

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the Inquiry into foreign investment proposals

2019 - 2020

Division: Foreign Investment Division
Topic: Sorts of actions taken to demand compliance with conditions
Reference: Spoken

Question:

ACTING CHAIR: Can I just thank you for your response to question on notice AET 53. You stated that there have been no criminal or civil enforcement actions ever taken under the Foreign Acquisitions and Takeovers Act 1975, which is of some concern to me. But you also gave me a very short answer there: 'Over the past three years action has been taken to demand compliance with conditions'. Could I ask you, on notice, to give me a much fuller answer to explain the sorts of actions that you have undertaken? I do note that on pages 74, 75 and 76 of your submission you talk about non-legislative approaches and remediation action plans as part of your enforcement, and information gathering infringement notices. I would like to understand more fully where they apply to the large entities that we've been discussing, rather than just to residential entities, because some of the penalties here are \$157,000 and the references to body corporates, I think, mean there might be differentiated systems, depending on the nature of the investment.

Mr Brake: We can certainly do that. Can I just clarify one thing? I just want to make sure that our answer to this question is clear. What we say in answer to this question is that over the past three years actions have been taken to demand compliance with conditions. When we say, 'However, no criminal or civil enforcement actions have been taken under the Foreign Acquisitions and Takeovers Act 1975 during this period', what we're referring to is that in the last three years no criminal or civil enforcement actions have been taken.

ACTING CHAIR: Thank you for the clarification, but I'm keen to get an overview of what action has been taken. It says there's a disposal order here—that the Treasurer may make a disposal order in relation to significant action. Have there been any disposal orders in recent times?

Mr Brake: With regard to non-residential real estate, not in the last three years.

ACTING CHAIR: So you can see I need a much fuller picture of what is going on there. Could I just go to the five elements that help you determine the risk that's involved. You go to five things that you consider?

Ms Kelley: The security, competition, policies, community and character.

ACTING CHAIR: Yes; national security, tax and other government policy character of the investor, impact on community and economy, and competition. Those are the five categories that you apply. My next questions regard character. Could you please outline the process that Treasury undertook when the Cheng family purchased Alinta Energy, which needed approval from the Foreign Investment Review Board? How do you check character in that context?

Mr Brake: On significant applications we will do a range of consultations and inquiries, as we want to understand very carefully who the acquirer is. Basically, there are two parts to our process: who's the acquirer and what's the target? We want to understand both of those elements. We do that through a range of checks done by Treasury officials—and I think we sent this out separately to the committee—plus also very importantly with our consultation partners.

ACTING CHAIR: Which include Foreign Affairs, Defence—

Mr Brake: The national security agencies.

Answer:

Since 2015, a number of approaches have been taken in relation to non-compliant non-residential foreign investors. These have included implementation of remedial action plans to address non-compliance; seeking clarification of reasons for late provision of required reporting; and requiring urgent preparation of those reports if the reasons were not adequate; and implementation of processes by the investor to ensure future compliance.

In relation to the question about the process that Treasury undertook when the Cheng family purchased Alinta Energy, this will be answered as part of Treasury's response to the more detailed questions on this issue that Senator O'Neill has requested by 4 June 2020.