Law Council
OF AUSTRALIA

Business Law Section

Foreign investment framework reforms—Review of ineffective conditions

The Treasury

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Executive summary

1. The Foreign Investment Committee of the Business Law Section of the Law Council of Australia (the **Committee**) prepared this submission. Its members are practitioners from leading Australian law firms who regularly advise foreign persons on the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**), the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth) (**FATR**) and foreign investment approvals administered by the Foreign Investment Review Board (**FIRB**).

2. The Committee welcomes the opportunity to respond to the Treasury's consultation paper, 'Foreign investment framework reforms—Review of ineffective conditions', dated 19 August 2026. This submission identifies conditions in foreign investment approvals that are duplicative, inconsistent or outdated, and recommends reforms based on Committee members' practical experience.

3. Many conditions serve their intended purpose, but others do not meet the criteria in Guidance Note 11 (GN 11). These fall into three categories:

    a. conditions that duplicate obligations under the tax laws, the Privacy Act 1988 (Cth) (Privacy Act) or the Security of Critical Infrastructure Act 2018 (Cth) (SOCI Act);

    b. conditions that conflict where a group holds approvals granted at different times, requiring parallel reporting and audits with differing timing and content requirements; and

    c. conditions disproportionate to the identified risk, or based on outdated business practices.

4. The table below identifies each condition, the practical issues it creates, and the Committee's recommendation. The Committee's guiding principle is that a condition should not be imposed or maintained where another Australian regulatory regime already addresses the identified risk.

Detailed conditions review

Condition Category / Condition	Issue	Recommendation
A. General		
Multiple overlapping conditions for the same corporate group Example: Where one foreign person exits and another enters (e.g. through acquisition of holding vehicles), conditions from the original approval for the exiting foreign person continue to apply to the corporate group. Different sets of conditions apply to the same corporate group with inconsistent disposal, intragroup transaction and reporting provisions.	Where holding vehicles are acquired in a later transaction, the earlier conditions continue to apply alongside the new conditions because no termination event has occurred for the corporate group itself. The resulting inconsistent disposal, intragroup transaction and reporting obligations have no automatic alignment mechanism.	Provide that conditions attaching to an earlier approval cease to apply and those attaching to the later approval over the same underlying assets/targets automatically supersede the earlier conditions, leaving one set of ongoing conditions for the corporate group.
Consolidation and variation of conditions across multiple approvals	No formal pathway exists to align conditions across multiple approvals held for or by the same corporate group. Aligning reporting dates requires separate, fee-bearing variation applications, which are costly and often refused because each approval is treated in isolation. The cost for FIRB is purely administrative and alignment reduces rather than increases regulatory risk.	Introduce a single fee-free consolidation application allowing an investor or corporate group to align reporting dates, audit scope and condition wording across its approvals.

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Reporting Conditions There are a number of ways Treasury and/or the ATO impose reporting obligations on investors including: 5. reporting conditions imposed under a no-objection notification or an exemption certificate; 6. notifications required pursuant to sections 98C, 98D and 98E of the FATA; and 7. notification to register an asset or Australian land on the Register of Foreign Ownership of Australian Assets. Example reporting conditions imposed under no-objection notifications or an exemption certificate include: • These conditions are pursuant to sub-section 74(2) of the Foreign Acquisitions and Takeovers Act 1975, and are considered necessary in order to ensure that the action(s) are not contrary to the national interest. Any reporting required under these conditions should be provided to FIRBnonresapps@ato.gov.au • These conditions are pursuant to sub-section 74(2) of the Foreign Acquisitions and	(a) Treasury and the ATO typically tie reporting deadlines to event-based triggers, such as: (i) within 30 days of taking the action; (ii) within 30 days of settlement; (iii) within 60 days of taking the action; (iv) within 14 days of acquisition; (v) no later than three months after the end of the Applicant's financial year; (vi) before the end of 30 days after the registrable event occurs; or (vii) every 3 months from the date that the exemption certificate is granted. For investors with multiple Australian interests, event-based reporting triggers result in obligations falling due at different times. The ad hoc nature of these	For event-based reporting deadlines (such as those triggered by taking the action, settlement or acquisition), the Committee recommends that Treasury and the ATO adopt a uniform one-month timeframe to simplify calculation and standardise reporting across calendar months. This will allow investors to: (a) undertake regular internal audits of interests held in Australian entities, assets of a business or land; and (b) operate to a consistent reporting timeline. In relation to inconsistent reporting timeframes across legacy instruments, the Committee recommends that Treasury and the ATO apply a consistent and uniform

Condition Category / Condition	Issue	Recommendation
Takeovers Act 1975, and are considered necessary in order to ensure that the action is not contrary to the national interest. Any reporting required under these conditions should be provided to FIRBATOCommercial@ato.gov.au. • The Applicant must advise the Department of the Treasury (Treasury) at ForeignInvestmentCompliance@treasury.gov.au within 30 days of each of (i) the completion of this acquisition, (ii) any amalgamation and subdivision approvals given, and (iii) completion of construction of the Property. • Each Applicant must advise the Department of the Treasury (**Treasury**) (at firbcompliance@treasury.gov.au) within 30 days of taking each action that it has done so. • Each Applicant must advise the Treasury (at firbcompliance@treasury.gov.au) within 30 days of a Termination Event in relation to that Applicant. ○ On all acquisitions made under this Exemption Certificate, a report must be provided:	obligations and the lack of consistency can result in a greater risk of inadvertent non-compliance. (b) The timeframe to notify Treasury and/or the ATO varies significantly across no-objection notifications (**NoN**) and exemption certificates, particularly in older instruments. While recent amendments to Parts 5 and 7A of the FATA have introduced a 30-day timeframe, some legacy no-objection notifications or exemption certificates specify a shorter or longer period. This inconsistency again increases the risk of inadvertent non-compliance. (c) Treasury and the ATO maintain a number of email addresses and registers for compliance and other reporting purposes. An investor may hold multiple no-objection notifications or exemption certificates, each specifying a different reporting method. This inconsistency further increases the risk of inadvertent non-compliance;	timeframe of one month for all reporting obligations. In relation to multiple reporting email addresses, the Committee recommends that Treasury and the ATO adopt a centralised reporting portal or email address that applies across all no-objection notifications and exemption certificates. The Committee recognises that some legacy reporting conditions may not comply with the above recommendations, particularly in older no-objection notifications and exemption certificates. This can be managed in the following ways: (i) Treasury and the ATO publishing guidance in relation to standardising reporting conditions and obligations (**Standardised Reporting Guidance**);

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○ every three months after this Exemption Certificate comes into effect until it expires; ○ when applying for a variation to this Exemption Certificate; ○ when applying for a new exemption certificate under section 58 of the Act; and ○ within 14 days if a report is requested by an officer of the Treasury. • Please notify this office within 14 days whether you were successful or not successful in acquiring the property by emailing your advice to firbrealestateapplications@treasury.gov.au.	for example, by reporting to an incorrect or outdated email address.	(ii) Treasury and the ATO confirming that non-compliance action will not be taken against investors where they are complying with the Standardised Reporting Guidance (including if this results in non-compliance of the investor's no-objection notification or exemption certificate); and (iii) inviting investors to voluntarily submit their legacy no-objection notifications and exemption certificates for reporting conditions to be varied to be consistent with Standardised Reporting Guidance (with no application fees payable for varying such legacy no-objection notifications and exemption certificates in this manner).

Condition Category / Condition	Issue	Recommendation
Exemption certificate—duration of conditions Example: Tax and ownership reporting conditions under Exemption Certificates continue to apply even after the Exemption Certificate has expired. Investors must continue reporting under multiple historical ECs.	Exemption certificate conditions, particularly tax and ownership-change reporting, continue after the certificate expires and all acquisitions under it have been reported. Investors holding several exemption certificates must report under certificates that permit no further acquisitions, imposing a continuing administrative burden and cost without any new or continuing risk.	Confine exemption certificate conditions to the certificate term and acquisitions made under it, with a six-month wind-down for final reporting. Ongoing obligations should attach only to the most recent active approval.
B. Standard tax conditions		
Standard tax conditions (before 27 May 2025) (a) The Applicant must comply with the taxation laws of the Commonwealth of Australia in relation to the action, and any transactions, operations or assets in connection with the assets or operations acquired as a result of the action. The Applicant does not breach this condition if it has taken reasonable care to comply with the relevant taxation laws and has a reasonably arguable position (**Tax Condition 1**). (b) The Applicant must use its best endeavours to ensure, and within its powers must ensure, that entities in its control group comply with the taxation laws of the Commonwealth of Australia	The standard tax conditions are deficient for a number of reasons including the following: (a) Tax Conditions 1 to 4 are redundant and a duplication of substantive legal requirements, being the requirement to comply with Australia's taxation laws. Confirmation of these conditions does not provide the ATO with any more information than it already has. (b) The relevant FIRB Guidance Note indicates that standard tax	The Committee recommends that applicants no longer be required to comply with any reporting requirements on standard tax conditions, which impose an unnecessary compliance burden for limited regulatory utility. The Committee also recommends that any reporting conditions have a finite, and short, period. The Committee has seen examples where no period has been placed on the obligation and where an

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in relation to the action and any transactions, operations or assets in connection with the assets or operations acquired as a result of the action. The Applicant does not breach this condition if entities in its control group have taken reasonable care to comply with the relevant taxation laws and have a reasonably arguable position (**Tax Condition 2**). (c) The Applicant must provide any documents or information that is required to be provided to the Australian Taxation Office (**ATO**) in accordance with the taxation laws of the Commonwealth of Australia in relation to the action and any transactions, operations or assets in connection with assets or operations acquired as a result of the action. These documents or information must be provided within the timeframe specified by the ATO (**Tax Condition 3**). (d) The Applicant must use its best endeavours to ensure, and within its powers must ensure, that entities in its control group provide any documents or information that is required to be provided to the ATO in accordance with the taxation laws of the Commonwealth of Australia in relation to the action and any transactions, operations or assets in connection with assets or	conditions of this nature will no longer be imposed, reflecting that there is little value from a regulatory perspective in reporting in respect of these conditions. (c) Tax Condition 5 relates to payment of taxes at the time of the "proposed action". Ongoing requirements to report on the same condition (where the condition has previously been reported on, and cannot have changed by definition) is similarly redundant and unnecessary. (d) The generic nature of the standard tax conditions means that any response is unlikely to provide FIRB or the ATO with information of substantive value, and it will not provide the ATO with information about high risk tax behaviours or arrangements.	applicant has applied to have the reporting obligation come to an end, due to a history of compliance not only with the reporting obligation but all tax affairs, and FIRB has rejected the request and instructed the applicant to make a new application for new conditions, with a fee required in excess of $30,000.

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operations acquired as a result of the action. These documents or information must be provided within the timeframe specified by the ATO (**Tax Condition 4**). (e) The Applicant must pay its outstanding taxation debt under the taxation laws of the Commonwealth of Australia, and must use its best endeavours to ensure, and within its powers must ensure, that entities in its control group pay any outstanding taxation debt under the taxation laws of the Commonwealth of Australia, which is due and payable at the time of the proposed action. This condition does not apply to payment arrangements agreed with the ATO or where the ATO has exercised its discretion to defer part or all of the payment of a disputed amount, to the extent that those arrangements are complied with (**Tax Condition 5**). (f) The Applicant must provide an annual report to the Government on compliance with conditions 1–5. The first report must cover the period from the date the action takes place to the end of the Applicant's income year for tax purposes. All subsequent reports must cover the Applicant's income year for tax purposes. If the action takes		

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place less than 90 days before the end of the first income year, then that period can be incorporated in the next report. Each report must be provided by the due date for lodgement of the Applicant's tax return for that year (**Tax Condition 6**).		
C. Additional tax conditions		
Reference to "Control Group" in tax conditions	Tax conditions (whether standard or bespoke) often include references to a "control group". It is conceivable (particularly with respect to highly acquisitive groups) that multiple entities within a control group could have separate FIRB reporting conditions imposed on them. Often, the reporting conditions and deadlines are not aligned. In practice, investors lodge reports on these conditions covering entities that must themselves lodge the same reports. This duplication is onerous and consumes resources.	The existing process imposes a substantial compliance burden on applicants whose control groups include other entities with reporting obligations on similar matters. The Committee recommends that reporting against the standard tax conditions be removed. If reporting is retained, a streamlined process should be introduced; for example, allowing a control group to lodge a single combined report or, at a minimum, standardising reporting due dates for control groups (see Item A above).

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Condition 2.4—Step plan "Provide an overview of the acquisition/restructure (the Transaction) step plan including a diagram of the pre- and post-Transaction organisational structures of the Target Entity that includes the flow of funds used to finance the Transaction, as well as the legal form and tax residency of the ultimate investor(s) or shareholder(s) ('the Investors') and all of the entities interposed between them and the Target Entity."	Applicants ordinarily submit the step plan and structure diagrams with the application, so the condition duplicates information already in Treasury's possession. This condition also requires the legal form and tax residence of every ultimate investor and interposed entity, information often unavailable for widely held funds or funds of funds. No threshold permits indirect investors to be disregarded.	(i) Limit the condition to material not already submitted. (ii) Require ultimate-investor details only for interests of 20 per cent or more.
Condition 2.10—Distributions to offshore recipients "Provide for each distribution expected to be made by an Australian entity to an offshore recipient after the Transaction's completion: (a) the tax treatment of the payment for the Australian entity making the distribution; (b) the tax treatment of the receipt for the non-resident entity receiving the distribution; (c) the proportion of the payment subject to withholding tax; and	This condition requires information about hypothetical scenarios that may have no bearing on the facts following the Transaction.	The Committee recommends that Treasury remove this condition.

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(d) if the withholding tax rate is less than 10 per cent or the payment is not subject to withholding tax, the reason(s) why."		
D. Customary private equity tax conditions		
Reference to "associates" and "related party" in tax conditions	Condition 3.1 (as set out below) and various other tax related conditions impose binding obligations on an investor's "associates" and "related parties", but neither term is defined in the conditions. This creates a fundamental compliance difficulty (i.e., the investor cannot determine with certainty which entities are subject to the condition and therefore cannot ensure compliance). The legal uncertainty is compounded because the FATA and the *Income Tax Assessment Act 1936* (Cth) (**ITAA 36**) define "associate" differently. The FATA definition in section 6 captures, among other things, parties acting in concert and entities holding 20% or more of voting power, whereas the ITAA 36 definition in section 318 has a broader scope encompassing family, business and trust relationships. As the	The Committee recommends that "associate" be defined in tax conditions by reference to section 318 of the ITAA 36, which is the definition most commonly used in the context of Australian taxation. The conditions should also expressly define "related party", whether by reference to "related body corporate" as defined in section 50 of the *Corporations Act 2001* (Cth) or by reference to another clearly delineated statutory concept, so that the scope of the obligation is ascertainable. Where a condition imposes obligations on entities beyond the applicant, the categories of those entities should be defined with sufficient precision to

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	conditions do not specify which definition applies, the scope of the obligation is ambiguous. The term "related party" is also not defined in either the FATA or the ITAA, and it is unclear whether this is intended to be limited to "related bodies corporate" within the meaning of the *Corporations Act 2001* (Cth) or to have a broader application. This uncertainty is material in consortium transactions involving multiple investors, fund-of-fund structures and joint ventures, where identifying which entities are "associates" or "related parties" of a particular investor is often complex and fact-specific. In the absence of a clear definition, investors must make assumptions about the intended scope of the obligation, without certainty that their interpretation accords with the ATO's expectations.	enable the applicant to identify them and ensure compliance. This is consistent with the principle in GN 11 that conditions should be clear, unambiguous and capable of compliance.

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Condition 3.1—Future disposal "Each Investor or their associates or related parties must notify and provide the relevant information to the Treasury (through the Foreign Investment Portal) and the ATO (at PGPrivateEquity@ato.gov.au and ATO-FIRBS@ato.gov.au) in writing at least 60 days prior to transaction closure for the disposal of a direct or indirect interest in your Australian investment. The details of the disposal expected under the engagement should include, but are not limited to, the following: (a) In your response reference the foreign investment submission or file number and provide a copy of the No Objection Notification Letter. (b) Date the contract for disposal is to be signed (or expected date), and as soon as practicable, a copy of the contract for disposal; (c) Parties to the contract, specifying the vendor entity and purchaser entity (or expected entities); (d) Date of settlement (or expected date);	The 60-day disposal notice requirement creates unnecessary delay where two interconnected transactions each require separate foreign investment approval. A common example is an internal reorganisation that must complete immediately before an acquisition. Both steps are notified to Treasury and the ATO through their respective submissions, so the regulators have full visibility of the entire transaction structure. However, the 60-day disposal notice condition in the reorganisation approval requires the investor to formally re-notify Treasury of the acquisition even though that acquisition is already the subject of a concurrent submission being considered by the same regulators. In one case, a member firm had to negotiate with Treasury for nearly the full 60-day disposal notice period before Treasury agreed to carve out transactions that had already been notified from this condition.	Introduce a carve-out from the disposal notice requirement where the disposal forms part of a transaction for which foreign investment approval has already been granted or applied for. This would remove the need for investors to re-notify Treasury of disposals of which Treasury is already aware through a concurrent or related approval. In particular, the carve-out should also include sell-downs giving effect to co-investment or syndication arrangements disclosed in the original application, regardless of whether the incoming party requires separate FIRB approval.

(e) Proceeds expected to be received for the disposal of the interest, and the expected profit or loss on disposal of the interest, including the calculation for this amount; (f) Estimated Australian income tax payable on disposal and an explanation regarding the expected Australian income tax outcomes of the disposal for the vendor entity, including an explanation of the calculation. To the extent no Australian income tax is expected to be payable, provide an explanation as to the basis for this position. If services or advice were obtained in connection with how the Australian tax provisions applied to the disposal: (a) all advisory firm/s and advisers within those firms that provided the services and advice; and (b) the dates each advisory firm and/or adviser was engaged."	A related concern arises with co-investment and syndication. Investors commonly structure acquisitions on the basis that they will bring in co-investors or syndicate part of their interest post-completion, and disclose those intentions to Treasury and the ATO in the original FIRB application. The co-investment or syndication is assessed and considered by the regulators as part of the original transaction. While the subsequent sell-down is technically a disposal, Condition 3.1 requires the investor to comply with the full notification regime (i.e., including 60 days' advance notice of the disposal, details of the parties, the expected disposal proceeds and profit or loss, estimated Australian income tax payable with supporting calculations, and details of all tax advisers) for a transaction that the regulators have already been informed of and considered. That compliance burden is disproportionate where the sell-down simply gives effect to arrangements canvassed in the original application, and is especially difficult to justify where the incoming co-investor or syndication partner does not itself require FIRB	Treasury and the ATO should also establish a process for engaging with applicants on proposed conditions during the initial application process, so that conditions are tailored to the transaction from the outset rather than requiring investors to negotiate carve-outs after draft conditions have been issued.

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	approval because the relevant monetary thresholds do not apply. Committee members have sought upfront carve-outs from FIRB during the application process to address this, but in practice have been unable to secure them until draft conditions are received and negotiated individually. The Committee submits that there should be a more effective way to engage with the ATO during the application process so that conditions are fit for purpose from the outset.	
Condition 3.2—Notification of arrangements relating to issue of new equity or debt interests, related party services or fees, restructure of target group or assets, transfer of assets to related entities and return of capital **"**Each Investor must, for each of the items described below and at a time not less than 28 days before implementation of that item, notify the Treasury (through the Foreign Investment Portal) and ATO (at PGPrivateEquity@ato.gov.au and ATO-FIRBS@ato.gov.au) of your intention and provide the information identified for that item below:	Condition 3.2 restricts ordinary business operations. The $2 million threshold catches routine intercompany transactions. For example, a target that manufactures products in Australia and exports weekly to related entities overseas would need to provide 28 days' advance notice before every shipment exceeding $2 million, which would materially disrupt the business unless it negotiates carve-outs. Transactions between wholly owned subsidiaries do not change beneficial ownership and are already subject to	(i) Replace 28-day pre-notification with quarterly post-event reporting aligned to the exemption certificate cycle. (ii) Exclude ordinary-course intercompany sales, settlements of intercompany receivables, dividend payments and cash-pooling transactions.

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(a) Details of any new equity or debt interests issued by the Target Entities to the "foreign applicant" or its associates or related parties following the transaction to which the FIRB approval relates. (b) Details and relevant agreements or documentation in relation to any new arrangements entered into following the transaction to which the FIRB approval relates under which services are provided by or fees paid to a related party of, or by the Target Entities to a related party of the "foreign applicant" and/or any of the limited partners in the "foreign applicant" which is a fund. For the avoidance of doubt, only documents in existence at the time of providing the notification are required to be provided. (c) Details of any further restructure of the Target Entities or their assets occurring after the transaction to which the FIRB approval relates which reduces the future Australian *tax liabilities [defined to include withholding tax]. (d) Details of any transfer of assets (includes all real property and other property, excluding intangible assets) from the Target Entities to a related	ATO oversight. The 28-day advance notice period is unworkable for recurring transactions, and investors must either seek blanket carve-outs, which Treasury negotiates inconsistently, or notify Treasury repeatedly for transactions that do not raise foreign investment concerns.	(iii) Exclude wholly owned subsidiary transfers that do not change ultimate beneficial ownership. (iv) Raise the $2 million threshold to a proportionate level, for example $10 million or a percentage of transaction value, tested annually.

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entity occurring after the transaction to which the FIRB approval relates which exceeds $2m per transaction. This excludes transactions between related parties in Australia involving trading stock. (e) Details of any transfer of intangible assets (no matter the value) from the Target Entities to a related entity. (f) Details of any return of capital from the Target Entities to the "foreign applicant" or a related entity occurring after the transaction to which the FIRB approval relates."		
E. Audit and compliance		
Condition 4.1—Audit Reports "The Applicant will, no later than three months after the end of the Applicant's financial year, provide a written report to the Department of the Treasury (through the Foreign Investment Portal) on compliance with conditions [insert] (the **Audit Reports**). The first report will be in respect of the period from the date that the Applicant first takes an action specified in this no objection notification to the end of the Applicant's financial year. If the action takes place less than 90 days before the end	The investor bears the cost of commissioning an Audit Report indefinitely, regardless of its compliance record, and must prepare separate Audit Reports for the same corporate group where multiple approvals exist.	Permit one report for all approvals held by a corporate group. After five consecutive clean Audit Reports, replace the Audit Report with an annual senior-officer certification, with Treasury able to reinstate the audit requirement after non-compliance.

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of the first financial year, then that period can be incorporated into the next Audit Report. The Applicant will provide subsequent reports in respect of each subsequent financial year. Audit Reports will be prepared at the cost of the Applicant to which the Audit Report relates."		
Condition 4.2—Preparation by independent audit firm "The Applicant must ensure that Audit Reports prepared pursuant to Condition 4.1 are prepared in accordance with Relevant Australian Standards by one or more independent audit firms."	An independent audit firm and compliance with Australian auditing standards are required regardless of the subject matter of the conditions being audited. Conditions relating to board composition, data location, personnel nationality and notifications involve factual matters rather than accounting judgements, and the Auditing and Assurance Standards Board's standards are not designed to verify them.	Limit the independent audit-firm requirement to conditions involving financial subject matter. For factual conditions, permit verification by internal audit or a suitably qualified independent expert.
Condition 4.6—Review of conditions "Each 12 months following issue of this decision, or as required, a review of the operation of these conditions and their impact on the business of the Company is to be conducted with representatives of the Applicant, the Company and the Department of	The annual review process lacks transparency. No published criteria address whether a condition remains necessary, Treasury need not give reasons for its decision, and the investor has no mechanism to initiate or challenge the review. In practice,	(i) Remove a condition at review if it has not been triggered, unless Treasury gives written reasons to retain it.

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Treasury and adjustments made to these conditions as agreed in writing between the representatives."	reviews rarely result in conditions being removed, even where the condition has never been triggered or other legislation such as the SOCI Act has overtaken it.	(ii) Allow the investor to request the review and record its outcome in writing.
F. Land conditions		
Land Development Conditions Example: Conditions requiring development of residential land within a specified timeframe, including subdivision conditions when the land was acquired as a whole parcel.	Development conditions continue after the secured development is complete, so reporting continues after the obligation is discharged. Subdivision conditions are also imposed where the land was acquired as one parcel and no subdivision is proposed.	(i) End a development condition on completion, evidenced by a senior-officer statutory declaration, without a variation application. (ii) Impose subdivision conditions only where subdivision forms part of the approved proposal.
Access restrictions to Properties by directors and other persons (a) The Applicant must use its best endeavours to ensure, and within its powers must ensure, that the Applicant's directors do not access the Target Properties, except where they are: 1. accessing areas open to the public in their personal capacity;	(a) Access conditions similar to the examples provided are restrictive and interfere with the ordinary ownership functions of investors. Directors, board members and similar persons of the investor, as property owner, cannot enter property owned by the investor unless they are in a public area, escorted by a tenant's employee, or	In relation to (a), the Committee recommends that Treasury and the ATO reconsider the need to impose access conditions, particularly in respect of: (a) investors that are passive investors in fund structures who are not involved in day-to-day management;

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2. escorted by an authorised employee of a relevant tenant in accordance with the existing access arrangements under the tenancy agreement; or 3. accessing those areas of the Target Properties in accordance with the emergency access provisions of the lease between the Applicant and the relevant tenant. (b) Each Applicant, or Representative of the Applicant, whether contractors, employees, investors and board members of the Applicant and its management team, must not access the Target Property to be acquired by the Applicants, except where the person(s) has a legitimate business requirement. This restriction does not apply to persons visiting the Target Property in a personal capacity, or public common areas of the Target Property, or tenanted spaces that are open to the public. (c) The Applicant must use its best endeavours to ensure that the company and its subsidiaries, and their appointees, management secondees or any other staff representing unitholders do not have access to any confidential, commercially sensitive or security-matter related information	responding to an emergency. The conditions prevent routine site inspections, governance oversight and property management functions. An investor organisation is also comprised of different teams that are assessing an acquired property for different purposes (for example, analysts which oversee the financials including investment into capital expenditure and technical team which are involved in reviewing the extent of works required to maintain the acquired property). The access conditions do not take into account the different uses for which an investor representative may need to access an acquired property. (b) Such access conditions are applied as a blanket restriction, without considering the nature of the investor. For example, access conditions are imposed even on passive investors in fund structures who are not involved in day-to-day management, or where the investor	(b) investors whose representative teams are based in Australia and are, for example, involved in assessing capital expenditure and works. In relation to the "legitimate business requirement" standard, the Committee recommends that Treasury and the ATO reconsider imposing access conditions on passive investors in fund structures who are not involved in day-to-day management. The Committee also recommends that Treasury and the ATO publish clear guidance on what constitutes a legitimate business requirement for access. In relation to tenanted properties, the Committee recommends that Treasury and the ATO reconsider imposing access conditions where practical measures already prevent tenanted or secured

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held at any data centres located at the Property or the clients of those data centres or the client data held at those data centres.	has already engaged a property manager. There is no guidance provided by Treasury and/or the ATO on what is a "legitimate business requirement" for access. (c) The "best endeavours" standard required by such access conditions is undefined and creates uncertainty for investors. This is a subjective test which investors can interpret differently from each other. There is also no guidance provided by Treasury and/or the ATO on what would ordinarily satisfy the best endeavours obligation. For example, the Committee is aware of cases where non-compliance has been determined despite practical access restrictions being in place, including measures such as tenants having exclusive possession, tenanted areas being secured by key cards and physical barriers preventing access. Treasury has taken the view that practically preventing access is insufficient to demonstrate	areas from being freely accessed by an investor's directors, employees, board members and similar persons. Tenants with exclusive possession under their leases can already occupy their premises to the exclusion of all others, including the landlord. Access to tenanted premises ordinarily requires notice (except in emergencies) and is supervised by the tenant. Additional requirements imposed by access conditions can be inconsistent with the terms of the underlying leases. The Committee does not consider that access conditions restricting access to tenanted areas are necessary given the access restrictions already contained in leases. The Committee also recommends that Treasury and the ATO publish clear guidance on what "best endeavours"

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	compliance and that documented policies and processes must be implemented. The Committee considers that Treasury should communicate this position to investors through published guidance, rather than investors learning of it only in the course of a compliance audit. (d) The record-keeping requirements associated with access conditions are unclear and create substantial compliance burdens for investors. Investors would benefit from further guidance on the records to be kept in respect of access conditions, including whether Treasury or the ATO requires logs of all persons accessing the acquired property and the level of detail required in those logs. Compiling those records is administratively burdensome and expensive for investors, who must then put in place property management arrangements under which managers record access to non-public areas, in addition to the practical measures referred to in	means in the context of access conditions. In relation to record-keeping, the Committee recommends that Treasury and the ATO provide clear guidance material on what is acceptable in relation to the record-keeping requirements associated with access conditions. The Committee considers that it should be sufficient for an investor to have a policy on access requirements that it provides to all employees, including new starters. Investors should not be required to maintain detailed logs of each person accessing the acquired property and the purpose of the access, because that requirement is administratively burdensome and expensive.

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	paragraph (c) above that already prevent access to those areas.	
Material changes to access conditions (a) The Applicant must notify the Treasury (at firbcompliance@treasury.gov.au) and all tenants of the Targeted Properties of any change to the Property Manager (other than to a related entity of the Property Manager) and/or Facilities Manager (if engaged) that has operational and day to day control of the Targeted Properties, within 28 days of the change occurring. (b) The Applicant must provide written notification to the Treasury (at firbcompliance@treasury.gov.au) within 14 days of it becoming aware of any material change to: 1. a tenant's right to access to other parts of the Target Properties that are currently leased or occupied by other tenants other than areas open to the public or in their personal capacity; or 2. accessing those areas of the Target Properties in accordance with the emergency access provisions of the lease between the Applicant and the relevant tenant.	Such conditions impose a practical burden on investors particularly where they are acquiring properties where there is a large number of tenants (such as shopping centres or large office buildings). In relation to the example condition in paragraph (a), property managers and facilities managers are often independent third parties that are in the business of providing property management or facilities management services under a contractual arrangement. It is unclear how an investor's acquisition of a property is connected to the property manager or facilities manager appointed for that property or what national interest consideration this example condition is aimed at addressing. As a practical matter, tenants of a property which is acquired will already be aware of the change in property manager and/or facilities manager as the day to day contact for the tenant will change as a	The Committee recommends that Treasury and the ATO reconsider the need to impose conditions requiring investors to notify Treasury or the ATO of changes, or material changes, to access arrangements by the property manager, facilities manager or tenants of acquired properties, each of whom is often an independent third party. This applies particularly where: (a) the investor is a passive investor that is not involved in the day to day management of the acquired property; or (b) the property being acquired is a property where there is a large number of tenants (such as shopping centres or large office buildings).

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(c) The Applicant must provide written notification to the Treasury (at firbcompliance@treasury.gov.au) within 14 days of it becoming aware of any material change to access rights granted to contractors directly engaged by the Applicant of the Target Properties (under contractor categories as listed in Table 1 below). *Note: Table 1 includes an extensive list of service contractors that provide services such as cleaning, building security, building maintenance, fire protection, elevator repairs, rubbish removal and telecommunication and similar services.*	result of the transition to a new property manager or facilities manager. In relation to the example condition in paragraph (b), this is of a particular concern where the property being acquired is one where there is a large number of tenants (such as shopping centres or large office buildings). Changes to access arrangements occur frequently as part of ordinary property management. Investors who are not involved in the day to day management of tenancies will not be aware of what changes have been implemented in access arrangements of tenants. There is also no clarity as to what is a "material change" to a tenant's right to access. In relation to the example condition in paragraph (c), the Committee considers that the condition is impracticable for investors to comply with because it does not reflect the way commercial properties operate in practice. Such service contractors are often	The Committee also recommends that Treasury and the ATO: (a) apply a consistent and uniform timeframe of one month for reporting obligations to make the calculation easier (in order to standardise the reporting date across the different calendar months); or (b) introduce standardised reporting dates, for example, within one month after the end of each quarter (31 March, 30 June, 30 September and 31 December) or aligned with the end of each investor's financial year.

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	independent third parties engaged for repair or maintenance or to provide a particular service. Leases entered into with tenants already contain practical measures restricting such service contractors from entering tenanted premises, such as requiring supervision by tenants or limiting the circumstances in which contractors can enter tenanted premises without the tenant's consent.	
G. Cybersecurity, privacy and data conditions		
Condition 5.1—Data storage "The Applicant must use its best endeavours to ensure, and within its powers must ensure, that all sensitive information remains stored only in Australia and is accessible only from within Australia, except where sensitive information is accessed from outside Australia on a confidential basis (and in compliance with all applicable Australian law) by professional advisers or international insurers to a Group Company in connection with an actual or potential claim involving a Group Company."	Condition 5.1 is impracticable and, in many cases, technically incapable of implementation: (a) Cloud platforms replicate, cache and process data across regions. Australia-only storage is incompatible with mainstream cloud infrastructure, including backup and disaster recovery. (b) Health analytics, diagnostic and security services may have no Australian provider. The condition	Replace Conditions 5.1 with a controls-based framework: (a) Permit offshore storage and access where role-based access controls, audit logging and contractual data-protection obligations apply, consistent with APP 8's approach to cross-border disclosure. (b) Create a standing exception for cloud, managed-service, analytics and support providers engaged in the

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	prevents the use of those services instead of regulating that use. (c) Targets may have offshore service contracts predating acquisition. Termination can breach those contracts and disrupt established services which could impose material costs on the business. (d) 24-hour support often requires offshore teams to access Australian systems overnight. The condition requires an investor either to staff an Australian night shift or to forgo out-of-hours support. (e) Directors of the Target may be resident outside of Australia and require access to the information to ensure compliance with directors' duties under Australian law.	ordinary course and bound by contractual data-protection obligations. (c) Create a standing, self-assessed and notified exception where no commercially reasonable Australian provider can perform the function. (d) Grandfather arrangements in place at completion rather than requiring them to be unwound.

Condition 5.2—Policies and procedures access, use or disclosure of customer data "The Applicant must use its best endeavours to ensure, and within its powers must ensure that the Company implements written policies and procedures to ensure that, the following people do not and cannot access, use or disclose Bulk Customer Data,[1] relating to or obtained in connection with the Company's or any Group Company's Australian operations: (a) directors, officers and employees (and their agents and representatives) of the Applicant and entities in the Applicant's control group (excluding the Company, any Group Company and their respective directors, officers and employees); and (b) directors, officers and employees (and their agents and representatives) of the Applicant's shareholders and entities in each shareholder's control group, (c) except where the access, use or disclosure is required: (d) to enable a person to discharge their duties under Australian law; (e) for the purposes of ensuring and monitoring compliance with Australian law and any	Condition 5.2 raises the same issues as Condition 5.1. The absolute "do not and cannot access" standard creates strict liability for any access, including authorised, lawful or technically unavoidable access, which is incompatible with modern role-based access models.	See recommendations for Condition 5.1. Replace the absolute "do not and cannot access" standard with a controls-based requirement, that is, permit access where role-based access controls, encryption, audit logging and contractual data-protection obligations apply.

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notices, guidance or directions by a court, tribunal or regulatory authority; (f) for the purpose of the provision of, or continuation of, goods or services provided to a customer by any Group Company (including the supply of fuel, gas, food and other goods or services provided by any Group Company from time to time), or relating to the operation of the business of the Group Company; (g) to enable the transfer of data from the Company or another member of the Company Group to the Applicant or a member of the Applicant's control group for another purpose set out in this condition; (h) to assess or respond to a request for access or correction of data from a current, previous or potential customer who has requested access to, or use of, data about them; or (i) for any other purpose, where a current, previous or potential customer has given express or implied consent for the access, use or disclosure of data that relates to them,		

[1] **Customer Data** means data relating to a current, previous or potential customer of the Company or its subsidiaries from time to time, including 'personal information' or 'sensitive information' of those customers, as defined under the Privacy Act. **Bulk Customer Data** means Customer Data relating to [10,000] or more current or previous customers of the Company.

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or the access, use or disclosure is permitted under the Privacy Act 1988 (Cth) (**Privacy Act**)."		
Condition 5.3—Security of Customer Data "The Applicant must use its best endeavours to ensure, and within its powers must ensure that the Company does not export, and has appropriate security controls in place to prevent the export of Bulk Customer Data relating to or obtained in connection with the Company's Australian operations, to a location outside Australia, except as permitted below. From the date that is [insert months/years] after the date of the acquisition, the Applicant must use its best endeavours to ensure, and within its powers must ensure that, the Company has appropriate security controls in place for the protection of Customer Data. The Applicant must use its best endeavours to ensure, and within its powers must ensure that Customer Data relating to or obtained in connection with the Company or any Group Company's Australian operations, remains stored only in Australia and is accessible only from within Australia, except where:	Condition 5.3 imposes the same Australia-only storage and access restriction as Condition 5.1. The lengthy list of exceptions in the condition itself demonstrates the practical need for offshore access; a controls-based framework would be simpler and more effective.	See recommendations for Condition 5.1. The lengthy list of exceptions in Condition 5.3 demonstrates the practical need for offshore storage and access. Replace the location-based restriction with a controls-based framework, under which offshore storage and access are permitted where encryption, role-based access controls, audit logging and contractual data-protection obligations apply, instead of requiring compliance with a complex set of carve-outs.

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(a) storage or access is required to enable a person to discharge their duties under Australian law; (b) storage or access is for the purposes of ensuring and monitoring compliance with Australian law and any notices, guidance or directions by a court, tribunal or regulatory authority; (c) storage or access is in accordance with the Company's or Group Company's usual business practices as they have been conducted in the 12 months prior to the date of this no objection letter; (d) access is by any financial, accounting, insurance, legal, regulatory or other advisers, auditors, insurers, security trustees or debt or equity financiers (and each of their advisers) of the Applicant, the Company, any Group Company or any bona fide prospective purchaser of any interest in, or of any interest in the main undertaking of, the Applicant, the Company or any Group Company, but in each case only to the extent necessary in order for those persons to provide the advisory or other services bona fide required of them;		

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(e) storage or access is by a person providing a support or maintenance service to the Company or any Group Company, or any other service incidental to the operation of the business of the Company or any Group Company (including call centre services, billing, collections, systems support and maintenance or other outsourced business process services), in the performance of the service provider's contract for those services with the Company or a Group Company; (f) access is required to assess or respond to a request for access or correction of Customer Data from a current, previous or potential customer who has requested access to, or use of, Customer Data about them; or (g) storage or access is required for any other purpose, where a current, previous or potential customer has given express or implied consent for the access, use or disclosure of data that relates to them, or the access, use or disclosure is permitted under the Privacy Act."		

Condition 5.4—Cybersecurity protocols "The Applicant must use its best endeavours to ensure, and within its powers must ensure, that: (a) management of cybersecurity in relation to each Group Company that holds, collects or is able to access sensitive information, is included in a formal business or governance plan of the Group; (b) the Group maintains registers which identify all end user devices which have been issued by any Group Company to individuals authorised to access or hold sensitive information (and the relevant individual in each case to whom the device has been issued); (c) the Group employs or engages staff with responsibility for managing cybersecurity in relation to the business of each Group Company that holds, collects or is able to access sensitive information; (d) the Group carries out a cybersecurity risk assessment and penetration testing in respect of each Group Company that holds, collects or is able to access sensitive information every two years (with additional ad hoc testing as and when deemed required);	Conditions 5.4 and 5.5 predate the SOCI Act and were not updated when the critical infrastructure risk management program came into effect. They now duplicate SOCI Act obligations for regulated assets, while imposing prescriptive standards, such as two-yearly penetration testing, patching within four to six weeks, and daily and weekly backups, where the SOCI regime allows the responsible entity to determine controls proportionate to risk. An entity may fully satisfy its SOCI program yet breach its foreign investment approval on matters Treasury, rather than the sector regulator, enforces. The conditions also extend to non-SOCI assets for which no equivalent regulatory baseline exists.	(i) For SOCI-regulated assets, remove Conditions 5.4 and 5.5 and rely on the critical infrastructure risk management program and its regulator. (ii) For non-SOCI assets, replace the prescriptive standards with outcome-based requirements aligned to the SOCI framework, requiring a documented cybersecurity risk management program, regular risk assessments, and incident response procedures, while leaving frequency, methodology and technical controls to the responsible entity. (iii) Remove patching and backup timeframes that may be impracticable for legacy systems or specialist environments.

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(e) the Group maintains an ongoing risk register to highlight, capture and manage business technology risks of each Group Company that holds, collects or is able to access sensitive information; and (f) the Group undertakes business continuity testing every two years in relation to each Group Company that holds, collects or is able to access sensitive information (but so that this may be conducted on a group wide basis and does not require specific testing of every possible scenario or system for every individual entity)." **Condition 5.5—Cybersecurity relating to personal information** "The Applicant must use its best endeavours to ensure, and within its powers must ensure, that each Group Company: (a) performs both incremental and differential backups on sensitive information on a daily and weekly basis respectively; (b) updates and installs patches for operating systems within four to six weeks of publication;		

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(c) undertakes a cybersecurity assessment when acquiring IT products or services for the business; (d) only allows IT administrators of the Group to install software within the relevant entity; (e) has a documented cybersecurity procedure or guide (including clear procedures on what people need to do in the event of a cybersecurity incident which reflects the requirements under conditions [insert], or is covered by such a procedure or guide in respect of the broader Group, and implements their procedure or guide to ensure that cybersecurity awareness and training is embedded into the businesses' policies and procedure; and (f) requires all of the relevant Group Company's staff to have annual cybersecurity awareness training, including on the potential for introduction of attack vectors through malicious websites, phishing emails and infected USB drives and the need to ensure the security and integrity of sensitive information."		

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Condition 5.6—Privacy Breach Reports "The Applicant provides the Department of the Treasury with a report (**Privacy Breach Report**) if the Applicant becomes aware that the Company or any entity in its control group has been required to give notice to the Australian Information Commissioner of an eligible data breach under the Privacy Act. The Privacy Breach Report must be provided to the Department of the Treasury at firbcompliance@treasury.gov.au within 10 days of the earlier of the notice being given to the Australian Information Commissioner and the statutory date for which such notice is due. The Privacy Breach Report must include the identity of the entity involved, a description of the eligible data breach, the kind or kinds of information involved and the date or date range of the breach."	Condition 5.6 duplicates the Notifiable Data Breaches scheme under Part IIIC of the Privacy Act. Under Part IIIC, an entity that experiences an eligible data breach must notify the Office of the Australian Information Commissioner (**OAIC**) and affected individuals as soon as practicable. Condition 5.6 requires the investor to report the same breach to Treasury within 10 days. The investor therefore reports one breach to two regulators: the OAIC under the Privacy Act and Treasury under the foreign investment approval.	Remove Condition 5.6. If Treasury needs visibility of breaches affecting foreign-owned entities, Treasury should obtain that information from the OAIC through information sharing instead of requiring a second notification from the investor.
H. Governance and security conditions		
IT Systems Operation and Personnel Nationality Requirements "Operation and control of the Group's information technology systems (to the extent they relate to Australian operations) is undertaken only from within Australia"; "maintenance of such systems and networks is undertaken only from within Australia, except where this requires offshore servicing of	Australia-only operation, control and maintenance rules prohibit global service-desk, follow-the-sun and managed-service models. The citizenship requirement is also stricter than the SOCI Act, which requires critical infrastructure operators to implement personnel vetting and	(i) Permit offshore support, managed-service and follow-the-sun operations where role-based access controls, encryption and audit logging apply.

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components"; and "personnel with primary responsibility for day-to-day operation, monitoring and security of such systems are Australian citizens ordinarily resident in Australia (and, where required, hold appropriate security clearances)."	access controls proportionate to the risk but does not mandate Australian citizenship. This condition imposes a blanket citizenship standard for personnel with primary IT responsibility, which may leave specialist roles unfilled where qualified candidates are permanent residents or vetted foreign nationals.	(ii) Limit citizenship to the Chief Information Security Officer or equivalent; subject other personnel to vetting and access controls. (iii) For SOCI-regulated assets, do not exceed the SOCI standard.
Security Clearance Conditions related to a requirement that a certain number of directors must have a certain level of security clearance (subject to a relevant grace period to permit the director to apply for and be granted the applicable security clearance). Conditions requiring that directors, officers and employees with security clearances must attend security briefings with the Government.	The Australian Government Security Vetting Agency (**AGSVA**) publishes processing times for higher-level clearances that can extend for many months or more than a year, while FIRB grace periods are commonly two to three months. The investor and director cannot control government processing, and some foreign national directors may be ineligible for required levels.	(i) Require an applicant to lodge a complete clearance application within 30 days of appointment and to hold the clearance once AGSVA grants it, instead of imposing a fixed grace period. (ii) Permit supervised or escorted access while pending and state that AGSVA processing delay is not a breach.

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I. Other conditions		
Best Endeavours Obligations on Minority Holders Example: An applicant with a 20 per cent interest must use "best endeavours to ensure" that the target company adopts specified data policies, cybersecurity protocols or governance arrangements. Example condition wording: "The Applicant must use its best endeavours to ensure, and within its powers must ensure, that [the target company] implements written policies and procedures to ensure that [specified persons] do not and cannot access, use or disclose Bulk Customer Data."	Best endeavours requires all steps a prudent and determined person would take, including steps against its interests, but a 20 per cent holder cannot procure a target's action without voting control.	Limit best-endeavours obligations to investors with voting control. Below that threshold, require only exercise of available rights, such as voting in favour of the measure.
Notification and Termination Event Conditions Examples: "Each Applicant must advise FIRB within 60 days of taking the approved action." "Each Applicant must advise FIRB within 60 days of a termination event" (ceasing to hold interest, ceasing to control entity, etc.).	Both events are already reportable under Part 7A of the FATA through the Register of Foreign Ownership of Australian Assets (**Register**), including taking the approved action, ceasing to hold an interest or ceasing to control an entity. The condition requires a second report to a different address on a 60-day rather than 30-day deadline, adding nothing to the Register.	Remove notification and termination-event conditions and rely on the Register. If additional notice is genuinely required for a sensitive asset, cross-reference the Register obligation and use its 30-day deadline.

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Critical Infrastructure Conditions—Renewable Energy Example: Security conditions restricting public access to critical infrastructure assets, applied to renewable energy projects spanning thousands of hectares.	Treasury applies physical-security conditions designed for enclosed sites to wind and solar projects spanning thousands of hectares, often with agricultural use and third-party access rights. Restricting access across such sites is impracticable and does not address the relevant risk of unauthorised access to control systems.	(i) For wind and solar projects, apply physical-security requirements only to substations, control rooms and switching equipment, and not to the generation site as a whole. (ii) Remove requirements to restrict public or agricultural access across dispersed land areas.

Conclusion

8. The Committee submits that the conditions identified in this submission impose compliance costs that can be reduced without compromising the underlying regulatory objectives. The Committee proposes that in each case the underlying risk is already addressed by another Australian regime, has ceased to exist, or is not materially mitigated by the condition as drafted. Accordingly, removing or amending the relevant conditions would reduce the compliance burden on foreign investors while maintaining appropriate protections for the national interest.

9. Beyond the specific amendments set out in the table above, the Committee recommends that Treasury adopt four principles for the conditions framework:

    a. a condition should not be imposed, or maintained, where the identified risk is already addressed by another Australian regulatory regime;

    b. a condition should cease when the risk it addresses has been discharged, and should not continue indefinitely;

    c. where a corporate group holds several approvals, a single consolidated set of conditions should apply, capable of alignment without a fee-bearing variation application for each approval; and

    d. a condition that has not been triggered or has not been the subject of non-compliance, for example audit conditions and tax reporting conditions, should be removed after a definitive period such as three or five years from the date of approval unless Treasury gives written reasons for retaining it.

10. The Committee would welcome the opportunity to discuss these recommendations with Treasury and FIRB.

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