mandatory disposal event).

AUSTRALIA'S TAXPAYER ADVOCACY BODY IS UNDERFUNDED

The ATO is subject to the oversight of the Inspector General of Taxation and Taxation Ombudsman (IGTO). The IGTO reviews the performance of the ATO on a system-wide level, and additionally processes complaints from individual taxpayers. A key function of the IGTO is to assist in minimising disputes – which improves tax administration, red tape and compliance costs generally and for all taxpayers. However, the IGTO remains significantly underfunded compared to, for example, its US counterpart, the Taxpayer Advocate Service (TAS).[64]

The independence and capability of the IGTO could be improved by a relatively modest increase in funding (relative to the ATO's budget), and via a set of governance improvements - such as limiting the appointment of the Inspector-General to a single non-renewable 10-year term (as opposed to renewable 5-year terms as is currently the case). Increased funding and independence will allow the IGTO to take a more active role in monitoring the economy-wide performance of key ATO functions, and will also allow taxpayers to have a prompt and proactive liaison in the event of a dispute with the ATO.

Expansion of the IGTO's capabilities could help to foster an efficient and fair experience for taxpayers, and would assist in developing Australia's reputation as a business-friendly jurisdiction - particularly for US investors that are accustomed to a similar function.

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64. The IGTO's annual budget is equivalent to 0.2 per cent of total ATO funding in contrast with TAS funding equivalent to 2 per cent of total IRS funding. Department of the Treasury Internal Revenue Service, 'Congressional Budget Justification and annual performance report and plan', 2020. https://home.treasury.gov/system/files/266/02.-IRS-FY-2020-CJ.pdf
Inspector General of Taxation, 'IGTO annual report FY20', 2020. https://www.igt.gov.au/sites/default/files/2020-10/IGTO%20Annual%20Report_FY20_FINAL.pdf

RELATED PARTY DEBT IS A SOURCE OF SIGNIFICANT UNCERTAINTY

Many inbound investments are at least partially debt funded due to a number of issues including cash-flow requirements, the need to manage offshore senior debt, and the commercial attractiveness of leveraged acquisitions. Of this debt, a portion is often funded via senior debt, and the remaining debt component (if any) is often funded via related party debt. Australia's transfer pricing rules can cause the implementation of such debt arrangements to be complex and risky due to drawn out disputes, which can impact investor certainty and impede US investment.

A potential mechanism for providing assurance to US investors is through the introduction of a safe harbour threshold in relation to the price of related party debt. Such a threshold could sit alongside the existing transfer pricing rules, and would provide an additional statutory backstop for investors who prefer to minimise the red tape and effort associated in supporting a detailed transfer pricing analysis.

As an example, this mechanism could recognise that subordinated shareholder debt should carry a credit rating that is 1-2 'notches' below the credit rating of the borrower group, which could allow a safe harbour rate. A safe harbour threshold could effectively expand on and codify existing ATO guidance in relation to related party debt arrangements (set out in PCG 2017/4). Taxpayers would be able to still rely on an "arm's length debt test" equivalent for pricing, where they otherwise have facts and circumstances which support an alternative pricing approach.

In addition, Australia currently requires the preparation and lodgement on an annual basis of a Country-by-Country (CbC) Local File for certain taxpayers that meaningfully differs from the OECD template (due to Australia's pre-existing International Dealings Schedule). The OECD template is closely aligned with the transfer pricing documentation prepared by businesses, whereas the Australian Local File serves as an extension of the Income Tax Return International Dealings Schedule by asking for a greater degree of general commercial and transactional information. This inconsistency causes global compliance complications, and serves as a point of frustration for US investors in exchange for limited additional benefits for Australia - a closer alignment with the OECD template would be an encouraging step for Australia's international business reputation.

RESEARCH AND DEVELOPMENT SHOULD BE INCENTIVISED FURTHER

The competition for high-skill technology investment and jobs is particularly fierce, and Australia's regional position and the strength of its educated workforce should be accompanied by a world-leading research and development (R&D) tax incentive regime. The current regime has a degree of in-built uncertainty due to the multiple regulators that are involved (ATO and AusIndustry) and the long review times over which those regulators can assess or reassess the availability of the incentive for a given taxpayer.

A significant degree of certainty could be provided for US investors by putting in place a Canadian-style administrative arrangement. In Canada, when a taxpayer applies for registration for the relevant R&D incentive, the regulator has a finite period to review the application following which the application is automatically approved. This would retain the important right of the regulator to review in order to ensure that the system is working as intended, while also providing certainty to US applicants, which can then allow those applicants to make informed decisions regarding the allocation of capital.

Other items that could be considered to increase US R&D activity, broadly or targeted to specific Australian industries, include:

- A collaboration premium to incentivise US companies to use Australian universities and Cooperative Research Centres (CRCs) for research.
- A distinct definition for software R&D to incentivise and make it easier for US technology companies to claim support for R&D and support digital upskilling in Australia.
- An increase to the refundable offset to $50 million turnover (currently $20 million as per when the current regime was introduced in 2012). This will bring it in line with the threshold for the higher company tax rates.
- The non-refundable offset could be carried forward to offset against future tax but also be able to be used to obtain a refund of tax paid in prior years up to a certain limit, for example four years.
- Create more certainty regarding evidence requirements by including specific requirements that meet with common business practices rather than (as some ATO and AusIndustry officers expect) scientific experimental documentation.
- Creating safe harbours for taxpayers to use in relation to the expenditure they can claim - especially for items where there is apportionment required - to create more certainty and reduce compliance costs for US investors.
- Recognition of digitisation and productivity improvements more broadly, as opposed to more traditional research.

FRINGE BENEFITS TAX (FBT) REQUIRES WHOLESALE REFORM

FBT was introduced to Parliament in 1986 as a system for effectively taxing remuneration obtained as fringe benefits which had been escaping the tax net. As of 2018, FBT accounted for $3.8 billion, or less than 1 per cent of the total tax revenue collected by the Federal Government in that year. Despite this relative immateriality, FBT compliance takes up a disproportionate amount of management time for taxpayers and reform is overdue.[65] Removing this constraint would make Australia an easier place to do business for US investors and domestic businesses alike.

COVID-19 has accelerated the need for urgent reform, and FBT amendments is one key legislative change that can help the economy rebound, while also supporting industries that have been most harshly affected by the virus. In line with the original purpose of the tax, the definition of a fringe benefit should be simplified to only include remuneration benefits, and remove any FBT on non-remuneration benefits. This change could leverage definitions within existing statutory provisions which limit certain concessions for "salary packaging arrangements", and therefore will seek to only tax fringe benefits provided where:

- The benefit is provided in return for the employees agreeing to a reduction in salary or wages.
- Any arrangement that is part of the employee's remuneration package, and it would be reasonable to conclude that the employee's salary or wages would be greater if the benefit was not provided.

This change will ensure that remuneration benefits that are a clear "reward for services" (such as vehicles, car parking and housing that would be provided to supplement/substitute cash income) are appropriately taxed, while genuine "business-type expenses" which are non-remuneration benefits (such as entertainment and travel) are removed from the FBT net.

These non-remuneration benefits are the benefit which employers spend the most time on when preparing the FBT return, given the multiple sources of recording and accrual and the significant and cumbersome touch-points across an organisation to establish and verify the existence (or otherwise) of a taxable outcome. The removal of FBT on these non-remuneration benefits will remove the need to obtain written declarations and other artefacts from employees to validate business percentages. Further, the minor benefit rule, which is not available for benefits provided as a "reward for services", will effectively become obsolete. Given this is an area of contention and confusion among employers, this will ensure greater certainty in achieving compliance.

This will reposition FBT towards a tax system only for benefits that are a clear substitution for remuneration that would otherwise be taxed when paid in cash to individuals. So if an employer chooses to offer such benefits rather than salary, they opt in to the administration that accompanies FBT compliance. The calculation methodologies for non-remuneration benefits, such as entertainment, happen to be the most burdensome and complex, and the removal of the FBT obligation on these items will result in immediate and significant compliance cost savings for taxpayers, without necessarily significantly impacting the revenue base.

In place of FBT applying to these expenses, they would simply be treated as non-deductible for the employer. This would lead to an immaterial decrease in tax collections for the ATO (equal to the gap between the FBT collections and the value of the foregone deductions), but would significantly reduce red tape for businesses and US investors. An additional benefit of the easing of red tape in relation to entertainment expenditure could encourage businesses to spend on entertainment, assisting Australia's hospitality industry to rebound from COVID-19 and rebooting CBDs.

In terms of immediate impact, the removal of non-remuneration benefits from the FBT tax net will also incentivise employers to increase spending on ad-hoc and discretionary benefit items (e.g. employee lunches, corporate boxes, travel and accommodation). This could provide a much-needed boost for the industries worst hit by COVID-19, including hospitality, tourism and aviation.

Items of compensation that are subject to FBT in Australia are also problematic from a US individual tax perspective. The taxation of non-cash benefits in Australia (subject to FBT) is inconsistent with the way in which such benefits are taxable in the United States (subject to income tax). In this regard, for any US citizens in Australia and in receipt of such benefits, an element of double taxation may eventuate due to the fact that any FBT paid is not an allowable foreign tax credit to offset the resulting US income tax. Consideration should be given to the structuring of remuneration to individuals to mitigate double taxation.

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65. Treasury has requested the Board of Taxation to conduct a comprehensive review of FBT compliance costs, with recent publications issued by the Chartered Accountants Australia and New Zealand (CA ANZ), The Tax Institute and Corporate Tax Association (CTA) all echoing a consistent message that FBT, in its current state, is ineffective.

SUPERANNUATION HOLDERS FACE SIGNIFICANT TAX BURDENS IN THE UNITED STATES

The United States considers most foreign pensions, including superannuation, as not meeting the criteria of a tax qualified plan for the purposes of the Internal Revenue Code [reference IRC s402(b)]. This has seen considerable US taxes being levied on earnings and the unrealised growth generated in superannuation funds, including foreign financial asset reporting obligations under US rules. The Australia/United States Double Tax Agreement (unlike the UK/United States Double Tax Agreement [reference Article 18 UK/US Double Tax Agreement 2001]) does not contain provisions within its Pension article that would serve to exempt Australian superannuation from US taxation. This has been an area of focus over a number of years however to date, no such amendment to the Australia/United States Double Tax Agreement has been put forward. Urgent consideration of this issue is required to regularise the US tax treatment of Australian superannuation.

TAX POLICY - KEY RECOMMENDATIONS

01 Streamlining of the ATO's role in the FIRB approval process. Specifically, their role as a consulted agency and the onerous tax details required of US applicants which are not required of domestic businesses starting operations.

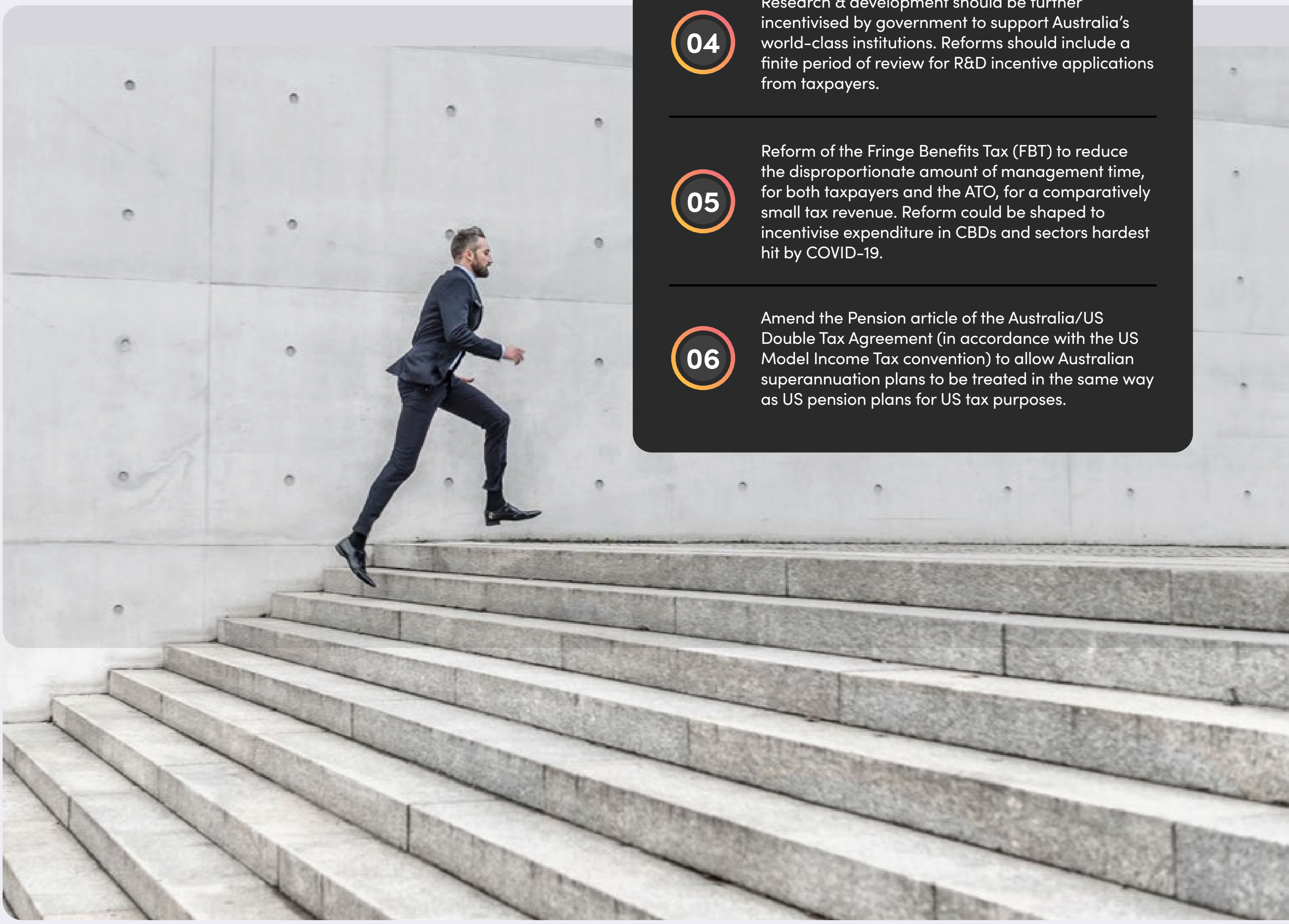
02 Funding and expanding Australia's taxpayer advocacy body to play a more active role in monitoring the economy-wide performance of key ATO functions.

03 Introduce a rate safe harbour threshold in relation to the price of related party debt. The provision of a statutory backstop for US investors would minimise red tape and detailed transfer pricing analysis.

04 Research & development should be further incentivised by government to support Australia's world-class institutions. Reforms should include a finite period of review for R&D incentive applications from taxpayers.

05 Reform of the Fringe Benefits Tax (FBT) to reduce the disproportionate amount of management time, for both taxpayers and the ATO, for a comparatively small tax revenue. Reform could be shaped to incentivise expenditure in CBDs and sectors hardest hit by COVID-19.

06 Amend the Pension article of the Australia/US Double Tax Agreement (in accordance with the US Model Income Tax convention) to allow Australian superannuation plans to be treated in the same way as US pension plans for US tax purposes.



4.4 REGULATORY SIMPLIFICATION AND THE REMOVAL OF DUPLICATION

Australia requires a well-functioning, efficient, and targeted regulatory system that operates efficiently across federal and state jurisdictions. This will allow the Australian economy to regain its strength and prosperity in a coordinated manner, and to respond effectively to the pressures and challenges facing the economy in a post COVID-19 world with ever-increasing social demands and competitive pressures within Australia and abroad.

While good regulation is necessary to ensure Australia's success, sometimes regulation and regulatory burdens can be too onerous, rigid, and duplicative across states and territories to promote innovation, competition and growth. The state and territory governments have crucial roles to play in matters that affect investment, including environmental, planning, certain taxes, energy and industrial relations policy.

Simplification of any regulatory system often tends to focus on three core phases:

1. Removal of laws that are no longer relevant (e.g. the removal of travel agent training requirements which had been superseded by online server providers with their own private sector training obligations).
2. Streamlining of existing processes and removal of duplication (e.g. the transfer of business regulation to the Australian Government necessitating the repeal or reform of state and territory requirements).
3. Reregulation and the introduction of new laws and regulation (e.g. the transfer of business regulation to the Australian Government necessitating the repeal or reform of state and territory requirements).

REMOVAL OF LAWS THAT ARE NO LONGER RELEVANT

The first phase focuses on the removal of unnecessary requirements - this type of reform usually follows a specific review and calls for the removal of unnecessary or obsolete laws. This category of reform is important to ease the regulatory burden on businesses and to clean up the statute and remove clearly unnecessary requirements. Sometimes with this type of reform the actual reduction in regulatory burden faced by business and citizens may not be as large as some would hope, where regulations are already redundant.

Impetus from the Prime Minister and Cabinet, State Premiers or Department Heads is required to enact change. This could be achieved via an order to target the removal of a fixed percentage of existing regulations impacting business and investment.

The Government's Deregulation Taskforce is well-placed to coordinate such a process, whereby departments and agencies nationally are given a defined period of time (e.g. 12 months) to reduce regulation (e.g. by 30 per cent) and achieve the step change required for growth.

Specific recommendations for reform are focused in industries and sectors that are significantly hindered by complex regulatory environments and include:

- Amend burdensome battery disposal regulations: Lithium batteries are growing in prominence across vehicle, home and industrial battery usage settings. One regulatory burden currently facing US businesses operating in the industry is the transportation of lithium batteries into and out of Australia. At the end of a battery's life cycle or in order to make repairs, batteries often need to travel across international borders. Once in a vehicle, a lithium battery can be shipped relatively easily however a standalone battery is classified as a Class 9 Miscellaneous Dangerous Good which significantly impacts the ease and cost of transportation. Removal of this arbitrary distinction could reduce costs for the renewables sector.
- Modernisation of regulation pertaining to electric vehicles (EV): As the EV industry continues to innovate and EVs become increasingly affordable and reliable, the possibility of decarbonising road travel continues to grow. One such innovation is the Tesla Semi; an all-electric battery-powered Class 8 semi-truck currently in development and due for production in 2021. However, the 10mm differential between the maximum vehicles widths in Europe (2600mm)[66] and Australia (2500mm)[67] poses a potential issue. Without a regulatory change, usage in the Australian market is likely financially unviable. Production lines would require amendments to slim the vehicle by 10mm for a market which comprises a small proportion of the global trucking industry.
- Proactively address bilateral impediments on investment: Not all regulatory obstacles to investment are within Australia's direct control. Impediments to doing business often occur with other countries, for example the US regulator ITAR (International Traffic in Arms Regulations) places a prohibition on involvement in SpaceX which does not exist for defence industries. The Australian Government should proactively lobby to bring down regulatory barriers such as these.

The removal of superfluous regulation can be systemnised through the use of sunset provisions. A sunset provision, or clause, is a measure which results in regulations or laws ceasing to have an effect after a defined time period, provided further legislative action is not taken.

66. European Parliamentary Research Service Blog, 'Weights and dimensions of road vehicles in the EU', 2014. https://epthinktank.eu/2014/04/10/weights-and-dimensions-of-road-vehicles-in-the-eu/#:~:text=The%20'Weights%20and%20dimensions'%20Directive,e.g.%20by%20rail%20and%20water)
67. National Heavy Vehicle Regulator, 'General mass and dimensions limits', 2016. https://www.nhvr.gov.au/road-access/mass-dimension-and-loading/general-mass-and-dimension-limits#:~:text=The%20height%20limit%20for%20heavy,double%2Ddecker%20bus%20%2D%204.4%20metres

By placing the emphasis on proving regulations are still fit for purpose, as opposed to business proving they are no longer required, governments can help reduce unnecessary burdens on investment. These clauses should be used regularly and assumed to be standard practice, unless a critical argument otherwise is made. For example, the US Department of Health and Human Services (HHS) has taken steps to implement a similar reform agenda – the Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) rule which is due to take effect from 22 March 2021. The purpose of SUNSET is to implement the Regulatory Flexibility Act within HHS, which requires federal agencies to review existing rules at least once every decade.[68]

STREAMLINING OF EXISTING PROCESSES AND REMOVAL OF DUPLICATION

The second phase of regulatory reform tends to focus on streamlining of existing processes. This phase does not challenge underlying obligations set out in regulation, but rather it seeks to make regulation easier to comply with, such as:

- Greater use of online portals.
- Single points of access to government agencies.
- Concierge services provided by government to help spirit business applications or regulatory interactions between business or citizens and the relevant regulator.
- Provision of data once which is then used for multiple purposes and by multiple regulators.
- Streamlining of 'back office' data analysis and support services by government to help pre-populate forms (such as tax returns) or cross-check with payments or service provision.

Like the reforms in the first phase of regulatory reform, this second phase can be extremely beneficial and result in significant benefits for the economy as well as greatly reduce any angst or resentment towards the regulatory process. This reduced burden and enhanced satisfaction from the business community and citizens can lead to a virtuous circle of greater levels of compliance, more efficient allocation of resources for regulatory oversight and an overall improvement in the acceptance of regulation. The challenge however, is that unlike the first phase of reform this type of reform requires money and time to affect changes to systems – for both government and business – and there is little tolerance when system upgrades or new delivery models fail, such as recent upgrades to online census surveys or when government portals crash.

68. National Archives, Federal Register, 'Securing Updated and Necessary Statutory Evaluations Timely', 2021. https://www.federalregister.gov/documents/2021/01/19/2021-00597/securing-updated-and-necessary-statutory-evaluations-timely

CASE STUDY
LYNAS RARE EARTHS

What do batteries, fluorescent lighting, MRI scanners and car engines have in common? These are just some of the everyday applications of rare earth elements. Lynas Rare Earths is the world's second largest producer of rare earths and the only producer of scale outside China.

At Mount Weld, Western Australia, Lynas operates a high-grade rare earth mine and Concentration Plant. Subsequently, these materials are shipped to their 100-hectare advanced materials plant in Gebeng, Malaysia, for separation and processing to produce rare earth products.

Lynas Rare Earths are used in many high tech and future facing industries, including electronics, wind turbines, catalytic converters, and electric and hybrid motor vehicles. Their products include neodymium and praseodymium which are used in high power magnetic motors, lanthanum used in specialized optical glasses, and cerium used in catalytic converters in automotive exhaust systems to reduce emissions.

In January 2021, as part of their 2025 growth strategy, Lynas entered into an agreement with the US Department of Defence (DoD) to build a Light Rare Earths processing plant, expected to be located in Texas, United States. The DoD will contribute up to ~US$30m in funding, with Lynas also contributing ~US$30m for the plant which will serve both the U.S. Defense Industrial Base (DIB) and the growing commercial market for Rare Earth materials.

The Texan plant is expected to produce 5000 tonnes of rare earths each year and will be designed to receive materials from the Rare Earths Processing Facility currently being developed in Kalgoorlie, Western Australia. The proposed plant will provide jobs in Texas and Western Australia and has ambitions to provide a foundation for the renewal of downstream specialty metal making and permanent magnet manufacturing in North America.

Broadly, the introduction of 'onestop shops' and online portals are welcome. These help reduce processing times, which can be particularly burdensome where several departments or agencies are involved in decision making. In these instances where more than one department or agency is involved, definitive timelines should be mandated to departments within which they should interact with other bodies, for example within five business days. Where these deadlines are not met, and investments involve the United States or other trusted nations, they should be automatically approved. Where approvals are not granted, individuals who sign off on such decisions should be clearly identified to expedite any follow up or further review processes.

Specific recommendations for sectoral and policy reform include:

- Reduce red tape prominent in primary industries: A recent case study of the iron ore mine Roy Hill by the Institute of Public Affairs found 4,967 licences, permits and approvals were required for the pre-construction phase alone, with approximately 79 per cent of these imposed by the state government. This necessitated compliance with 685 separate pieces of legislation and regulation comprising 17 Acts of Parliament, 450 regulations at the Commonwealth level, 56 Acts of Parliament and 162 regulations from the Western Australia Government. Using the 'RegData' methodology developed at George Mason University, around 91 per cent of these 4,967 requirements can be classified as 'red tape' (i.e. regulations in excess of what is minimally effective). Application of the RegData methodology would reduce the number of requirements from 4,967 to 469.[69] Another example of red tape is the forced removal of infrastructure in Queensland by mining companies on farmland and pastoral land, where the landowner benefits from the infrastructure (e.g. dams, concrete pads, bore holes and fencing). Inserting a provision into Section 318ZB (2) and (4) of the Queensland EP Act which allows landowners to agree to receive their land, add to their land, or parts thereof, in a certain condition would mitigate this issue.
- Update of the current Research and Development Tax Incentive: This scheme helps to offset the financial costs private companies invest in eligible R&D which benefits the wider Australian economy. Applications for the current scheme require identification and detailed documentation of eligible projects and activities. This can often prove difficult for companies starting new teams where specific tasks and activities have not yet been defined.

  An alternative model could process US applications on a simplified, more dynamic basis where a more general list of activities is accepted (e.g. software engineering or program development), including headcount, timelines and local investment amounts. This would help provide certainty for trusted, US companies in obtaining incentives and allow for more dynamic, adaptive activities required in a post-COVID-19 economy. The incentive could be targeted to sectors of the economy which the government wants to support. This could include the Modern Manufacturing Initiative (MMI) sectors and other high value Australian industries.

Making systems run better or quicker or more efficient does not explicitly look at the fundamental regulatory controls and aim, or question whether that aim remains valid or optimal. To do this requires a broader review of regulation and this is the third phase of reform which seeks to optimise the overarching regulatory obligations or requirements. This type of reform will inevitably result in distributional impacts and it is these impacts on the so called 'winners' or 'losers' of reforms that tend to dominate the policy debate. Nonetheless, when done well, this type of reform can have lasting positive impacts for the economy and the community at large.

REREGULATION AND THE INTRODUCTION OF NEW LAWS AND REGULATION

In the main, Australia has a first best regulatory system and the rule and acceptance of law is one of the key drivers for our long term economic success. That said, improvements to our regulatory system are necessary, even if there is strong resistance to change (e.g. taxation, industrial relations, corporations law, federal/state overlap, trade restrictions).

Pressure for reform can be home grown, but in the absence of a broad consensus for change, change ultimately comes in the form of an external pressure. History shows us this through: the tariff and exchange rate reform in the face of Australia's currency and fiscal challenges of the 70s and 80s; budget pressure in the 90s leading to the broadening of the tax base through the GST and the removal of selected inefficient taxes, and; competition from overseas businesses and imports (e.g. the changes to taxi regulation across Australia in the face of competition from rideshare services, or changes to online gambling in the face of overseas service providers, or changes to duties and taxes at the border in light of imports, or even the more recent policy challenges relating to information services, the gig economy, and profit shifting across jurisdictions).

Recommendations for reform include:

- Provide a roadmap for regulation of digital businesses: Regulation, and particularly tax policy, has struggled to keep pace with the rate of digitalisation in the economy. This is an issue facing governments globally and is not unique to Australia. The OECD has grouped together 137 countries and jurisdictions and is working towards a multilateral digital tax agreement to be released mid-2021.[70] While some degree of international alignment is necessary given the nature of large multinational technology businesses, Australian regulators have a key role to play.

[69] Institute of Public Affairs, 'Government approvals research report - Roy Hill Iron Ore Project', 2020.

[70] OECD, 'International community renews commitment to address tax challenges from digitalisation of the economy', 2020. https://www.oecd.org/tax/beps/international-community-renews-commitment-to-address-tax-challenges-from-digitalisation-of-the-economy.htmv

For example, the Productivity Commission recommended a less restrictive IP regime could stimulate innovation and the replacement of 'fair dealing' with 'fair use' in copyright law.[71] Government should be proactive in encouraging the digital services of tomorrow; signposting future regulatory developments via a roadmap is one step to achieving this.

- Ensure the culture and skill sets within regulators are appropriate for a world of emerging digital technologies: The News Media and Digital Platforms Mandatory Bargaining Code outlines a set of rules to govern where and how the US technology giants (specifically Google and Facebook) share their revenue with news organisations whose content appears on their platforms. Lengthy negotiations between the government, the ACCC and industry took place before the Bill was passed by parliament in February 2021. Engagement with industry is a critical step in achieving positive regulatory outcomes, however there were concerns the consultation process had become politicised. This was, at least in part, due to the complexity of novel, digital markets and the number of agencies involved in negotiations which included the Australian Communications and Media Authority (ACMA) and the Office of the Australian Information Commissioner (OAIC). In the digital age we live in, having a culture and technical skill sets which are compatible with the digital economy are as vital to regulators as the ability to navigate tax, environmental or energy policy. Regulators should prepare for increasingly regular interactions with digital technology companies.
- Harmonisation of clinical trial governance and ethics approval processes: Despite the relatively small size of Australia, each state and territory has unique processes for clinical trials and ethics approvals. This duplication is burdensome to US pharmaceutical companies, particularly so for treatments related to rare diseases where the number of patients throughout Australia who stand to benefit from treatment is often significantly fewer than 100. Duplication can result in significant delays in the time to market for treatments – meaning Australian patients wait longer than some international counterparts. Further, international harmonisation should occur where trusted nations have approved therapeutics. The development of COVID-19 vaccinations has demonstrated the ability of trusted nations to share efficacy and safety data efficiently.

Several of these areas require significant interaction between multiple agencies, including Home Affairs, Tax, Treasury and FIRB for example. Where this is required, it creates space for a separate body dedicated to working on initiatives not contained within single agencies. Such a body could also play a role as a single point of contact with US or other foreign investors, to help provide consistency of advice, experience and interaction with the Australian Government.

[71] Productivity Commission, 'Shifting the dial, 5 year productivity review, supporting paper No.13', 2017. https://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review-supporting13.pdf

REGULATORY SIMPLIFICATION AND DUPLICATION – KEY RECOMMENDATIONS

01 Reduce inefficient, outdated regulation through a time bound exercise to achieve a step change for growth. This should run for a defined period (i.e. 12 months) with the ambition to reduce the total number of regulations by a fixed percentage (i.e. 30 per cent).

02 Amend inconsistent lithium battery disposal regulations to increase the ease of shipping across international borders.

03 Modernise vehicle regulations to ease the regulatory burden on producers of electric vehicles (EVs) and green alternatives.

04 Proactively address bilateral impediments on US investment through active diplomacy.

05 Federally mandate the use of sunset provisions as standard practice across departments to automate the eradication of unnecessary burdens on investment.

06 Where more than one department or agency is involved, communications should occur within 5 business days. When deadlines are not met and involve the United States or other trusted nations, they should be automatically approved.

07 Where approvals are not granted, individuals who sign off on decisions should be clearly identified to expedite any follow up or further review.

08 Reduce duplicative and redundant red tape, prominent in primary industries, where there is no clear additional benefit to the community.

09 Update of the current Research and Development Tax Incentive to allow for more flexibility, reflecting the often malleable nature of high value services which US companies often provide.

10 Government should provide a roadmap for the regulation of digital businesses to introduce more certainty for US investors in the technology sector.

11 Ensure the culture and skill sets within regulators are appropriate for a world of emerging digital technologies, equipping regulators to navigate increasingly complex industries.

12 Harmonise clinical trial governance and ethics approval processes across state borders and with trusted, international jurisdictions such as the United States.

13 Creation of a distinct body to work on cross agency and departmental investment initiatives. Where significant interaction between multiple agencies exist, this separate body could also act as a single point of contact for US investors.

A

APPENDICIES

APPENDIX A: SPECIFIC REFORMS FOR PAYROLL TAX (PRT) DEREGULATION

WHY IS DEREGULATION REQUIRED?

At or around 2007, the most recent attempt was made to harmonise PRT legislation and ensure consistency among each state and territory. Unfortunately, each jurisdiction continues to have differing laws, with each offering slightly different treatment of certain taxable wage items as well as differing administrative approaches.

With no single repository, the onus is on employers to keep abreast of any differences between jurisdictions. This includes, but is not limited to, differing treatment of contractors, exempt ancillary leave payments, overseas employees, revenue rulings and threshold entitlements.

Furthermore, the lodgement of monthly PRT returns is time-consuming, with employers required to log in to each jurisdiction's separate online portal to declare taxable wages, and make up to eight different lodgements and payments for one employer. For a group with 10 national employing entities, this is 80 returns to be lodged (and separate payments made), each month.

PROPOSED CHANGES TO PRT SYSTEM

The Federal Government should be given administrative authority to implement a single, centralised reporting system for PRT. This system will use the readily available infrastructure of single touch payroll (STP) to auto-generate taxable wages and lodge PRT returns, with the ATO then responsible for distributing revenue to each relevant state and territory.

The automation of the PRT return process will deliver a true harmonisation of technical rules between jurisdictions, while also reducing the administrative time spent by employers on completing separate returns.

To ensure jurisdictions maintain some degree of control over their revenue base, it is still important that they have the power to set PRT rates and thresholds. However, as the reporting of PRT shifts from a self assessment to an automatic percentage of the relevant earnings submitted via STP, the ability for employers to report inaccurate figures is removed. The PRT gap will be effectively mitigated, reducing the need for each jurisdiction to allocate resources towards audit control. Jurisdictions will also no longer require their online PRT portals, saving taxpayer money and government spend on relevant infrastructure (e.g. servers and website upkeep costs).

The limitation of such a system will be the allocation of employees to each jurisdiction. The Nexus Provisions, which currently offers a complex tiered step by step process for assessing which jurisdiction the employee's taxable wages is taxable within, could be reformed to simply assign the employee's jurisdiction based on their residence in the ATO's myGov portal.

How the automated STP process will work in practice for each PRT taxable wages category is set out below.

CATEGORY	DESCRIPTION
SALARY AND WAGES, SUPERANNUATION	Currently, employers are already required to upload an employee's salary, wage and superannuation information via STP. These figures can be auto generated into a PRT calculation, broken into jurisdiction per the myGov record for the individual (as outlined above). This methodology would ensure all salary, wage and superannuation amounts are captured. There will be no exempt wage types, or differing treatment amongst jurisdictions. This standardised process will remove the requirement for employers to have different configurations for each wage type, as instead all wages declared by STP will be included.
FRINGE BENEFITS	Fringe benefits are already reported to STP via the Reportable Fringe Benefits Amount (RFBA). One drawback of utilising RFBA figures is that this only includes amounts over $2,000 per employee. There are several solutions to this problem. Jurisdictions could accept that only fringe benefits over $2,000 are taxable for PRT purposes, or the RFBA threshold could be reduced to nil to ensure that jurisdictions obtain their fair share of tax (noting that, per our previous proposal, only remuneration benefits will be taxed in the FBT regime in any event, and so it may be appropriate to capture this as reportable without any thresholds).
EMPLOYEE SHARE SCHEMES	Employee share schemes (ESS) are often miscalculated for PRT due to different valuation methodologies compared to income tax (and the associated pay-as-you-go (PAYG) withholding reporting requirements). To minimise confusion and improve automation, the ESS Reporting figures lodged with the ATO should be used to auto-generate ESS taxable wages for PRT calculation.
CONTRACTORS	Assessing the PRT implications for contractors is burdensome for employers, due to complex exemption criteria and the requirement to individually assess each contractor each fiscal year (i.e. a contractor could be exempt in one year, but taxable in the next). To alleviate this burden, contractor taxable wages should be auto generated from taxable payments annual reports (TPAR). While this would include a larger base of contractors, jurisdictions could introduce a lower PRT rate for contractors. For industries that are yet to introduce TPAR reporting, a dummy employee could be entered into STP which would include all contractor payments. Where the intention is to only capture certain contractors (i.e. to prevent double-taxation where the contractor also declares PRT on relevant wages for personnel used to service clients), it may be appropriate for a taxpayer to maintain a detailed log that then establishes a taxable percentage which is then valid for a 5-year period (similar to logbooks or other records used in a personal income-tax context). That percentage would apply to the total contractor spend each year for the 5-year period, removing the significant administration of undertaking ongoing assessments.

APPENDIX B: KEY RECOMMENDATIONS GLOSSARY

FRAMEWORK FOR ALIGNING THE CULTURE OF REGULATORS TO THE DEREGULATION AGENDA

REGULAR REVIEW OF THE ROLE AND REMIT OF REGULATORS TO ENSURE THEY REMAIN FIT FOR PURPOSE

REGULATORY CULTURE

01

DEFINE THE 'WAY TO REGULATE' AND ENSURE RELEVANT CAPABILITIES ARE MATURE

- Define the 'way to regulate'
- Align regulator capabilities with role, remit and way to regulate
- Provide government sponsorship of changing behavioral norms

02

ALIGN REGULATOR(S) WITH INTENDED REGULATORY OUTCOMES

- Construct appropriate risk infrastructure
- Exemplify positive traits through best practice examples
- Address the root cause of old culture and unintended reinforcing mechanisms

03

IMPROVE REGULATORY EXPERIENCES

- Solicit feedback from regulated entities to understand compliance burden
- Utilise user journeys to identify priority areas
- Share better practice among regulators

INSTITUTIONALISING URGENCY, PRAGMATISM AND RISK-APPROPRIATE REGULATORY BURDENS

Source: PwC analysis

REGULATORY CULTURE

01 Apply the framework for aligning the culture of regulators to the deregulation agenda to drive positive regulatory outcomes.

02 Gather feedback from current and potential US investors confidentially. Currently, feedback is solicited by regulators on their own activities - usually after decisions are made (e.g. ATO rulings). Government can and should play an independent, third party role and listen to industry. This will enable the identification of priority areas for deregulation and highlight areas where Australia's international competitiveness lags.

03 Reduce uncertainty for investors and improve the consistency of how regulations are applied by placing time constraints and targets on key processes (e.g. a maximum FIRB approval time for US investors).

04 Increase the transparency of regulatory decisions by providing more detailed, timely feedback on the rationale underpinning rulings and key decisions. This should include public servants in key decision making processes being made available where matters are contested.

05 Develop closer Australia-US relations via bilateral meetings between regulatory counterparts from both nations. Regulators could be held accountable to evidence change through annual progress reports to the Treasurer and Parliament.

FIRB

01 Provide clarity and certainty through the provision of guidance about the application of foreign investment policy, for example, by outlining types of investments and investors that are unlikely to raise national interest concerns and by enacting as law the policy positions of consulted agencies.

02 Introduce a pre-approval process to allow US sellers of specific assets to seek pre-clearance for sale to particular types of investors.

03 Introduce materiality thresholds for Australian components of global deals and recognise the significance of Australian components of deals.

04 Introduce new and expand existing bilateral country agreements with the United States (and other trusted nations where appropriate). Make existing agreements more effective by allowing investment structures involving entities in countries outside of the agreement without losing the benefit of the agreement.

05 Introduce a passporting system for regular US investors which enables an expedited process for firms with a reliable track record.

06 Limit the need for approvals of restructures with no effective change of control.

07 Ensure the treatment of US quasi-government funds does not unnecessarily restrict capital flows, particularly as global investment capital is increasingly being deployed through funds in which quasi-government investors invest.

08 Introduce a review process, or combine foreign investment decisions with existing review processes within the ATO and other relevant government agencies.

TALENT

01 Australia should reciprocate special considerations afforded by the United States, and other trusted nations. This should include the E-3 visa program.

02 The government needs to reconsider the efficacy of the occupation classification requirement under the TSS visa program in a setting rife with competition for US investment and characterised by reskilling, upskilling and rapidly emerging new jobs.

03 Immigration policy needs to reform to take into consideration new forms of employment relationships, business structures and workforce arrangements.

04 The government should consider decoupling the assessment of skills from ANZSCO and instead adopt median wage calculations to assess skill level and determine visa duration.

05 Regulatory criteria around pathways to permanent residence needs to reform and coexist with talent attraction strategies so that the best and brightest are incentivised to relocate to Australia and encouraged to diversify rather than remain static for purposes of meeting outdated eligibility criteria.

06 Increase proactivity and advocacy of Australian academic institutions and the strong pipeline of skilled labour Australia produces which can support US businesses in Australia.

07 Streamline and accelerate the processes for qualification recognition to enable US talent mobility and mobility within Australia.

TAX POLICY

01 Streamlining of the ATO's role in the FIRB approval process. Specifically, their role as a consulted agency and the onerous tax details required of US applicants which are not required of domestic businesses starting operations.

02 Funding and expanding Australia's taxpayer advocacy body to play a more active role in monitoring the economy-wide performance of key ATO functions.

03 Introduce a rate safe harbour threshold in relation to the price of related party debt. The provision of a statutory backstop for US investors would minimise red tape and detailed transfer pricing analysis.

04 Research & development should be further incentivised by government to support Australia's world-class institutions. Reforms should include a finite period of review for R&D incentive applications from taxpayers.

05 Reform of the Fringe Benefits Tax (FBT) to reduce the disproportionate amount of management time, for both taxpayers and the ATO, for a comparatively small tax revenue. Reform could be shaped to incentivise expenditure in CBDs and sectors hardest hit by COVID-19.

06 Amend the Pension article of the Australia/US Double Tax Agreement (in accordance with the US Model Income Tax convention) to allow Australian superannuation plans to be treated in the same way as US pension plans for US tax purposes.

REGULATORY SIMPLIFICATION AND DUPLICATION

01 Reduce inefficient, outdated regulation through a time bound exercise to achieve a step change for growth. This should run for a defined period (i.e. 12 months) with the ambition to reduce the total number of regulations by a fixed percentage (i.e. 30 per cent).

02 Amend inconsistent lithium battery disposal regulations to increase the ease of shipping across international borders.

03 Modernise vehicle regulations to ease the regulatory burden on producers of electric vehicles (EVs) and green alternatives.

04 Proactively address bilateral impediments on US investment through active diplomacy.

05 Federally mandate the use of sunset provisions as standard practice across departments to automate the eradication of unnecessary burdens on investment.

06 Where more than one department or agency is involved, communications should occur within 5 business days. When deadlines are not met and involve the United States or other trusted nations, they should be automatically approved.

07 Where approvals are not granted, individuals who sign off on decisions should be clearly identified to expedite any follow up or further review.

08 Reduce duplicative and redundant red tape, prominent in primary industries, where there is no clear additional benefit to the community.

09 Update of the current Research and Development Tax Incentive to allow for more flexibility, reflecting the often malleable nature of high value services which US companies often provide.

10 Government should provide a roadmap for the regulation of digital businesses to introduce more certainty for US investors in the technology sector.

11 Ensure the culture and skill sets within regulators are appropriate for a world of emerging digital technologies, equipping regulators to navigate increasingly complex industries.

12 Harmonise clinical trial governance and ethics approval processes across state borders and with trusted, international jurisdictions such as the United States.

13 Creation of a distinct body to work on cross agency and departmental investment initiatives. Where significant interaction between multiple agencies exist, this separate body could also act as a single point of contact for US investors.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