AUSTRALIA

FOREIGN INVESTMENT REVIEW BOARD

REPORT 1993–94

Foreign Investment Review Board

Report 1993-94

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The Hon Ralph Willis, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with the Foreign Investment Review Board's responsibility to advise the Government on foreign investment matters, I have the honour to submit to you the Board's Report for the financial year 1993-94.

The first chapter of the Report outlines the activities of the Board; the second chapter provides a summary of the year's foreign investment proposals and comments on the more significant cases; and the third chapter reviews trends in foreign investment in Australia and Australian investment abroad. The Report has a number of Appendices that provide supporting material on foreign investment policy.

Yours sincerely

K.C. Stone, AO
Acting Chairman

MAIN POINTS

Senate Inquiry

* Members of the Board provided evidence to the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in relation to the Print Media during the year. The Committee's first report was released on 9 June 1994 and its final report is due to be released by 31 March 1995. The Government is scheduled to respond to the Committee's findings and recommendations within three months of the release of the final report.

Proposals

* In 1993-94 there were 5,287 proposals for investment in Australia submitted to the Government of which:

  - 4,819 were approved (3,085 with conditions), 384 withdrawn and 84 rejected.

* The rejection rate was 1.7 per cent. Most rejections continued to be in relation to developed residential real estate.

* Total expected investment for proposals approved in 1993-94 was $23.5 billion (major qualifications apply to these and other FIRB statistics - refer to Chapter 2).

  - Expected investment increased for real estate ($6.0 billion to $10.8 billion) and tourism ($1.4 billion to $4.1 billion).

* There were 88 approvals in 1993-94 with expected investment of more than $50 million which accounted for about $12.4 billion of expected investment, or about 53 per cent of the total expected investment.

* The most significant investor sources in terms of total expected investment in 1993-94 were United States ($4.4 billion), Singapore ($2.8 billion), United Kingdom ($1.6 billion), Japan ($1.5 billion), Hong Kong ($1.1 billion) and Malaysia ($0.9 billion).

  - Four of the top six investor sources were in Asia.

* Australian interests were parties to 109 foreign investment approvals and were expected to contribute $3.3 billion in investment (about 14 per cent of total expected investment).

CONTENTS

Chapter 1

FOREIGN INVESTMENT REVIEW BOARD

Introduction

The Foreign Investment Review Board (FIRB) is a non-statutory body established in April 1976 to advise the Government on foreign investment policy and its administration. The Board examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's policy.

Membership

Membership of the Board comprises:

* Mr Ken Stone, AO who was appointed to the Board in May 1984 and has been Acting Chairman since October 1992. He was formerly Secretary, Victorian Trades Hall Council, Junior Vice-President of the Australian Council of Trade Unions, and National Director of the Australian Trade Union Training Authority.

* Mr Des Halsted who was appointed to the Board in October 1984. He was formerly Deputy Chairman of Hooker Corporation Ltd, having retired as an executive from the Hooker Group in 1982. He has been a director of a number of companies.

* Mr Graham Maguire who was appointed to the Board in August 1993. He was a Senator for South Australia in the Commonwealth Parliament between 1983 and 1993. During his term of office he served as Chairman of the Senate Standing Committee on Foreign Affairs, Defence and Trade (1987-1993) and was a member of the Joint Committee of Public Accounts (1983-1987).

* Mr Tony Hinton who has been Executive Member since August 1992. He is First Assistant Secretary of the Investment and Debt Division of the Commonwealth Treasury. Mr Hinton has been with Treasury since 1971 and has diverse experience across Treasury's various Divisions.

Functions

The main functions of the Board are:

* to examine proposals by foreign interests for investment in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;

* to advise the Government on foreign investment matters generally;

* to foster an awareness and understanding, both in Australia and abroad, of the Government's foreign investment policy; and

* to provide guidance, where necessary, to foreign investors so that their proposals may be in conformity with the policy.

The Board's functions are advisory only. Responsibility for the Government's foreign investment policy and for making decisions on proposals rests with the Treasurer. Many of the decisions requiring Ministerial consideration are made by the Assistant Treasurer.

The Board is assisted by an Executive which is part of the Treasury and also has available to it advice from other Commonwealth and State Government departments and authorities.

Consultation Arrangements

During the year, the Board consulted various Commonwealth and State departments and authorities with an interest in particular (mainly large) foreign investment proposals. Their advice and comments were helpful in assessing the implications of proposals and the Board acknowledges the assistance received from the relevant Commonwealth and State departments and authorities.

The Board regards its liaison with the State Governments as important in the administration of Australia's foreign investment policy.

In keeping with one of the Board's functions of fostering an awareness and understanding of the Government's policy and providing guidance to investors, a number of meetings were held with both potential foreign investors and Australian businesses to explain foreign investment policy and its administration and the application of the policy to particular proposals.

Processing of Proposals

The Board seeks to ensure that proposals are dealt with quickly and efficiently and every effort is made to avoid unnecessary interference in normal commercial practice. The information and other requirements have been designed to keep to a minimum the cost incurred in seeking foreign investment approval.

In 1993-94, there was a 40 per cent increase in the number of applications. While this increase was more than accounted for by an increase in the number of relatively straight forward real estate proposals, the extra case-load resulted in an increase in the average case processing time from 15 to 17 days. Minimising the impact on commercial decision making processes and ensuring proper consideration of cases against policy requirements continue to be important objectives of the administration of foreign investment policy. Improved computer systems supporting processing arrangements assisted the handling of the increased case-load.

Senate Select Committee Inquiry

On 9 December 1993, the Senate appointed a Select Committee on Certain Aspects of Foreign Ownership Decisions in relation to the Print Media. Some aspects of the Committee's terms of reference were of direct relevance to the Government's foreign investment policy and the operations of the Board. The Treasury's submission to the Committee is at Appendix E. During the first half of 1994, the Committee held several public hearings and FIRB Members gave evidence to the Committee on a number of occasions:

* Mr Stone and Mr Halsted on 11 April 1994;

* Mr Hinton on 4 and 11 February 1994 and 11 April 1994.

The Committee's first report was released on 9 June 1994 and its final report is due to be released by 31 March 1995. Under established guidelines, the Government is scheduled to respond to the Committee's findings and recommendations within three months of the release of the final report.

Freedom of Information

In 1993-94, the Board's Executive processed eight applications received under the *Freedom of Information Act 1982* (FOI Act) for access to documents concerning foreign investment matters. Wherever practicable,

requests for information are answered without applicants needing to have recourse to the provisions of the FOI Act. The Executive takes particular care in responding to these requests to protect commercially sensitive and confidential information.

It is the practice of the Executive to consult with the parties to a proposal about the documents that are the subject of an FOI request to establish whether the parties are prepared to have the documents made available to an applicant. As a result of these procedures, no applicants were granted a full release of documents, but partial release in respect of four requests was possible. In two cases, access to all documents was denied. There are, of course, provisions in the FOI Act authorising denial of access to commercially confidential documents. This has relevance to documents provided to the Board (or prepared by the Board or the Executive) in its examination of a proposal. Of the remaining proposals, one was withdrawn and one remained outstanding. Two requests were the subject of appeal to the Administrative Appeals Tribunal and are scheduled to be heard in 1994-95.

No commercially sensitive or confidential documents have been released to applicants as a result of an FOI Act request or subsequent appeal.

Cost of the Board's Operations

Consistent with the proper discharge of its functions, the Board is concerned to ensure that the cost of its operations is minimised. To this end, the Board limits face to face meetings to once a month, with business between meetings conducted by telephone conferences. Government expenditure on the Board in 1993-94 was around $90,000, slightly up on the previous year reflecting the appointment of another member during the year. As in previous years, about 75 per cent of the expenditure was for the remuneration of the Board members; the remainder was for local travel, car hire, printing expenses and incidentals. These costs are included in Treasury's 1993-94 Annual Report.

The Foreign Investment Review Board members' fees are determined by the Remuneration Tribunal. Under the Remuneration Tribunal Act 1973, the Tribunal is required to make Reports or Determinations in respect of the remuneration and allowances of officers at intervals of not more than one year.

Government expenditure on the Executive was about $873,000 in 1993-94. This expenditure was directed mostly to salaries, with relatively minor

expenses being incurred for travelling, printing and advertising. In addition, some minor support costs were incurred by Treasury. The total cost of foreign investment screening would also include a minor part of the expenditure of other Government authorities and agencies, at both the Commonwealth and State levels, that are consulted on proposals.

At end-June 1994, there were 19 officers in the Foreign Investment Review Branch of Treasury.

International Organisations

Australia is a subscriber to the 1976 Declaration of the Organisation for Economic Co-operation and Development (OECD) concerning international investment and multinational enterprises. The Declaration comprises two instruments (covering national treatment and investment incentives and disincentives) and a set of voluntary guidelines concerning the conduct of multinational enterprises in member countries. Australia also is a subscriber to two OECD Codes of Liberalisation, one covering capital movements and the other invisible transactions. The broad thrust of the OECD's work in this area is to seek to liberalise international capital flows.

The Board is the national contact point for matters that arise in respect of the guidelines and its Executive is called upon to provide briefing on foreign investment policy matters relating to the Declaration and the Codes.

Chapter 2

FOREIGN INVESTMENT PROPOSALS

This chapter provides statistical information on the proposals submitted in 1993-94 for examination and comments on some of the more significant cases.

Statistical Qualifications

Many qualifications need to be borne in mind in interpreting the Board's statistics. The data recorded on investment relate to expected investment on proposed acquisitions and new businesses submitted by foreign interests under foreign investment policy, including planned future development expenditures. In particular, the figures:

* relate to proposals approved, which may or may not be implemented; and, if implemented, perhaps only over a period of years;

* for real estate include annual programs approved for real estate developers for unspecified purchases up to an agreed dollar amount and 'off-the-plan' approvals for developers to sell up to 50 per cent of residential real estate developments to foreign interests. It is almost certain that some of these annual program and 'off-the-plan' approvals will not be fully utilised;

* provide no indication of the source of the funds for the investment. Some of the expected investment represents the contributions by Australians to projects in which they are in partnership with foreign interests. The extent to which approved investment proposals will directly result in foreign capital inflows depends not only upon whether the proposals are implemented, but also upon the proportion financed from foreign sources. In many cases, this proportion will be quite low. In the case of acquisitions by one foreign interest from another foreign interest of businesses operating in Australia, no flows of capital across the Australian exchanges need occur;

* do not necessarily reflect changes in foreign ownership since, in some cases, the vendor as well as the purchaser come within the definition of a 'foreign interest'; and

* in addition to being inherently 'lumpy' (ie, the tendency for a few large investments to skew any one year's figures), are restricted to investments which fall within the scope of the *Foreign Acquisitions and Takeovers Act 1975* and the Government's foreign investment policy. Therefore, they do not cover foreign portfolio investments, direct foreign investments below the notification thresholds, new businesses below the notification thresholds, expansions of existing foreign-owned businesses in Australia into related areas and sales by foreign investors to Australian residents.

  - The notification and examination thresholds for the various sectors are contained in the policy summary at Appendix A.

Policy changes mean that the statistics are not necessarily comparable over time; in particular, the major liberalisations to foreign investment policy in recent years mean that the statistics for 1993-94 lack comparability in a number of significant respects with the figures for earlier years (see Appendix D for full details of policy changes).

The Board's statistics on foreign investment proposals are substantively different from the Australian Bureau of Statistics' (ABS) statistics of foreign investment in Australia. ABS statistics, which are set out in Chapter 3 of this Report, seek to measure actual investment transactions between residents of Australia and non-residents.

Having regard to the qualifications mentioned above, the Board urges particular caution about the use of FIRB statistics, as well as for making comparisons with earlier years.

Definition of 'Expected Investment'

The term 'expected investment' that is used widely throughout this Report includes many elements:

* the expected cost of acquisition (shares, real estate or other assets);

* the expected cost of development following acquisition; and

* in the case of a new business, the expected cost of both establishment and development.

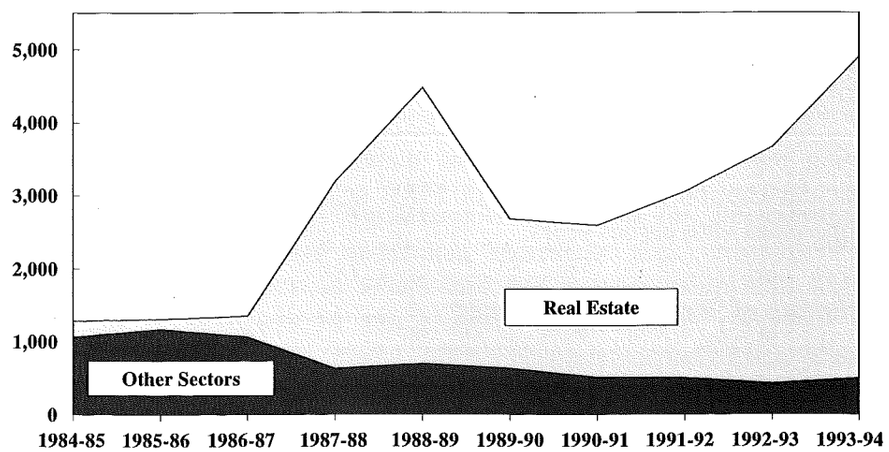
Total expected investment is the aggregation of the cost of each acquisition, the development (if any) associated with each acquisition, the development

associated with new business proposals and the value of annual programs and 'off-the-plan' approvals, valued at the time each application is approved. Total expected direct investment approved during 1993-94 was $23.5 billion. However, because of the reasons set out in the paragraphs above about 'statistical qualifications', it cannot be concluded that all of this actually occurred during 1993-94. For example, it includes $6.1 billion of expected investment on development which is likely to be spread over the years ahead (to the extent that the acquisitions and development occur at all).

Applications Decided

A record number of foreign investment applications were received during 1993-94. **Chart 2.1** depicts the number of cases decided (ie, excluding those cases that were withdrawn) over the last ten years. Real estate proposals have dominated the number of cases over the last seven years, reflecting the tightening in foreign investment policy in 1987 which brought the acquisition of urban land under the Act.

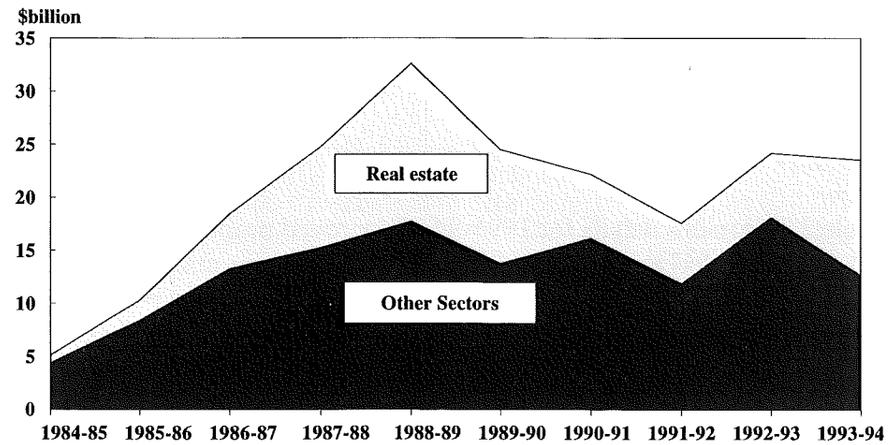
Chart 2.1 Annual Number of Applications Decided



Notwithstanding the substantial increase in the number of cases decided in 1993-94, the value of total proposed investment in the applications was marginally below that recorded in 1992-93 and remained below the peak recorded in 1988-89. **Chart 2.2** shows the value of proposed investment associated with cases decided over the last 10 years. The much higher notification thresholds for foreign investment in sectors other than real estate

mean that these sectors contribute a much higher proportion of proposed investment than the number of cases would at first suggest.

Chart 2.2 Annual Value of Applications Decided



A breakdown on the outcome for proposals submitted over the last four years is provided in **Table 2.1.**

Table 2.1 Applications Considered (Number and Expected Investment) 1990-91 to 1993-94

	1990-91		*1991-92*		*1992-93*		*1993-94*	
Action	*No*	*$b*	*No*	*$b*	*No*	*$b*	*No*	*$b*
Unconditionally Approved	928	12.7	1048	12.0	1334	18.9	1734	16.3
Conditionally Approved	1597	7.6	1933	3.8	2268	5.1	3085	7.2
Total Approved	*2525*	*20.2*	*2981*	*15.8*	*3602*	*24.0*	*4819*	*23.5*
Rejected	69	1.9	66	1.8	58	0.1	84	0.1
Total Decided	*2594*	*22.2*	*3047*	*17.6*	*3660*	*24.1*	*4903*	*23.6*
Withdrawn	235		227		165		384	
Total Considered	**2829**		**3274**		**3825**		**5287**	

The number of rejected cases needs to be interpreted with care and reflects the Government's consultative approach to foreign investment whereby foreign investors are encouraged to discuss potential proposals with the FIRB to ensure they are consistent with policy. Where a potential proposal is inconsistent with policy, the proponents may modify the proposal to ensure it conforms or may not proceed with the project. In some instances where a proposal has been submitted and it is clearly inconsistent with the policy, some proponents prefer to withdraw the proposal rather than have it rejected, while others require a formal rejection to assist with negating contractual obligations.

Of the 3,085 approvals with conditions in 1993-94, 3,047 (99 per cent) were in relation to real estate. The conditions for real estate cases were predominantly related to specifying a period during which development should commence or requiring temporary residents to sell established properties when they cease to reside in Australia.

Approvals by Sector

Summary

Table 2.2 provides details for 1993-94 of approved proposals for each sector and the associated expected investment on acquisitions and new businesses. The bulk of the total expected investment is attributable to the expected cost of acquisitions and in relation to development expenditure; real estate, tourism and the mineral sectors account for the majority of the expected investment.

* The sectors attracting the largest expected investment were the real estate and tourism sectors, with some $15 billion of expected investment (or 64 per cent of the total) and 92 per cent of all approvals.

  - The overall importance of the real estate sector in terms of total expected foreign investment, however, is overstated as it includes expenditure for annual programs and 'off the plan' approvals granted to real estate developers. Based on past experience, a significant proportion (possibly up to half) of these advance approvals are not utilised. In addition, no account is taken of real estate that is developed under an annual program by a foreign developer which is subsequently sold to Australian interests.

* Mineral exploration and development sector was the next most attractive to intending foreign investors, with expected investment of $3.7 billion or 15 per cent of expected investment.

Table 2.2 Approvals by Industry Sector, 1993-94 ($billion)

Industry Sector	*No of Approvals*	*Acquisition Cost*	*Expected Investment on Development*	*Total Expected Investment*
Agriculture, Forestry & Fishing				
less than $50m	17	0.1	..	0.2
$50m and over	-	-	-	-
Total	*17*	*0.1*	..	*0.2*
Finance & Insurance				
less than $50m	44	0.4	-	0.4
$50m and over	3	0.3	0.1	0.4
Total	*47*	*0.6*	*0.1*	*0.7*
Manufacturing				
less than $50m	94	0.9	0.1	0.9
$50m and over	3	1.0	0.1	1.1
Total	*97*	*1.8*	*0.2*	*2.0*
Mineral Exploration & Development				
less than $50m	46	0.6	0.1	0.6
$50m and over	16	2.1	0.9	3.0
Total	*62*	*2.7*	*1.0*	*3.7*
Resource Processing				
less than $50m	6	0.1	-	0.1
$50m and over	2	0.2	..	0.2
Total	*8*	*0.2*	..	*0.2*
Services(Excl Tourism)				
less than $50m	120	0.9	..	0.9
$50m and over	11	0.7	0.2	0.8
Total	*131*	*1.6*	*0.2*	*1.7*
Tourism				
less than $50m	52	0.9	0.1	1.0
$50m and over	19	1.4	1.8	3.1
Total	*71*	*2.3*	*1.9*	*4.1*
Real Estate				
less than $50m	4286	5.8	1.2	7.0
$50m and over	34	2.3	1.5	3.8
Total	*4320*	*8.1*	*2.8*	*10.8*
Total				
less than $50m	4665	9.5	1.6	11.0
$50m and over	88	7.9	4.6	12.4
TOTAL	**4753**	**17.3**	**6.1**	**23.5**

Notes:

(a) Data have been compiled by reference to the Australian Standard Industrial Classification published by the ABS, except proposals involving newspaper printing and publishing which have been allocated to service industries (the ABS classifies these under manufacturing). Acquisitions of diversified company groups are classified according to the industry of the major activity of the group. Acquisitions of real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.

(b) '..' indicates expected investment of less than $0.05 billion.

(c) Totals may not add due to rounding.

Of the $23.5 billion total expected investment from approvals, about $3.3 billion was attributable to Australian entities participating in ventures with foreign interests. By excluding Australian participation, a better approximation of total expected foreign investment approved in 1993-94 would be $20.2 billion (compared with $19.3 billion in 1992-93).

Agriculture, Forestry & Fishing

There were 17 proposals in the agriculture, forestry and fishing sector in 1993-94, involving total expected investment of $115 million. Of these 17 proposals, 14 proposals involved rural properties with a total expected investment of $101 million. In the previous year, there were 14 proposals and total expected investment of $178 million. Each of the 17 proposals involved total expected investment of less than $50 million.

Finance & Insurance

On the basis of FIRB data, foreign investor activity in the finance and insurance sector in 1993-94 was slightly down on preceding years. During 1993-94, 47 proposals were approved, comprising five new business proposals and 42 proposed acquisitions. The total expected investment for these approvals was $720 million, compared with $752 million in 1992-93. There were three proposals involving expected investment in excess of $50 million each. Together, they accounted for 48 per cent ($347 million) of total expected investment in the sector. The most significant of these was the foreign to foreign takeover of Friends' Provident Life Assurance Company Limited by Tower Insurance Group Limited.

Manufacturing

Expected investment of $2 billion in the manufacturing sector was associated with proposals approved during 1993-94. Around 97 per cent of this consisted of expected investment related to acquisition costs, with only a small proportion attributable to expected investment on development. Of the 97 proposals considered, three involved expected investment of $50 million or more and accounted for around 55 per cent of expected expenditure. No proposals in the manufacturing sector were rejected during 1993-94.

Given the long historical involvement of foreign investors in the manufacturing sector (particularly United Kingdom, United States and more

recently Japan) a large proportion of investment that occurs is not included in FIRB data as the expansion of existing businesses do not require notification.

The major acquisitions approved during the course of the year were Gladstone Power Station joint venturers acquiring (and subsequently operating) the Gladstone power station which had been owned and operated by the Queensland Electricity Commission; and Lion Nathan Limited's acquisition of the brewing division of South Australian Brewing Holdings Limited, including Southwark Brewery, Kent Town Malting and 105 hotels located in South Australia.

Mineral Exploration & Development

The modest improvement in energy and other minerals commodities prices in 1992-93 did not continue in 1993-94. Economic growth in key industrial economies remained low and patchy with stronger growth in the US offset by slow growth in Japan and Western Europe. Weak economic growth in Japan held back demand and prices for certain key commodities, notably coal, iron ore and base metals. World energy commodity prices and other mineral commodity prices fell in Special Drawing Right terms, by 9.2 per cent and 2.8 per cent respectively in 1993-94. Whereas in 1992-93 a lower Australian dollar meant energy commodities prices expressed in $A terms increased by 7.7 per cent and other minerals commodities increased by 2.8 per cent, there was no such offset in 1993-94: the Australian dollar appreciated from a low of US65 cents in September 1993 to US70-71 cents in February 1994[1].

There were more investment proposals in the minerals sector approved in 1993-94 than in the previous year (62 compared with 54 in 1992-93) but total expected investment fell from $5.2 billion to $3.6 billion. There were 58 acquisitions and four new businesses. The leading source countries were the United States ($1,082 million), the United Kingdom ($466 million) and Japan ($305 million). Australian controlled companies with some foreign ownership were expected to invest $1,242 million. There were no rejections in the minerals sector in 1993-94.

On an industry basis, the number of approvals and total expected investment for the past two years are shown in **Table 2.3**.

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1 See ABARE: Australian Commodities, Forecasts and Issues, June Quarter 1994.

Table 2.3 Minerals Sector Approvals by Number and Total Expected Investment: 1992-93 and 1993-94

Industry	Acquisitions				New Businesses			
	No of approvals		$ million		No of approvals		$ million	
	1992-93	1993-94	1992-93	1993-94	1992-93	1993-94	1992-93	1993-94
Gold	16	22	970	1150	-	-	-	-
Oil and gas	6	10	406	1018	-	2	-	790
Coal	16	8	1668	188	3	-	845	-
Base metals	6	3	1020	127	1	-	220	-
Other	5	15	63	335	1	2	50	42
Total	**49**	**58**	**4127**	**2818**	**5**	**4**	**1115**	**832**

Foreign investor proposals in the coal industry fell sharply from $2.5 billion in 1992-93 to less than $200 million in 1993-94. There were eight approved proposals, all of which were acquisitions compared with 19 proposals (three new mines) in 1992-93. World coal prices fell again for the fourth year in a row (cumulative price falls of around 15 per cent in the four years to 1994) and demand conditions remained flat for both coking coal and steaming coal for export (the value of total coal exports declined from $7.5 billion in 1992-93 to $7.2 billion in 1993-94). Domestic consumption of coal rose from 51.5 million tonnes in 1992-93 to 53 million tonnes in 1993-94. Poor prospects for coal exporters have had two effects - new greenfields projects have been delayed until conditions improve and expansion in production in the short term is likely to come from additional capacity at existing mines.

There was an increase in proposals to invest in the oil and gas sector in 1993-94, though this did not reflect any major improvement in price or demand/supply conditions. There are long lead times on developing new oil and gas projects and the Board's figures on total expected investment are very lumpy. There were 10 approved acquisitions in the oil and gas sector, with total expected investment of $1,018 million (up from six proposals and $406 million in 1992-93). By far the largest proposal involved the competing bids for Bridge Oil Limited by two US oil controlled companies — Parker & Parsley Petroleum Australia Limited (P&P) and Gantry Acquisition Corporation. P&P was successful with an on-market offer for Bridge Oil which valued the company at $378 million. Four Japanese companies, Sumitomo Corporation, Osaka Gas Co Ltd, Teikoku Oil Co Ltd and Japan National Oil Company purchased a 44.5 per cent and 30 per cent interest in the 'Petrel' and 'Tern' offshore gas exploration permits respectively and will contribute to further exploration of those prospective gas fields. The two new proposals involved the development of the Wanaea Oil Field by the six companies involved in the North West Shelf project at a cost of $600 million and the development of the offshore Roller and Skate

oil fields near Thevenard Island, WA by a consortium of Australian and foreign investors at a cost of about $190 million.

The number of proposals to invest in the gold industry increased from 16 in 1992-93 to 22 in 1993-94 and total expected investment rose from $970 million to $1,150 million. Australian gold production rose to a record 255 tonnes in 1993-94. This additional production was achieved largely by expansions of existing mines (not reviewable under foreign investment policy) and previously approved new mines coming on stream during the course of the year. For the third year in a row, there were no proposals for new gold mines in 1993-94. The Normandy Poseidon Group (a foreign interest but Australian controlled) continued to acquire further significant interests in the gold mining industry with Poseidon Gold Limited's purchase of Reynolds Australia Metal Ltd's 40 per cent interest in the Boddington Gold mine and successful on-market takeover offers for Aztec Mining Company Limited and the remaining shares it did not already own in Mt Leyshon Gold Mines Limited.

World base metals prices continued to fall throughout 1993-94, but there are signs that the price outlook is improving as world economic recovery increases demand; stocks have fallen to more reasonable levels. There were only three proposals in the base metals sector (all acquisitions), with total expected investment of $127 million, well down from the seven proposals and expected investment of just over $1 billion in 1992-93.

The Board's figures on expected investment tend to understate the level of foreign investor activity in the minerals sector for at least two important reasons. First, expansions of existing mines in which foreign companies have an interest are not included because they do not require approval under foreign investment policy. Secondly, new mines being undertaken by naturalised companies, either on their own or in partnership with Australian-owned and controlled companies, are also exempt from approval under foreign investment policy and as such would not be included in the Board's investment figures. Prominent examples include two new projects by CRA Limited (Marandoo iron ore project in the Pilbara and Century Project zinc/lead project in Queensland) and MIM Holdings Limited (Ernest Henry copper deposit also in Queensland).

Resource Processing

There were eight proposals in the resource processing sector during 1993-94, with a total expected investment of $249 million. Two proposals

accounted for almost all of expenditure — Bundaberg Sugar Company's offer for the South Johnstone Mill and Tully Sugar Limited (although subsequently rejected by shareholders) and ConAgra International Inc proposal to increase its shareholding in Australian Meat Holdings Limited.

In announcing the decision to approve the ConAgra proposal, the Treasurer indicated that he took into account a number of factors, including those raised in representations from various interested parties, such as the Cattle Council of Australia and the Cattlemen's Union. In reaching this decision that the proposal was not contrary to the national interest, the Treasurer took into account the contributions ConAgra has made to date and proposed to make to Australia's meat processing industry.

Service Industries (excluding tourism)

During 1993-94, the Board examined 131 proposals for investment in the service industries sector (excluding tourism), comprising 17 proposals to establish new businesses and 114 proposed acquisitions of interests in existing businesses. The total expected investment for the establishment of new businesses and acquisitions was $162 million and $1,562 million, respectively. Only one proposal was rejected. The major source investors within this sector came from the United States, United Kingdom, New Zealand and Malaysia.

Of the 17 proposals to establish new businesses, two proposals accounted for 91 per cent ($145 million) of the total expected investment. These proposals involved the establishment of new businesses in the air transport and communications sectors.

There were nine proposals involving acquisitions with expected expenditure of $50 million or more. Together they accounted for 44 per cent ($687 million) of total expected investments in the service industries sector (excluding tourism). The more significant proposals in this sector considered by the Board were in the transport, personal services, retail trade and business service industries. These included the proposal by Novacorp Australia Pty Ltd and Petroliam Nasional Berhad to acquire an interest in the Moomba to Sydney Pipeline, the proposal by Service Corporation International to acquire an interest in the Pine Grove Funeral Group and several acquisitions by Bankers Trust Australia Limited on behalf of their institutional and portfolio investors in various service industry sectors.

Tourism

There was a significant increase in expected investment in the tourism sector associated with approvals in 1993-94, with total expected investment of $4.1 billion ($1.4 billion in 1992-93). **Table 2.4** provides a disaggregation of tourism investment by country of investor and location of investment.

A total of 71 proposals involving new businesses and acquisitions were approved, of which three proposals associated with the Sydney and Melbourne Casinos accounted for about 35 per cent of total expected investment in tourism and 78 per cent of total expected investment in new tourism businesses. There were eight proposals to establish new tourism businesses, involving total expected investment of $1.8 billion and 63 proposals involving acquisitions of existing tourism projects and businesses for which total expected investment amounted to $2.3 billion. One proposal involving an existing business was rejected.

The comparative figures for the preceding year were three new business proposals (involving expected investment of $653 million) and 25 proposed acquisitions of existing businesses (with total expected investment amounting to $773 million).

Table 2.4: Expected Investment Associated with Tourism Approvals[(a)], by Country of Investor and Location of Investment, 1992-93 and 1993-94 ($million)

Location	*USA*		*Japan*		*Singapore*		*Germany*		*Hong Kong*		*World Other*		*Sub-Total*		*Aust*		*Total(b)*	
	92-93	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*	*92-93*	*93-94*
NSW	22	476	120	274	-	365	-	375	87	123	70	123	299	1736	-	250	299	1986
QLD	26	43	76	339	-	44	42	-	-	-	4	264	147	689	71	2	217	691
VIC	600	-	-	-	-	94	-	-	-	11	-	87	-	192	-	500	-	692
SA	-	2	-	-	-	22	-	-	-	-	10	178	-	201	-	-	-	201
WA	-	-	-	-	-	131	-	-	-	-	1	28	1	159	-	-	1	159
Other(c)	-	67	45	12	-	190	-	-	15	-	238	149	908	418	-	1	908	419
Total	648	587	241	625	-	845	42	375	102	134	323	829	1355	3395	71	753	1425	4148

Notes:
Figures may not add due to rounding
(a) Tourism proposals defined by reference to Australian Standard Classification Numbers 9138, 9141, 9143, 9144, 9232, 9233, 9241, 9242.
(b) Includes acquisitions of tourism businesses involving assets of over $5 million and establishment of new tourism projects involving total investment of $10 million or more. New tourist projects are not recorded as such in the statistics unless total investment is to exceed $10 million. For example, a proposal by foreign investor to buy land valued at $3 million to build a $9 million motel would be classified as a new 12 million tourism business. By contrast, a proposal to buy land valued at $3 million to build a $3 million motel would not be examinable under foreign investment policy as a new tourism business (because total investment is less than $10 million) but would be examinable as an acquisition of commercial real estate for development and recorded as such.
(c) Other comprises expenditure in the other States and the Territories and also expenditure to be undertaken in more than one State or Territory.

Urban Real Estate

In 1993-94, a total of 4,320 proposals by foreign interests to acquire urban real estate in Australia were approved, a 36 per cent increase over the 3,180 proposals approved in 1992-93. The total expected investment in urban real estate increased by 77 per cent from $6.1 billion in 1992-93 to $10.8 billion in 1993-94 (a disaggregation of this figure according to type of proposal is provided in **Table 2.5**), indicating a large increase over and above the upward trend in the expected urban real estate investment experienced in recent years (**Chart 2.3**). The increase appears to result from a more than two-fold increase in investor interest in all areas of residential real estate for development and a moderate increase in investor interest in the developed commercial real estate sector.

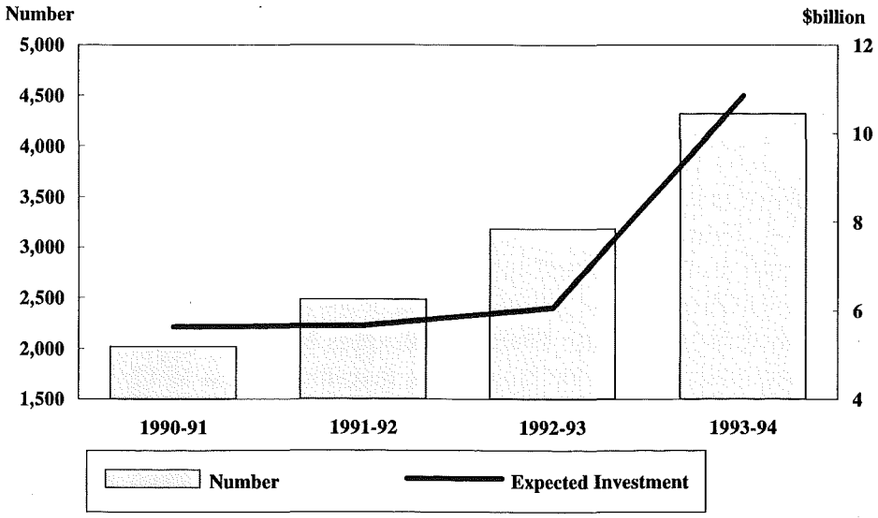
For foreign investment policy purposes, the urban real estate industry is divided between the residential and commercial sectors (and within each of these sectors, between purchases of developed property and property for development).

Table 2.5 Expected Investment in Urban Real Estate by Type and Number of Proposals Approved in 1993-94 ($billion)

	Number of Approvals	*Consideration*	*Expected Development Expenditure*	*Total Expected Investment*
Developed Residential	1395	0.3	..	0.3
Residential for Development				
- ordinary approvals	1357	0.6	1.9	2.5
- off-the-plan				
. individual	670	0.1	..	0.1
. developer	677	3.2	..	3.2
- annual programs	6	0.2	..	0.2
Total Residential for Develop	*2710*	*4.2*	*1.9*	*6.0*
Commercial	215	3.6	0.9	4.5
TOTAL	**4320**	**8.1**	**2.8**	**10.8**

Note: The symbol '.' indicates an aggregate figure of less than 50 million dollars.

Chart 2.3 Approved Urban Real Estate



RESIDENTIAL REAL ESTATE

Total expected investment in residential real estate for proposals approved in 1993-94 was $6,349 million, a 125 per cent increase from the $2,822 million in 1992-93. Consistent with past years, about 95 per cent of this expected investment — $6,032 million — was attributable to proposals involving residential real estate for development and five per cent ($317 million) was attributable to purchases of developed residential real estate, with the majority of these relating to purchases by foreign nationals temporarily resident in Australia.

Developed Residential Real Estate

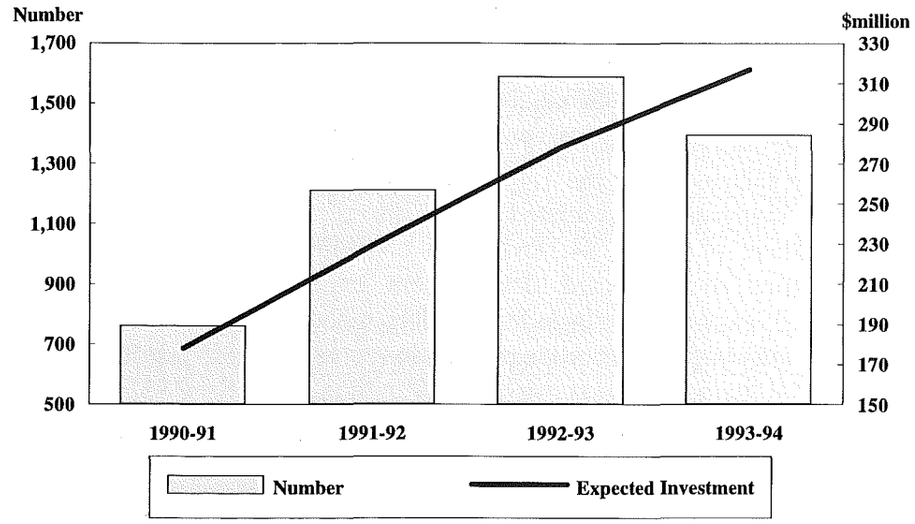
The policy applying to developed residential real estate remains restrictive. Accordingly, approvals are given only for a strictly limited range of purchases. Under current policy, foreign purchases of developed residential real estate are normally only permitted in the case of foreign nationals who are temporarily resident in Australia for a period exceeding twelve months and foreign-owned companies buying homes for their senior executives resident in Australia. In both cases, a normal condition of approval is that the property be sold when no longer required for these purposes.

Although there was a slight decrease in the number of these proposals, there was an increase in the value of expected investment in developed residential

real estate for approvals in 1993-94, maintaining the upward trend of recent years **(Chart 2.4)**.

* Of the 1,395 approvals, approximately 56 per cent were from PRC nationals who purchased dwellings under the temporary resident category of the residential real estate policy, while they were waiting for consideration of their applications for permanent residency.

Chart 2.4 Approved Developed Residential Real Estate



Reflecting the comparatively restrictive nature of the policy, there were 63 rejections of proposed acquisitions of developed residential property in 1993-94. The anticipated acquisition costs of these proposals was $25 million. These proposals were rejected because the prospective buyers did not fall into one of the eligible categories and, in some cases, involved the prior unapproved acquisition of property which resulted in the purchaser being required to sell the property.

In addition to forcing divestiture, the Government also has the power to impose substantial financial and penal sanctions for the unapproved acquisition of property, including those acquisitions utilising corporate, trust or nominee arrangements.

Many of the rejected proposals involved non-residents intending to purchase developed residential property, either as an investment or as a holiday home. Several involved proposals by foreign-owned companies seeking permission

to buy 'executive housing' which were not approved because the company did not have a resident executive who would occupy the property or the scale of the proposed 'executive housing' accommodation appeared to be inconsistent with the size of the company's business activities in Australia. Other rejected proposals involved the acquisition of an established single dwelling that was to be demolished to permit redevelopment of the land. Normally, proposals of this kind are approved only if the existing dwelling has reached the end of its economic life and the proposed redevelopment is of a substantial nature.

Residential Real Estate for Development

There were 2,710 proposals approved for the acquisition of residential real estate for development, including eligible redevelopment, during 1993-94, an 84 per cent increase over the 1,468 proposals approved in 1992-93. Total expected investment associated with those proposals amounted to $6,032 million, of which $4,186 million constituted acquisition costs and $1,846 million the expected development expenditure. The expected development expenditure, including eligible redevelopment, relates to only 1,357 ordinary approvals with acquisition costs of $597 million. The remainder of the acquisition costs ($3,589 million) comprised $3,369 million of developer and individual 'off-the-plan' approvals and $220 million of annual programs.

Ordinary Approvals

Ordinary approvals comprise the purchase of broadacres for residential subdivision and vacant building blocks for single dwelling construction and for integrated residential developments (such as townhouse and high rise units). As noted above, 1,357 proposals by foreign interests to acquire residential real estate for development were approved, with a total expected investment of $2,443 million, consisting of $597 million for acquisitions and $1,846 million for the associated development expenditure.

Residential development proposals are generally approved, subject to a condition that construction is commenced within a stipulated period of time. This category of investment adds to the total housing stock in Australia.

There were 10 proposals rejected involving the acquisition of residential real estate for development in 1993-94. The anticipated acquisition and development costs of the real estate associated with these proposals was

$45 million. The most common reasons for these rejections were one or more of the following:

(i) the planned development expenditures were not considered significant in relation to the acquisition price for the property (there is a normal expectation that proposed development expenditure should be at least 50 per cent of the acquisition price);

(ii) the proposed timetables for development were unsatisfactory; or

(iii) the prospective foreign purchasers had not established to the Government's satisfaction that they had the technical and financial capacity to undertake the proposed development.

Table 2.6 provides details of expected investment in all categories of urban real estate for each State and Territory. New South Wales continues to be the main location for expected foreign investment in residential real estate, with 46 per cent of the total.

Table 2.6 Total Expected Investment in Urban Real Estate by Category of Real Estate and Location of Investment, Approved in 1993-94 ($million)

Location	*Developed Residential*	*Residential for Development*	*Developed Commercial*	*Commercial for Development*	*Total*
New South Wales	202	2,768	1,545	437	4,952
Victoria	34	796	958	649	2,437
Queensland	38	1,862	397	144	2,440
Western Australia	36	463	171	19	689
Other [(a)]	7	143	116	63	330
TOTAL	**317**	**6,032**	**3,187**	**1,312**	**10,848**
Number of Proposals	*1,395*	*2,710*	*171*	*44*	*4,320*

(a) 'Other' includes Australian Capital Territory, Northern Territory, Tasmania and South Australia, and annual programs covering more than one State or Territory.

'Off-the-Plan' Arrangements

Under the 'off-the-plan' arrangements, foreign interests may receive approval to acquire up to 50 per cent of the units, townhouses or house and land packages in new residential development projects, providing the dwellings are bought before or during construction, or following completion but prior to being first occupied or used. In April 1993, the Government announced that the 'off-the-plan' category had been extended to include acquisitions that are part of extensively refurbished buildings where the building's use had changed from non-residential commercial to residential and the cost of refurbishment of the building was at least 50 per cent of its acquisition cost or current value.

In 1993-94, there were 670 proposals approved, involving expected investment of $137 million for individuals to acquire residential property 'off-the-plan'. There were nine proposals involving proposed acquisition costs of $3 million which were rejected as they did not meet the 'off-the-plan' policy criteria.

The Board's statistics overstate the likely extent of foreign purchases, since few of the developers with 'off-the- plan' approvals will actually sell a full 50 per cent of their developments to foreign purchasers.

There were 677 applications from real estate developers approved for advance approval to sell property, valued at $3,232 million, 'off-the-plan' to foreign persons. This is a significant increase over the 352 advance approvals, valued at $1,584 million, for 1992-93 and may indicate increasing developer confidence in future growth in the residential market.

In the seven year period to June 1994, a total of 2,043 'off-the-plan' approvals were granted to real estate developers and the Board has now received reports on more than 50 per cent of these developments. (There is necessarily a significant lag between the granting of approvals and receipt of reports due to construction time.) The returns received in the seven years to June 1994 indicate that sales to foreign interests averaged about 19 per cent of total sales by number and about 24 per cent by value.

About half of all 'off-the-plan' sales to foreign interests were on the Gold Coast. In that region, about 21 per cent of sales by number and about 32 per cent by value were to foreign interests. The average purchase price paid by foreign interests was about 80 per cent higher than the average price paid by Australian residents, suggesting a tendency for foreign investors to acquire more expensive dwelling units. Elsewhere in Queensland, sales to foreign interests were 16 per cent by number and 17 per cent by value of total sales and the average price paid by both Australian and foreign purchasers was similar and substantially lower than on the Gold Coast.

In New South Wales, sales to foreign interests accounted for 14 per cent by number and 18 per cent by value of total sales with foreign purchasers paying, on average, 34 per cent more for properties than Australian residents. In Victoria, 27 per cent by number and 29 per cent by value of sales were to foreign interests and in Western Australia 27 per cent by number and 31 per cent by value of sales were to foreign interests. South Australia accounted for only a small number of 'off-the-plan' approvals

and only seven per cent of reported sales in that State have been to foreign interests.

Integrated Tourism Resorts

On 25 July 1991, the then Treasurer announced a change in the foreign investment policy which would permit foreign investors to acquire any residential real estate within a designated Integrated Tourism Resort (ITR) without the need to obtain Government approval. There are established criteria to qualify as a designated ITR. The policy change was designed to encourage further investment in tourist resorts. The regulation made pursuant to the *Foreign Acquisitions and Takeovers Act 1975*, which gave effect to the policy change, came into force on 30 September 1991.

Up until June 1994, the following 10 resorts had been designated as ITRs:

* Hamilton Island Resort in the Whitsunday Passage (Qld);
* Sanctuary Cove at Hope Island (Qld);
* Hyatt Regency Resort at Coolum (Qld);
* Royal Pines Resort at Ashmore (Qld);
* Mirage Port Douglas Resort at Port Douglas (Qld);
* Hope Island Resort, Hope Island (Qld);
* Palm Cove Travelodge Resort (Qld);
* Laguna Quays Resort, Stage 1 at Repulse Bay (Qld);
* Kooralbyn Valley Resort (Qld); and
* Wirrina Cove Resort (SA).

Annual Programs

The annual program arrangements are designed to avoid the need for established real estate developers to notify individual acquisitions of property. Such companies may be granted annual approvals to buy land up to specified limits on condition that they report to the Board at the end of the year on their acquisitions and the development undertaken. In 1993-94, there were seven annual program arrangements, six involving residential real estate for development totalling $220 million in expected acquisition costs and one involving commercial acquisitions of $25 million. This is a

significant increase over the three annual program approvals in 1992-93, which totalled $80 million.

COMMERCIAL REAL ESTATE

During 1993-94, the Government approved 215 proposals involving non-residential commercial real estate (including one under an annual program). The total expected investment associated with the approved proposals was $4,499 million, a significant increase over the 1992-93 figure. Most of the activity in this sector involved the acquisition of developed commercial property.

Significant individual proposals include the acquisition by Bankers Trust Australia Ltd of the Cities of Australia Property Trust and the Grosvenor Trust, Thakral Group's acquisition of a number of commercial properties throughout Australia and the acquisition of various commercial properties in Sydney and Melbourne by the United States retailer Toys 'R' Us.

Approvals by Country of Investor

Expected investment by country of investor for approvals in 1990-91 to 1993-94 are summarised in **Table 2.7.** Country data for 1993-94 are disaggregated by States in **Table 2.8** and by industry sector in **Table 2.9**.

Table 2.7 Expected Investment by Country of Investor by Year of Approval

Country of investor	*1990-91* *$b*	*1991-92* *$b*	*1992-93* *$b*	*1993-94* *$b*
United States	3.9	1.9	3.9	4.4
Singapore	0.2	0.7	0.9	2.8
United Kingdom	2.9	1.9	4.2	1.6
Japan	5.0	2.6	2.0	1.5
Hong Kong	0.4	0.6	0.8	1.1
Malaysia	0.4	0.4	0.4	0.9
New Zealand	1.1	1.0	0.6	0.8
Other foreign	4.0	3.7	6.6	7.0
Australia	2.3	3.0	4.8	3.3
Total	20.2	15.8	24.0	23.5

Notes: Figures may not add due to rounding. The contribution attributed to Australia reflects expected investment by Australian entities participating in ventures with foreign interests.

The United States remained the most important sources of expected foreign investment in Australia approved during 1993-94. Other major sources included Singapore, United Kingdom, Japan, Hong Kong, Malaysia and New Zealand.

* The decline in Japanese expected investment continued in 1993-94 and was approximately one sixth of the level in 1989-90.
  - In 1993-94, Japanese expected investment was concentrated in the tourism, real estate and mineral exploration sectors and was principally directed towards New South Wales and Queensland.
* A notable development has been the expansion of expected investment from Singapore, which was the second largest source of expected investment in 1993-94 for approvals, replacing the United Kingdom.
  - This expected investment was highly concentrated in the real estate and tourism sectors, with most investment occurring in New South Wales and with the remainder being evenly spread among the other more populous states.
* Expected investment from the Peoples Republic of China includes $426 million in the real estate sector.

Table 2.8 Expected Investment by Country by State 1993-94 ($billion)

	USA	*Singapore*	*UK*	*Japan*	*Hong Kong*	*Other/ Aust (a)*	*Total*
New South Wales	1.1	1.2	0.4	0.5	0.7	4.2	8.1
Queensland	0.5	0.4	0.3	0.7	0.2	2.4	4.5
Victoria	0.7	0.4	0.1	0.1	0.2	2.2	3.7
Western Australia	0.3	0.5	0.2	0.1	0.0	1.7	2.8
Other (b)	1.7	0.3	0.5	0.2	0.0	1.7	4.4
Total	4.4	2.8	1.6	1.5	1.1	12.1	23.5

Notes:
Figures may not add due to rounding.
(a) Includes expected investment from Australian controlled companies.
(b) Includes off-shore takeovers and proposals where the investment is expected to be undertaken in more than one State or Territory.

Table 2.9 Total Expected Investment Associated with Approved Proposals, by Country of Investors and Industry Sector 1993-94 ($million)

Industry Sector	*USA*	*UK*	*Ger-many*	*Other EC*	*NZ*	*Japan*	*Sing-apore*	*Mal-aysia*	*Other ASEAN*	*Hong Kong*	*P. R. China*	*World Other*	*Sub-total*	*Aust (a)*	*Total*
Agric, Forestry & fishing	47	6	-	-	15	5	-	2	15	-	-	63	152	-	152
Mineral Explor. & Develop	1083	466	3	134	46	305	-	81	18	2	13	258	2408	1242	3650
Resource Processing	91	111	-	-	-	4	-	-	1	-	29	-	236	13	249
Manufacturing	640	151	77	80	113	206	84	22	3	29	1	167	1573	403	1976
Finance & Insurance	117	92	180	6	189	25	3	9	17	44	0	37	717	3	720
Services (excl tourism)	603	261	29	112	203	62	69	152	1	14	16	122	1644	80	1724
Tourism	587	45	375	45	217	625	845	195	3	134	36	287	3395	753	4148
Real Estate (b)	1226	471	67	85	44	316	1787	449	102	887	426	4183	10044	804	10848
Total	**4393**	**1604**	**731**	**463**	**827**	**1546**	**2788**	**910**	**161**	**1110**	**522**	**5114**	**20170**	**3297**	**23467**
Number of Proposals(c)	*264*	*330*	*92*	*129*	*46*	*244*	*1093*	*177*	*209*	*259*	*927*	*1041*	*4811*	*109*	*4920*

Notes:

(a) The investment identified as originating from Australia represents the contribution by Australian-controlled companies and Australian residents to the total investment associated with foreign investment proposals in which they are in partnership with foreign interests but does not generally include the contribution attributable to minority Australian shareholders in companies with majority or controlling foreign shareholders.

(b) 'Off-the-plan' approvals valued at $3.2 billion to real estate developers have been recorded as World Other because the country of investors is not known in advance.

(c) These figures indicate the total number of proposals in which investors from the particular country have an interest. Proposals involving investment from more than one country count as one proposal for each of the countries concerned.

Chapter 3

AGGREGATE FOREIGN INVESTMENT — ABS DATA

This chapter summarises trends in foreign investment in Australia and Australian investment abroad using Australian Bureau of Statistics (ABS) data.

ABS foreign investment data are based on different criteria from those used by the Foreign Investment Review Board - the Board's figures are an aggregation of the proposals submitted for approval, along with the expected associated expenditures, while those of the ABS are estimates of actual transactions that have occurred.

Foreign Investment Flows

Foreign investment flows involve the creation or extinction of foreign financial assets or the change in ownership of a financial asset. There is an inverse relationship between net capital flows and the current account deficit. In any year, the inflow of foreign investment into Australia, minus the outflow of Australian investment abroad, equals the balance on capital account in Australia's balance of payments. Within the balance of payments, the balance on capital account should equal the current account deficit but, because of net errors and omissions, a balancing item results.

Table 3.1 provides a breakdown of the flow of foreign investment over the last five years. In 1993-94, borrowing by the official sector (comprising general government and the Reserve Bank) declined by around 40 per cent, reflecting a decline in general government borrowing domiciled abroad, partially offset by borrowing domiciled in Australia.

Non-official investment is divided into direct and portfolio and other investment. Under the ABS framework for foreign investment statistics, direct investment represents capital invested in an enterprise by an investor (called a 'direct investor') in another country, which gives the investor a 'significant influence', either potentially or actually exercised, over the key policies of the enterprise (called a 'direct investment enterprise'). Ownership of 10 per cent or more of the ordinary shares or voting stock of an enterprise is considered to indicate 'significant influence' by an investor.

Table 3.1 Foreign Investment Flows ($billion)

	1989-90	*1990-91*	*1991-92*	*1992-93*	*1993-94*
Foreign Investment in Australia					
Official	3.7	0.7	2.1	11.6	6.9
Non-official					
Direct investment					
Equity	5.1	7.4	4.3	6.4	4.8
Debt	2.5	1.5	2.3	-1.5	-0.2
Other	-0.3	-0.3	0.2	0.1	0.1
Total direct investment	*7.4*	*8.5*	*6.9*	*5.1*	*4.8*
Portfolio and other					
Equity	1.6	3.2	1.1	4.1	9.8
Debt	12.6	9.9	5.0	-2.3	-2.0
Other	-0.5	-0.2	0.4	0.2	1.4
Total portfolio and other	*13.7*	*13.0*	*6.5*	*2.0*	*9.2*
Total Non-official	*21.0*	*21.5*	*13.4*	*7.1*	*14.0*
Total Foreign Investment In Australia	*24.7*	*22.2*	*15.5*	*18.7*	*20.9*
Australian Investment Abroad					
Official	2.2	1.9	-4.6	-4.0	1.6
Non-official					
Direct investment					
Equity	4.3	-3.5	1.2	4.8	3.7
Debt	-1.9	2.6	-0.2	-1.8	0.8
Other	-0.1	0.0	-0.1	0.2	0.0
Total direct investment	*2.3*	*-0.8*	*1.0*	*3.2*	*4.5*
Portfolio and other					
Equity	-2.0	1.9	2.3	-1.6	3.6
Debt	2.7	1.1	1.3	4.3	1.8
other	0.3	-0.3	-0.9	-0.1	1.4
Total portfolio and other	*1.0*	*2.8*	*2.6*	*2.6*	*6.8*
Total Non-official	*3.2*	*2.0*	*3.6*	*5.8*	*11.3*
Total Australian Investment Abroad	*5.4*	*3.8*	*-1.0*	*1.8*	*12.9*
Net Foreign Investment	19.3	18.4	16.4	16.9	8.0

Source: ABS 5306.0 International Investment Position, Australia June Qtr 1994

Non-official investment in Australia in 1993-94 was characterised by a continuation of the repayment of debt and by a substantial increase in portfolio and other equity investment, resulting in a doubling of non-official investment in Australia when compared with the previous year. Nevertheless, non-official investment in Australia remained below the inflows recorded in 1990-91 and in the late 1980s.

Non-official Australian investment abroad in 1993-94 was almost double that in the previous year. This growth continued the trend of the last three years. Contributing to the growth in Australian investment abroad was the

turnaround in portfolio and other equity investment which changed from a withdrawal of $1.6 billion in 1992-93 to an outflow of $3.6 billion in 1993-94.

Foreign Investment Levels

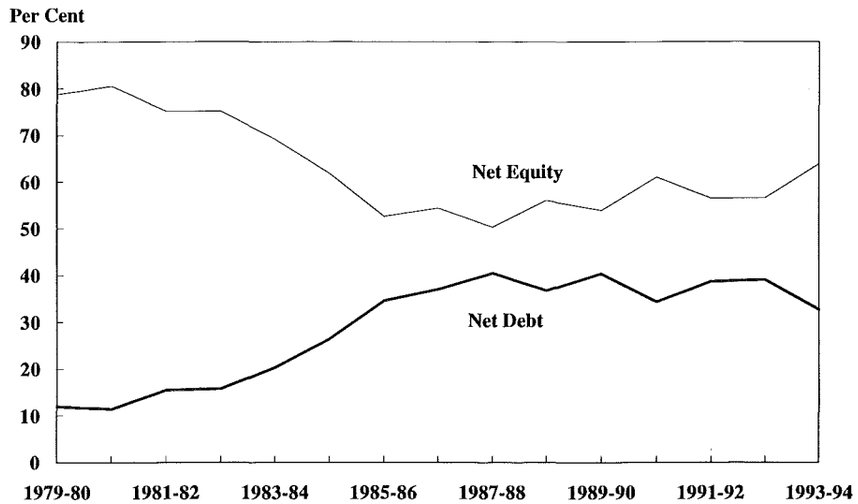
The estimated level or stock of foreign investment in Australia as at 30 June 1994 was $359 billion, comprising $61 billion of official investment, $119 billion in non-official direct investment and $179 billion in non-official portfolio and other investment. This represented an increase of $25 billion, or eight per cent, over the level at 30 June 1993.

The estimated level of Australian investment abroad as at 30 June 1994 was $126 billion, comprising $24 billion in official investment, $47 billion in non-official direct investment abroad, and $56 billion in non-official portfolio and other investment. This represented an increase of $14 billion, or 12 per cent, over the level at 30 June 1993.

Non-official direct investment represents those investments where the investor has the potential to exercise significant influence over key policies of the enterprise and accounted for 33 per cent of the total stock of investment in Australia and 37 per cent of the total stock of investment abroad as at 30 June 1994.

Chart 3.1 provides details of net equity and net debt as a proportion of total non-official net direct investment since 1979-80. Over the period, net equity has continued to be the major component of direct investment, although the proportion fell during the early 1980s. The change in the composition during the early 1980s was consistent with the trend toward debt financing and the growth of Australian investment abroad. Since late 1987-88, the proportion of net equity has increased reflecting a shift in emphasis back to equity and direct equity investment in Australia growing at a faster rate than Australian equity investments abroad.

Chart 3.1 Non-Official Net Direct Investment:
Share of net equity and net debt as at 30 June each year

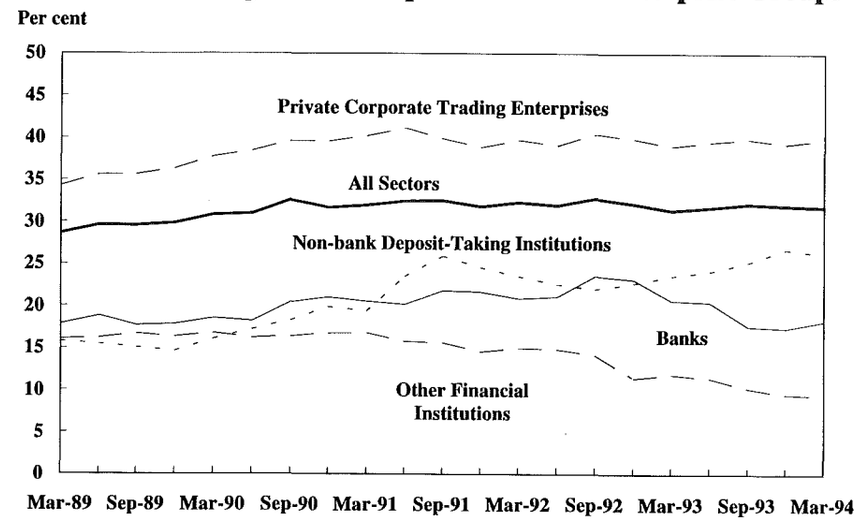


Foreign Ownership

As can be seen in **Chart 3.2**, the percentage ownership by foreign persons of equity in Australian enterprises has remained relatively stable over the last five years when measured as a percentage of equity issued by a particular sector to the rest of the world. This relative stability has occurred notwithstanding the recent switch in emphasis from debt to equity investment.

Most variation in foreign ownership has occurred in the financial sectors, which have been subject to structural changes with institutions changing categories. In particular, foreign ownership of non-bank deposit taking institutions has increased in the context of a decrease in the overall level of equity associated with building societies switching to bank status.

Chart 3.2 Foreign Ownership of Australian Enterprise Groups



Source: Australian National Accounts, Financial Accounts March Quarter 1994 (5232).
Notes: The estimated market values of equity issued by non-bank deposit taking institution are considered to be of poor quality and should be used cautiously.

SUMMARY OF AUSTRALIA'S FOREIGN INVESTMENT POLICY AS AT 30 JUNE 1994

General

The Government's foreign investment policy is framed and administered with a view to encouraging foreign investment in Australia and ensuring that such investment is consistent with the needs of the community.

The Government recognises the substantial contribution foreign investment makes to the development of Australia's industries and resources. Capital from other countries supplements domestic savings and provides scope for higher rates of economic activity and employment.

Foreign capital also provides access to new technology, management skills and overseas markets.

Notification

The types of proposals by *foreign interests* to invest in Australia which should be notified to the Government can be summarised as:

* acquisitions of *substantial interests* in existing Australian businesses with total assets over $5 million ($3 million for rural properties);
* plans to establish new businesses involving a total investment over $10 million;
* investments in the media irrespective of size;
* direct investments by foreign governments or their agencies irrespective of size;
* acquisitions of non-residential commercial real estate valued over $5 million;
* acquisitions of real estate for development irrespective of size;
* acquisitions of residential real estate irrespective of size (unless exempt under the regulations);

* takeovers of offshore companies whose Australian subsidiaries or assets are valued over $20 million or account for more than 50 per cent of the target company's global assets; and
* proposals where any doubt exists as to whether they are notifiable.

A *foreign interest* is briefly defined as:

* a natural person not ordinarily resident in Australia.
  - A natural person who is a citizen of a foreign country is taken to be not ordinarily resident of Australia unless (a) that person has actually been in Australia for 200 days in the previous 12 months and (b) there is no legal limitation on that person remaining in Australia indefinitely; and
* any corporation, business or trust in which there is a *substantial foreign interest*, ie in which a single foreigner (and any associates) has 15 per cent or more of the ownership or in which several foreigners (and any associates) have 40 per cent or more in aggregate of the ownership.

Examination by sector

The *Foreign Acquisitions and Takeovers Act 1975* applies to most examinable proposals and provides penalties for non-compliance.

RURAL PROPERTIES, AGRICULTURE, FORESTRY, FISHING, RESOURCE PROCESSING, OIL & GAS, MINING (EXCLUDING URANIUM), MANUFACTURING, NON-BANK FINANCIAL INSTITUTIONS, INSURANCE, SHAREBROKING, TOURISM (HOTELS AND RESORTS), MOST OTHER SERVICES.

The Government registers, but normally raises no objections to, proposals above the notification thresholds where the relevant total assets/total investment falls below $50 million. Notification thresholds are $3 million for purchases of rural properties, $5 million for acquisitions of substantial interests in other existing businesses, $10 million for the establishment of new businesses and $20 million for offshore takeovers.

The Government examines proposals to acquire existing businesses (with total assets over $50 million) or establish new businesses (with a total investment over $50 million) and raises no objections to those proposals unless they are contrary to the national interest. Offshore takeovers do not generally raise national interest issues.

REAL ESTATE

Proposed acquisitions of *residential real estate* are exempt from examination in the case of Australian citizens living abroad and foreign nationals entitled to permanent residence in Australia.

Proposed acquisitions of *real estate for development* (within 12 months) are normally approved unless they are contrary to the national interest.

Foreign interests are normally given approval to buy *vacant residential land* (on condition that construction of a dwelling is commenced within 12 months) and to buy home units, townhouses etc *'off-the-plan'*, under construction or newly constructed but never occupied (the 'off-the-plan' criteria only applies to new development projects or extensively refurbished commercial structures which have been converted to residential), on condition that no more than half of the units in any one development are sold to foreign interests.

Proposed acquisitions of residential property (both vacant land and existing dwellings) which are within the bounds of a resort that the Treasurer has designated as an *'Integrated Tourism Resort'* are exempt from examination.

All other proposals by foreign interests to acquire developed residential real estate are examinable and are not normally approved except in the case of foreign companies buying for their senior executives resident in Australia, and foreign nationals temporarily resident in Australia for more than 12 months buying for their own use as a principal residence (subject to the sale of the property when they cease to reside in Australia) and foreign nationals purchasing residential real estate as joint tenants with an Australian spouse.

Proposed acquisitions of *developed non-residential commercial real estate* are normally approved unless they are contrary to the national interest.

BANKING

Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* and banking policy, including prudential requirements.

The Government will permit the issue of new banking authorities to foreign owned banks where the Reserve Bank is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply

with Reserve Bank prudential supervision and arrangements. In addition, foreign owned banks will not be precluded from bidding for the smaller banks (if available for sale), ie for banks other than the four majors.

CIVIL AVIATION

Foreign airlines flying to Australia can generally expect approval to acquire up to 25 per cent of the equity in a domestic carrier individually or up to 40 per cent in aggregate provided the proposal is not contrary to the national interest. In special circumstances the Government is prepared to consider foreign equity proposals in excess of these guidelines provided the proposal is not contrary to the national interest. All other foreign investors (including those which do not operate an airline service to Australia) may acquire up to 100 per cent of a domestic carrier or establish a new aviation business unless judged contrary to the national interest. In the case of Australia's international airlines, such as Qantas, total foreign ownership is restricted to a maximum of 35 per cent in aggregate, with individual holdings limited to 25 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

SHIPPING

The *Ship Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (ie owned by an Australian citizen, a body corporate established by or under law of the Commonwealth or of a State or Territory of Australia), unless the ship is designated chartered by an Australian operator.

MEDIA

All proposals to invest in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy.

Broadcasting

Whilst proposals for a foreign person to acquire an interest in or establish a new broadcasting service would be subject to a case by case examination under foreign investment policy the following criteria also must be satisfied. A broadcasting regulatory regime, enacted through the Broadcasting Services Act 1992 (BSA), stipulates that:

* Foreign interests in commercial television broadcasting services continue to be limited to a 15 per cent company interest for individuals and a 20 per cent company interest in aggregate. A foreign person may not be in a position to exercise control of a commercial television broadcasting license. No more than 20 per cent of directors may be foreign persons.

* For all subscription television broadcasting services licenses, foreign interests are limited to a 20 per cent company interest for an individual and a 35 per cent company interest in aggregate.

There are no foreign ownership and control restrictions on commercial radio or on other broadcasting services under the BSA.

Newspapers

Foreign investment in mass circulation newspapers is restricted. All proposals by foreign interests to acquire an interest in or to establish a newspaper in Australia are subject to case-by-case examination. The maximum permitted foreign interest involvement in mass circulation newspapers by a single shareholder is 25 per cent and unrelated foreign interests are allowed to have (non-portfolio) shareholdings of up to five per cent.

TELECOMMUNICATIONS

Only the Commonwealth of Australia may hold shares in Telstra Corporation Ltd and these shares cannot be transferred. Optus Communications Pty Ltd, Australia's second general telecommunications company is 51 per cent Australian owned. Government policy stipulates that this 51 per cent Australian ownership level is to be maintained in the foreseeable future. Australia's third licensed mobile carrier, Vodaphone Pty Ltd is currently 95 per cent foreign owned. It is, however, a condition of the licence that, on or after 1 July 2003, foreign interests must hold less than 50 per cent of Vodaphone's total issued shares.

URANIUM

Foreign interests may explore for uranium and are not required to seek Australian participation in their exploration activities. With respect to development or uranium projects, the Government's policy provides for the operation of the Ranger and Nabarlek projects in the Northern Territory and

the development of the Olympic Dam copper/uranium/gold deposit in South Australia, but for no other uranium mines to be developed.

Appendix B

FOREIGN INVESTMENT POLICY AND ADMINISTRATION - LEGISLATION, POLICY STATEMENTS AND PUBLICATIONS

Legislation

1. *Companies (Foreign Take-overs) Act 1972, No 134 of 1972 — November 1972.*

2. *Companies (Foreign Take-overs) Act 1973, No 199 of 1973 — December 1973.*

3. *Foreign Takeovers Act 1975, No 92 of 1975 — August 1975* (now known as the Foreign Acquisitions and Takeovers Act as amended).

4. *Foreign Takeovers Amendment Act 1976, No 93 of 1976 — September 1976.*

5. Statutory Rules 1975, No 226 — December 1975.

6. Statutory Rules 1976, No 203 — September 1976.

7. *Commonwealth Functions (Statutes Review) Act 1981, No 74 of 1981 — June 1981.*

8. *Foreign Takeovers Amendment Act 1989, No 14 of 1989 — August 1989.*

9. Foreign Acquisitions and Takeovers Regulations (Amendment), No 302 — 24 September 1991.

Policy Statements

1. Statement by the Treasurer, the Hon Paul Keating, MP — Review of Foreign Investment Policy - 20 December 1983.

2. Statement by the Treasurer, the Hon Paul Keating, MP — Foreign Investment Policy and Stockbroking - 18 April 1984.

3. Statement by the Treasurer, the Hon Paul Keating, MP — Participation in Banking in Australia and Other Issues of Financial Deregulation - 10 September 1984.

4. Statement by the Treasurer, the Hon Paul Keating, MP — Foreign Investment Policy and Stockbroking - 18 December 1984.

5. Statement by the Treasurer, the Hon Paul Keating, MP — New Banking Authorities - 27 February 1985.

6. Statement by the Acting Treasurer, the Hon Chris Hurford, MP — Review of Foreign Investment Policy - 29 October 1985.

7. Statement by the Acting Treasurer, the Hon Chris Hurford, MP — Economic and Rural Policy Statement - 15 April 1986.

8. Statement by the Treasurer, the Hon Paul Keating, MP — Foreign Investment Policy Relaxations - 28 July 1986.

9. Statement by the Treasurer, the Hon Paul Keating, MP — Further Liberalisation of Foreign Investment Policy - 30 April 1987.

10. Statement by the Treasurer, the Hon Paul Keating, MP — Thin Capitalisation and Corporate Restructures in relation to Foreign Investment Policy - 30 April 1987.

11. Statement by the Treasurer, the Hon Paul Keating, MP — Foreign Investment Policy: Developed Residential Real Estate - 29 September 1987.

12. Statement by the Treasurer, the Hon Paul Keating, MP — Foreign Investment Policy: New Oil and Gas Developments - 20 January 1988.

13. Statement by the Treasurer, the Hon Paul Keating, MP — *Proclamation of Foreign Takeovers Amendment Act 1989* and Gazettal of Foreign Acquisitions and Takeovers Regulations - 6 July 1989.

14. Statement by the Treasurer, the Hon J. Kerin, MP — Foreign Investment Policy: Integrated Tourism Resorts - 25 July 1991.

15. Statement by the Treasurer, the Hon J. Kerin, MP — Foreign Investment in the Print Media — 10 October 1991.

16. Statement by the Treasurer, the Hon J. Dawkins, MP — Economic Statement: Foreign Investment Policy Changes - 26 February 1992.

17. Statement by the Treasurer, the Hon J. Dawkins, MP — Modification to Foreign Investment Policy. Residential Real Estate and Developed Non-Commercial Real Estate - 1 April 1993.

18. Statement by the Treasurer, the Hon J. Dawkins, MP — Foreign Investment Policy: Mass Circulation Newspapers - 20 April 1993.

Publications

* Foreign Investment Review Board Reports: 1977 to 1994.

* Australia's Foreign Investment Policy — A Guide for Investors, Revised September 1992.

Copies of the Board Reports and the Guide may be obtained from Australian Government Publishing Service bookshops. The Guide is also available at Australia's overseas posts.

PRESS RELEASES — 1993-94

No. 105 Statement by the Treasurer, the Hon J. Dawkins, MP — Foreign Investment Review Board - Appointment of Mr Graham Maguire — 26 August 1993.

No. 146 Statement by the Treasurer, the Hon J. Dawkins, MP — Foreign Investment Policy - Mass Circulation Newspapers — 19 November 1993.

No. 150 Statement by the Assistant Treasurer, the Hon G. Gear, MP — Divestiture of Residential Real Estate acquired by Foreign Persons without prior approval using an Australian Trustee — 24 November 1993.

No. 157 Statement by the Treasurer, the Hon J. Dawkins, MP — Foreign Investment Policy - Proposal by ConAgra International Inc to increase its interest in Australian Meat Holdings — 1 December 1993.

No. 14 Statement by the Treasurer, the Hon R. Willis, MP — Print Media Inquiry - 14 February 1994.

CHRONOLOGY OF MEASURES RELATING TO FOREIGN INVESTMENT POLICY, DECEMBER 1983 TO JUNE 1994

20 December 1983

The Treasurer announced the Government's decision to continue the broad thrust of the previous Coalition Government's foreign investment policy. Specific guidelines for Australian participation would continue for new mining and primary industry projects and, in certain circumstances, for proposals to invest in the finance and insurance sectors, to develop real estate and to take over existing rural businesses. The Government also announced its intention to appoint two additional representatives to the Foreign Investment Review Board.

18 April 1984

Following a Trade Practices Commission (TPC) ruling that allowed stockbroking firms to incorporate, the Treasurer announced the results of a review of foreign investment policy as applied to the stockbroking industry (prior to the TPC ruling, non-residents were precluded from having an interest in unincorporated stockbroking firms). Under the revised policy, proposals by foreign interests to acquire shareholdings in stockbroking businesses would only be allowed to proceed, where they involved the acquisition of less than 15 per cent of shares by a single foreign interest or of less than 40 per cent by two or more foreign interests.

10 September 1984

The Government invited applications from domestic or foreign interests for a limited number of banking authorities and decided to initiate proceedings to enable the Bank of China to open a branch in Australia.

The Treasurer also announced the temporary waiving (for one year) of some sections of its foreign investment policy relating to the merchant banking sector. The 'Australian opportunities test' (ie the requirement that Australians be given the opportunity to bid on market terms for interests available for sale) and the "substantial economic benefits" test of foreign investment policy were to be set aside for a period of 12 months in respect of merchant bank restructuring proposals.

18 December 1984

The Treasurer announced the Government's decision to increase to 50 per cent the maximum permitted shareholding in Australian stockbroking businesses that might be held by foreign interests. This revised the previous limitations announced on 18 April 1984.

27 February 1985

The Treasurer announced that the Government had selected 16 new banks which would be invited to establish operations in Australia. Each would be required to proceed with discussions with the Reserve Bank and the Treasury with a view to developing their proposals.

22 May 1985

The *Banks (Shareholdings) Act 1972* (which limits the size of shareholdings in banks authorised under the *Banking Act 1959*) was amended in order to facilitate the establishment of new banks in Australia. The major amendments were an increase in the size of individual shareholdings in a bank which might be held without the Governor-General's approval from 10 to 15 per cent, and allowing the Governor-General to grant exemptions from the new higher limit in the national interest.

29 October 1985

The Acting Treasurer announced a number of modifications to policy aimed at streamlining existing procedures, the most significant of which were:

* the practice of requiring the demonstration of specific opportunities for Australians to purchase interests available for sale (the 'opportunities test') was discontinued;

* the administrative threshold below which takeovers were normally approved, in the absence of special circumstances, was increased from $2 million to $5 million;

* the notification threshold for new businesses (except in the media or civil aviation) was increased from $5 million to $10 million;

* the notification threshold for foreign investment in real estate was increased from $350,000 to $600,000;

* the liberalised stance in relation to merchant banks was extended to other non-bank financial intermediaries;

* the need for 50 per cent Australian equity for land bought for development and subsequent resale was to be applied only to developments costing $10 million or more; and

* the exemption threshold for offshore takeovers was increased from $3 million to $20 million.

15 April 1986

As part of the Government's Economic and Rural Policy Statement, it announced the relaxation of the rules applying to foreign investment in rural land such that only proposals over $3 million (previously $1 million) would be subject to the stricter test of providing effective Australian participation or benefits of national or regional significance to gain approval.

28 July 1986

The Treasurer announced a number of significant relaxations to policy including:

* the net economic benefits test and Australian equity requirements for takeovers and new businesses in the manufacturing, tourism and non bank finance sectors were suspended and proposals were to be automatically approved unless contrary to the national interest;

* the minimum Australian equity requirements for real estate for development (both for retention or resale), and service industry real estate (hotels and motels, tourism resorts) were abolished;

* acquisitions of developed commercial real estate were to be allowed provided there was 50 per cent Australian equity (previously there was a virtual prohibition); and

* the policy test on rural property acquisitions over $3 million was relaxed such that approval would now be granted where it could be demonstrated by the intending investor that proposed on-farm development expenditure would be at least one - third of the acquisition price.

30 April 1987

The Treasurer announced a number of further liberalisations including:

* passing amendments to the *Foreign Takeovers Act 1975* providing for the exemption from notification of takeovers below $5 million ($3 million for rural businesses);

* extending the national interest based test (applied to manufacturing, tourism and non-bank finance sectors since July 1986) to other sectors namely resource processing, services, insurance, sharebroking and rural properties; and

* improvements to the benefits associated with naturalised or naturalising status, namely, that all takeovers or new businesses involving naturalised or naturalising companies (including new mines where at least 50 per cent is owned by the naturalised or naturalising company) would be approved unless contrary to the national interest.

The Government also announced that it would introduce legislation to replace the thin capitalisation and corporate restructuring conditions of approval that had been imposed on foreign investors under foreign investment policy.

29 September 1987

The Government decided to restrict substantially foreign acquisitions of developed residential real estate and to introduce legislation to require compliance with the amended policy. The $600,000 examination threshold was abolished and approvals of developed residential real estate were to be restricted to Australian citizens resident abroad, intending migrants and foreign companies buying for their senior executives resident in Australia.

20 January 1988

The Government announced that the Australian participation guidelines for foreign investment in respect of new mining projects over $10 million would no longer apply to new oil and gas developments which could now be approved with 100 per cent foreign equity, provided they were not considered contrary to the national interest.

6 July 1989

The Treasurer announced the proclamation, on 1 August 1989, of the *Foreign Takeovers Amendment Act 1975* and the gazettal of the Foreign Acquisitions and Takeovers Regulations. The amended legislation, to be known as the Foreign Acquisitions and Takeovers Act, gave legislative effect to the changes to residential real estate policy announced in September 1987.

25 July 1991

The Government decided that foreign investors may acquire any residential real estate (vacant land for development, units off the plan, or established properties) within a designated Integrated Tourism Resort (ITR) without the need to seek approval under the Foreign Acquisitions and Takeovers Act. The ITR exemption would only apply to residential real estate within resorts that have applied for and been designated exempt by the Treasurer.

26 February 1992

As part of the Government's One Nation Economic Statement, further policy liberalisations were announced, namely:

* the Government would register, but normally raises no objections to proposals above the notification thresholds where the relevant total assets/total investment falls below $50 million. Notification thresholds are $3 million for purchases of rural properties, $5 million for acquisitions of substantial interests in other existing businesses, $10 million for the establishment of new businesses and $20 million for offshore takeovers;

* the 50 per cent Australian equity and control guideline for participation in new mining projects, and the economic benefits test for takeovers of existing mining businesses, were abolished; and

* that new banking authorities would be issued to foreign owned banks where the Reserve Bank is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with Reserve Bank prudential supervision and arrangements. Moreover, foreign owned banks will be allowed to bid for the smaller banks (if available for sale), ie, for banks other than the four majors.

1 April 1993

The Treasurer announced two changes to foreign investment policy:

* 'off the plan' acquisitions to include acquisitions that are part of extensively refurbished buildings subject to the building's use changing from non-residential to residential and the costs of refurbishment to be at least 50 per cent of total acquisition costs; and

* proposals by foreign interests to acquire developed non-residential commercial real estate were no longer required to have 50 per cent Australian equity. Prior to this change, acquisitions by foreign interests of developed non-residential commercial real estate were normally approved, unless judged contrary to the national interest, on the condition that the acquisition was being made with 50 per cent Australian equity participation. Where it could be demonstrated that 50 per cent Australian equity was not available on reasonable terms and conditions, proposals providing up to 100 per cent were approved.

20 April 1993

The Treasurer announced the Government's decision to increase the maximum permitted foreign interest involvement in mass circulation newspapers by a single shareholder to 25 per cent and that it would allow unrelated foreign interests to have (non-portfolio) shareholdings of up to five per cent.

PRINT MEDIA INQUIRY

The following is the text of Treasury's January 1994 submission to the Senate Select Committee Inquiring into Certain Aspects of Foreign Ownership Decisions in Relation to the Print Media.

SECTION 1: OVERVIEW

(i) Introduction

1.1 Some items of the terms of reference of the Senate Select Committee On Certain Aspects of Foreign Ownership in relation to the Print Media (the Committee) are of direct relevance to the responsibilities of the Treasury and the Foreign Investment Review Board (FIRB). The following items in the terms of reference are of particular relevance:

(a) the origins and basis of decisions in 1991 and 1993 to increase the permissible percentage of foreign ownership of newspapers and, in particular:

(iii) the procedures followed by the Foreign Investment Review Board and the extent to which any of its deliberations or recommendations were taken into account in the making of those decisions;

(b) the significance and effectiveness of the guidelines of the Foreign Investment Review Board.

1.2 This Submission responds to the Committee's terms of reference by covering the following matters:

- functions and membership of the FIRB (Section 2)
- foreign investment policy procedures (Section 3)
- the four foreign investment applications relating to the 1991 and 1993 decisions and, therefore, of direct interest to the Committee (Section 4); and
- the procedures followed in handling these four cases (Section 5).

1.3 This approach essentially reflects Treasury's objective of providing the Committee with as much information as is possible that is both relevant and useful to its investigation, while remaining within the constraints imposed by confidentiality of commercial and government operations. By providing information about FIRB and FIRB processes, Treasury also hopes to counter a degree of misunderstanding that appears to exist in some areas about the Board and its functions within the Government's handling of foreign investment applications.

1.4 Additional and more detailed information about the FIRB and the Government's foreign investment policy more generally is contained in the FIRB's recently finalised 1992-93 Annual Report and the booklet 'Australia's Foreign Investment Policy - A Guide for Investors (September 1992)'. Copies of these publications have been made available to the Committee.

(ii) Development of foreign investment policy

1.5 In looking at the development of foreign investment policy in a particular area such as the print media, it is important to place that development against the background of how foreign investment policy more generally has changed over time. Attitudes to foreign investment have been influenced by changing economic circumstances, the rapid integration of Australia into the world economy and an apparent softening in community concerns about levels of foreign ownership and control of Australian industries and resources.

1.6 The structure of Australia's external accounts and balance of payments is such that Australia has traditionally been a very large net importer of capital. Foreign direct investment has been and will continue to be a vital supplement to Australia's domestic savings. Foreign direct investment is the most beneficial form of private sector foreign investment, bringing with it technical and managerial expertise, market access, new and improved products, and generally leading to a more productive and competitive economy.

1.7 Prior to the early 1970s, Australia basically had an 'open door' policy on foreign investment. While there had been concerns in the community about foreign investment, these had not clearly impacted on policy. In the latter part of the 1960s, concerns in the community emerged as a consequence of rising levels of foreign ownership and control of Australia's industries and natural resources. In the early 1970s, the Government introduced general authorisation procedures involving 'screening' of foreign

direct investment, while continuing to maintain a welcoming approach to foreign investment. In 1975, the Labor Government enacted the *Foreign Takeovers Act 1975,* requiring prior authorisation of certain takeovers of Australian businesses.

1.8 In April 1976, the Coalition Government, while broadly continuing with the stance of its predecessor, issued a major policy statement on foreign investment. In addition to the screening of takeovers, the Government required prior authorisation for the establishment of new businesses, direct investments by foreign governments and purchases of certain real estate. To gain approval, proposals in most sectors had to show net economic benefits to Australia (the 'benefits test') and that Australians had had an adequate opportunity to purchase the business or property in question (the 'opportunities test'). In addition, the Government applied a more restrictive policy to certain sectors (including minimum Australian equity and control guidelines, usually 50:50) in the minerals sector, uranium, primary industries, forestry and fishing, finance and insurance, the media and civil aviation.

1.9 A central feature of the 1 April 1976 policy statement was the establishment of the Foreign Investment Review Board to advise the Government on foreign investment matters. This involved the Board giving advice on general issues concerning foreign investment policy and keeping under review the administrative procedures involved in this process. The Board's immediate predecessors had been committees comprising only government officials. In replacing these with the Board, the Government was conscious of the need to obtain independent, business-oriented advice on foreign investment matters, while giving due recognition to community concerns about foreign investment in the Australian economy.

1.10 Australia's foreign investment policy was subject to regular review in the 1970s, but there were no major policy changes in the latter part of that decade. However, by the early 1980s, it had become apparent that the policy may have been discouraging some worthwhile foreign investment notwithstanding a marked deterioration in Australia's external accounts. Australia had also begun a wide-ranging deregulation of its financial system.

1.11 Against this background, in the mid to late 1980s, there were a number of major liberalisations to Australia's foreign investment policy.

- In 1986, a significant shift in emphasis occurred in policy administration. The Government decided to discontinue the previous requirements for proponents to demonstrate net economic benefits and that Australians had had the opportunity to purchase the target businesses. Rather, the Government assessed whether a proposed foreign investment was contrary to the national interest. In effect, this shift in emphasis was implicit endorsement that foreign direct investment was typically of benefit to the recipient economy.

- Minimum Australian equity and control requirements for both takeovers and new businesses and projects in most industry sectors in which they were imposed (mining, oil and gas, primary industries, forestry and fishing, real estate, finance and insurance) were progressively abolished.

- Higher thresholds (below which proposals do not require approval) were progressively introduced, such that most small takeovers and new businesses in most sectors did not require prior approval.

- In 1984, sixteen foreign banks were invited to apply for banking authority. In 1992, the Government decided that other foreign banks could apply for banking licences, subject to their being of sufficient standing and where the bank agrees to comply with Reserve Bank prudential supervision and arrangements.

- There also occurred a progressive deregulation of Australia's non-bank financial sector, with easier access to merchant banking, stockbroking and insurance.

1.12 In addition, there have been a number of modifications to some more detailed (but relatively less significant) aspects of foreign investment policy, which essentially arose through experience of handling cases.

(iii) Media Sector

1.13 The Government addressed (in part) the community's sensitivity to foreign ownership of the media sector through the incorporation, in the *Broadcasting and Television Act 1969*, of provisions governing foreign ownership and control of broadcasting and television. These provisions were, in effect, subsequently broadened to cover newspapers. Acknowledgment of daily newspapers as a 'sensitive' sector in relation to the Government's foreign investment policy was included in the Treasurer's statement of 1 April 1976, as follows:

> *"We will restrict foreign investment in certain basic sectors of the economy. These areas, some of which are already covered by*

SECTION 2: FUNCTIONS AND MEMBERSHIP OF THE FOREIGN INVESTMENT REVIEW BOARD (FIRB)

(i) Functions

2.1 The Government's foreign investment policy encompasses both the *Foreign Acquisitions and Takeovers Act 1975* (hereinafter called the Act) and other requirements set down by way of Ministerial statement. The Treasurer is responsible for the policy and is assisted in the administration by the FIRB, an advisory body which makes recommendations to the Treasurer or Assistant Treasurer on foreign investment proposals. The Board has no authority to take decisions, either to approve or reject foreign investment applications.

2.2 The main functions of the Board are:

- to examine proposals for investment in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;
- to advise the Government on foreign investment matters generally;
- to foster an awareness and understanding of the Government's foreign investment policy in the community at large and in the business sector, both in Australia and abroad; and
- to provide guidance, where necessary, to foreign investors on those aspects of their proposals that may not be in conformity with Government policy and suggest ways by which the proposals might be amended.

(ii) Membership

2.3 There are currently four members of the Board, drawn from differing backgrounds and diverse experience, to provide the Government with a business-oriented and independent advice on foreign investment matters. Three of the four members are part-time non-executives and the fourth member, the Executive Member, holds the position *ex officio* as the head of the Investment and Debt Division within the Treasury. The Foreign Investment Review Branch within the Investment and Debt Division provides the executive services to the Board.

2.4 The current **membership** of the Board is as follows:

- **Mr Ken Stone, AO** was appointed to the Board in May 1984. He has been Acting Chairman since October 1992. He was formerly Secretary, Victorian Trades Hall Council, Junior Vice-President of the Australian Council of Trade Unions and National Director of the Australian Trade Union Training Authority.
- **Mr Des Halsted** was appointed to the Board in October 1984. He was formerly Deputy Chairman of Hooker Corporation Ltd, having retired as an executive from the Hooker Group in 1982. He has been a director of a number of companies.
- **Mr Graham Maguire** was appointed in August 1993. He was a Senator for South Australia in the Commonwealth Parliament from 1983 to 1993. During that period he served as Chairman of the Senate Standing Committee on Foreign Affairs, Defence & Trade (1987-1993) and was a member of the Joint Committee of Public Accounts (1983-1987).
- **Mr Tony Hinton** has been the Executive Member since August 1992. He is the First Assistant Secretary of Treasury's Investment and Debt Division and has wide-ranging experience in many divisions of Treasury.

SECTION 3: FOREIGN INVESTMENT POLICY PROCEDURES

(i) Processes for considering foreign investment proposals

3.1 Comprehensive information on the types of foreign investment proposals that should be submitted for examination is provided in the booklet *Australia's Foreign Investment Policy - A Guide for Investors.* Further guidance can be obtained from the Secretariat. The onus for ensuring that examinable proposals are submitted for consideration rests with foreign investors, who may submit a proposal themselves or, alternatively, with the help of an Australian agent (usually a legal firm).

3.2 It is open to parties to discuss proposals for investment with the Executive of the Board at an early stage of their formulation and they may make further submissions or seek further discussions at any time during consideration of their proposals. Early consultation with the Executive of the Board can improve foreign investors' understanding of the Government's foreign investment policy as it relates to the circumstances of their proposals. Investors can also receive advice on the examination process and on the likelihood of their proposals being assessed as in conformity with the requirements of policy. Parties to proposals may, of their own volition, seek a meeting to discuss aspects of their proposals directly with the Treasurer or Assistant Treasurer.

3.3 In some cases, discussions with the applicant may be sought by the Executive where additional information about the intentions of the parties is required or where the proposal raises issues that require detailed examination or clarification. In most cases, it is sufficient for any additional information to be obtained by telephone and/or written communication.

3.4 After proposals have been submitted to the Board or its Executive, the initial work is handled within one of the three case-work Sections in the Foreign Investment Review Branch of Treasury's Investment and Debt Division, with proposals being allocated on the basis of geographic location (for real estate proposals) or industry sector involved (sectors other than real estate). The examination of proposals is broadly-based and the Executive seeks, where appropriate, the advice of other Commonwealth and State government departments and authorities in order to ensure assessment is made against the background of the policies and responsibilities of those areas of government, as well as foreign investment policy.

3.5 The investigations and research undertaken by the Executive in the course of preparing reports on foreign investment proposals are often extensive, particularly in the case of the larger proposals and those that raise contentious issues. Where the examination period is limited by legal deadline (see below), the time allowed for the abovementioned investigations and consultations can be relatively short, given the time periods that must be set aside where deliberations by the Board and the Treasurer are involved.

3.6 The examination process involves reaching a judgement as to whether a proposal is in conformity with the general and particular requirements of foreign investment policy and other relevant Government policies. Following evaluation by the Executive, a report on the proposal is prepared.

3.7 A report on a foreign investment proposal normally includes the following:

- a description of the proposal and the aspect of the Act or policy to which it is subject;
- details of the parties to the proposal, including information on their ownership and control, the location and activities of the business and financial details of the parties;
- reasons for the proposal and any relevant background information;
- information on the industry, including its competitiveness, profitability, estimates where available of the level of foreign ownership and control and industry considerations raised by the proposal;
- the economic and other benefits and costs that are likely to arise following implementation of the proposal and the proposal's impact on the national interest;
- views of other Commonwealth and State government departments and authorities and information presented by parties who may be opposing or are otherwise affected by the proposal (eg, the target company or a competing Australian bidder);
- comments and conclusions; and
- recommendations.

3.8 The Board considers reports prepared by the Executive on individual proposals on a weekly basis. Formal meetings are held approximately every four weeks, with a telephone discussion between the Executive Member and the other Board members in each of the intervening weeks. These meetings and discussions are not open to the parties to proposals or to other persons. Following examination of a report, the Board's views and recommendations are submitted by the Executive Member to the Treasurer or Assistant Treasurer. The Board's views need not be unanimous. Should a proposal raise important considerations and/or impinge on other ministerial responsibilities, the Treasurer may consult his colleagues or seek Cabinet's view.

3.9 The nature of the report and the level to which it is submitted for decision are normally determined by the features of the foreign investment proposal. In the case of significant proposals (because of their size, complexity or the policy issues raised), a full report to the Board is usually made for its consideration prior to seeking the decision of the Treasurer or Assistant Treasurer. Sometimes time constraints limit Board involvement to telephone contact with the Executive Member; in the occasional significant case, it may not be possible to have Board involvement, other than by the Executive Member, before it is submitted for decision.

3.10 There are also arrangements under which authorities for approval, but **not the rejection**, of certain types of proposals that do not involve issues of significance, have been delegated to the Executive Member and the Branch and Section Heads within the Foreign Investment Review Branch. There may also be some cases which do not raise significant issues and are not covered by the delegation to the Executive Member, which are forwarded direct from the Executive Member to the Assistant Treasurer for decision, without prior consultation with the other Board Members (this includes the straight-forward rejection cases). However, the Board Members are informed each week of all decisions (with documentation) made without their involvement.

3.11 In some cases, a legal deadline for processing the application is imposed by the Act. It is open to the applicant not to require the application of a legal deadline in those cases subject to this provision of the Act. The Treasurer is required to make a decision on applications which come within the ambit of the Act within 30 days of receipt of the prescribed notice form. Within the 30 day period, a decision must be taken that the proposal may proceed (with or without conditions), is rejected, or should be subject to further examination. In the last circumstance, under provisions of the Act,

the 30 day examination period can be extended by a further period of 90 days by the publication in the Commonwealth Gazette of an Interim Order.

3.12 After a decision has been taken on a case (by the Treasurer, Assistant Treasurer or an official under delegation), the parties may be notified by telephone of the decision and are advised in writing. Normally, the advice to the parties is confined to whether or not there are objections to the proposal under the Government's foreign investment policy and to noting any conditions that may be attached to an approval. Formal notification of the reasons for a decision by the Treasurer is not normally made, although it is open to the parties to a proposal to request the reasons for a proposal being regarded as inconsistent with the policy in cases where the proposal is rejected, or to request an explanation for any conditions imposed. Although there are no formal or legal avenues for appeal of a decision by the Treasurer or Assistant Treasurer, it is open to the parties to a proposal that is rejected to seek its reconsideration as a new proposal on the basis of additional information bearing on the proposal or the modification of its features.

(ii) Confidentiality

3.13 The Government recognises that much of the information that the Board needs in order to assess its attitude to a particular proposal will be of a sensitive commercial-in-confidence nature.

3.14 All information provided to the Board and the Executive by foreign investors is treated in strict confidence and the Board and the Executive do not disclose details of proposals other than to the parties directly involved, except in special circumstances where the information provider's consent is first obtained.

3.15 The Board and the Executive are most conscious of the need to maintain this policy in order that future proponents providing commercially valuable and sensitive information will be confident that it will not be disclosed to third parties without their consent. This relationship is fundamental to the successful administration of foreign investment policy.

3.16 There have been occasions when third parties have sought access to confidential information relating to foreign investment cases, for example, through applications under freedom of information legislation. The Treasury has strongly defended the policy to protect information provided in confidence as part of foreign investment proposals, including through the courts.

3.17 It is also not generally the case that decisions either to accept or reject or reasons for them are made public. For major proposals, in which there is considerable public interest, the Treasurer may decide to issue a press statement, which has been the usual practice in the past.

3.18 In addition, it has been a well established and strongly held policy to protect the confidential relationship between the Government and its advisers (including FIRB). The ability of the Board to provide well considered and independent advice to the Treasurer on matters that may be commercially as well as politically sensitive depends to a large degree on the confidence of Board members that the advice presented is and will remain confidential. As with information provided by foreign investors and others in the processing of foreign investment applications, Treasury has and will continue to protect advice provided by the Board to the Treasurer. Not to do so would irreparably harm the basis of the Board's existence and curtail its usefulness.

SECTION 4: FOUR FOREIGN INVESTMENT APPLICATIONS RELATING TO DECISIONS IN 1991 AND 1993

4.1 There were four foreign investment applications that were the origins of the decisions under the Government's foreign investment policy in 1991 and 1993 which are referred to in the Committee's terms of reference. The first three were 1991 applications that related to bids to the Receiver of the Fairfax Group. While these three applications were assessed under the Government's foreign investment policy, it was the Receiver's decision as to which particular bid (with the assessment covering both foreign and Australian bids) should be successful. The fourth was a 1993 application and involved a proposed increase in the interest in the Fairfax Group held by The Telegraph.

4.2 Each of the four applications is summarised below.

(i) Application 1: Tourang I

4.3 The Government received an application for foreign investment approval from the Tourang Consortium on 1 November 1991. The Consortium comprised Mr Conrad Black's The Telegraph, Mr Kerry Packer's Consolidated Press Holdings, the US company Hellman & Friedman and US junk bondholders. It was the intention of the Consortium to bid for the Fairfax Group and then to float it on the Australian stock exchange. A short time later, Mr Packer withdrew his company from the Consortium and a revised Tourang I application was received on 26 November 1991. After this withdrawal and following the public float, the ownership proportions in Fairfax would have been:

Party	Voting share (%)	Economic interest (%)
Black	20	20
Hellman & Friedman	0	15
US junk bondholders	0	4
Australian investors	80	61

4.4 The Government **rejected** the (revised) Tourang I application on 5 December 1991.

(ii) Application 2: Independent Newspapers

4.5 Dr O'Reilly's application was submitted on 19 November 1991. Dr O'Reilly's intentions with regard to ownership proportions following a Fairfax float were for his company to hold 20 per cent of the shares, US junk bondholders 5 per cent, with the remaining 75 per cent to be held by Australian investors.

4.6 The Government **approved** Dr O'Reilly's application on 5 December 1991.

(iii) Application 3: Tourang II

4.7 The Tourang Consortium revised its application (again) and resubmitted it on 11 December 1991. The resulting revised Fairfax ownership would have been:

Party	Voting share (%)	Economic interest(%)
Black	15	20
Hellman & Friedman	0	5
US junk bondholders	0	4 to 7
Australian investors	85	68 to 71

4.8 On 13 December 1991 the Government announced that it had **approved** the revised Tourang bid.

(iv) Application 4: The Telegraph

4.9 On 11 December 1992 Mr Black's company submitted an application to increase its shareholding in Fairfax from just under 15 to 25 per cent. The Government **approved** the application and announced its decision on 20 April 1993.

4.10 The next Section of this Submission outlines the procedures followed in handling the four applications summarised above.

SECTION 5: PROCEDURES FOLLOWED IN HANDLING THE FOUR RELEVANT APPLICATIONS

(i) Procedures

5.1 The procedures followed for handling the four foreign investment applications that related to the 1991 and 1993 decisions and therefore are of direct relevance to the Committee, were broadly consistent with the general processes outlined in Section 3. **Attachment A** provides a chronological listing of the actual steps undertaken for the processing of these four cases, including information on the consultation processes, FIRB involvement, guidance from the Treasurer and the actual decisions.

(ii) 1991 decisions

5.2 There were significant time constraints on the processes for handling the 1991 applications. The Tourang and the O'Reilly applications were received only a few weeks prior to the final assessment being made by the Fairfax Receiver. This constraint was a material factor in the handling of the Tourang applications and, in particular, the Tourang II application, which required a decision from the Treasurer in a matter of days.

5.3 While the orderly processes as outlined in Section 3 were of necessity squeezed in terms of the time taken, their key features were on the whole retained. That is, the applications were received by the Executive, features were discussed with the applicants to ensure that sufficient and necessary information was available for an informed assessment to be made, consultations with relevant Commonwealth departments and agencies took place, reports were prepared and considered by FIRB, submissions on the proposals, including the Board's views and recommendations, were made to successive Treasurers for their decisions.

5.4 As is often the case when applications are received from different organisations but which involve the acquisition of the same target, the Tourang I and O'Reilly applications were processed in the same report prepared for the Board's and then the Treasurer's consideration. This approach is usually taken in order to facilitate consistency in both the assessment of cases and the application of foreign investment policy.

(iii) Clarification of portfolio investment

5.5 The Telegraph's application of 1992 was preceded by a process which clarified and made public the Government's foreign investment policy as it applied to the public float of Fairfax. On receiving a request from the stockbroking sector for this clarification, the Board adopted the same approach as it would for an application received for foreign investment approval. (These steps are included in the listing in **Attachment A**.) That is, the Executive consulted with relevant Commonwealth bodies, prepared a report that was considered by the Board prior to its submission to the Acting Treasurer, who in the event sought further details requiring resubmission prior to a final decision being taken. In this case, given the importance of ensuring the policy was understood in the market place prior to the Fairfax float, the decision was made public by a press release.

(iv) 1993 decision

5.6 The Telegraph's application to raise Mr Black's company's stake in Fairfax from a little below 15 to 25 per cent was received on 11 December 1992. The Government's decision on this case was not made until four months later in April 1993, with both the Christmas/New Year holiday period and the 1993 Federal election intervening.

5.7 The significant nature of this application (viz, approval would require an easing in the significant restriction on foreign investment in a sensitive sector), meant that its handling involved higher level processes. For this case, the Treasurer sought the preparation of a Cabinet Submission and the decision to approve the application was taken by Cabinet. A press release was issued.

(v) Press releases

5.8 A number of press releases were issued during and after the course of processing the four foreign investment applications of direct interest to the Committee. Copies of those press releases are provided at **Attachment B** for the information of the Committee. These press releases cover the following matters:

- 13 December 1991 - approval of the Tourang II application;
- 23 April 1992 - Government policy on foreign small portfolio shareholdings prior to the Fairfax public float;

- 20 January 1993 - Interim Order published, providing a further three months in which to consider The Telegraph's application to increase its interest in Fairfax;
- 20 April 1993 - approval of The Telegraph's application to increase its interest in Fairfax to 25 per cent;
- 19 November 1993 - Treasurer Dawkins' statement on foreign investment policy for mass circulation newspapers.

ATTACHMENT A

PROCEDURES FOLLOWED FOR HANDLING OF THE FOUR FOREIGN INVESTMENT APPLICATIONS OF DIRECT INTEREST TO THE COMMITTEE

(i) December 1991 Decision

NOVEMBER 1991

1 November	Application for foreign investment approval received for The Daily Telegraph PLC (Conrad Black) to acquire 14.99 per cent of the Fairfax Group via the Tourang Consortium [comprising Conrad Black, Consolidated Press Holdings Ltd (Kerry Packer), Hellman & Friedman which would have a 15 per cent economic (non-voting) interest, Fairfax US junk bondholders (5 per cent non voting) and an institutional placement], henceforth referred to jointly as Tourang; no statutory period for a decision was sought.
19 November	Application for foreign investment approval received from Independent Newspapers PLC (O'Reilly) to acquire 20 per cent of the Fairfax Group. A statutory deadline of 20 December 1991 was placed on the time for decision.
late November/early December	Consultation with parties and appropriate authorities/departments, including: - Trade Practices Commission - Department of Transport & Communications - Australian Broadcasting Tribunal - Attorney-General's Department.

26 November	Following the withdrawal of Mr Packer from the consortium, Tourang submitted a revised application for Conrad Black to acquire through Tourang 20 per cent of Fairfax, with the non-voting levels shares remaining at Hellman and Friedman 15 per cent and US junk bondholders 5 per cent.

DECEMBER 1991

3 December	Draft report to the Treasurer on the Tourang and O'Reilly applications considered by the FIRB.
5 December	Report, including FIRB's views and recommendations, on the Tourang and O'Reilly applications sent to the Treasurer by the Executive Member. Advice received that the Fairfax Receiver had set 11 December as the date on which it would receive final bids. Treasurer Kerin rejected the Tourang application as being contrary to the national interest on the grounds that it provided insufficient Australian equity (after also taking into account the substantive non-voting interests). Treasurer Kerin approved the O'Reilly application. (No press release was issued.)
9 December	Both Tourang and O'Reilly were advised of the Treasurer's decisions on their respective applications.

11 December	Tourang submitted a further revised application in which Mr Black's interest would be 15 per cent voting shares and Hellman and Friedman and US junk bondholders would each hold 5 per cent non-voting shares. In addition, Tourang sought the Treasurer's view on their intention subsequently to seek approval to lift their stake as closely as possible to the levels proposed in the originally revised Tourang application.
12 December	The Fairfax Receiver requested that the Treasurer make a decision on the revised Tourang bid if possible by the afternoon of 13 December. Report, including FIRB's views and recommendations, on the revised Tourang application submitted to the Treasurer by the Executive Member.
13 December	Treasurer Willis approved the revised Tourang bid and rejected the foreshadowed request. A press announcement on the decision was released.

(ii) Policy Clarification in April 1992 in relation to Portfolio Investment

MARCH/APRIL 1992

30 March	Request received from a stockbroker for clarification of the Government's foreign investment policy with respect to 'passive portfolio' investments in the context of the forthcoming Fairfax float.
7 April	Draft report to the Treasurer submitted to the FIRB for its consideration.
13 April	Report, including the FIRB's views and recommendations submitted by the Executive Member to the Acting Treasurer who sought additional details.

21 April	Further details on the proposal provided to the Acting Treasurer by the Executive Member.
22 April	Acting Treasurer Willis resolved that it was consistent with current foreign investment policy for the Government not to object to foreign small portfolio shareholdings under 5 per cent each, in cases where the foreign investor is neither related to any other Fairfax investor (including The Daily Telegraph and Hellman & Friedman), nor represented on the Fairfax Board. A press release was issued.

(iii) April 1993 Decision

DECEMBER 1992

11 December	Application received for foreign investment approval to increase The Telegraph's interest in Fairfax from 14.33 to 25 per cent. A statutory deadline of 11 January 1993 applied.
24 December	Report, with FIRB's views and recommendations, submitted to the Treasurer by the Executive Member.

JANUARY 1993

11 January	Treasurer Dawkins signed the Interim Order establishing a new statutory deadline for final decision of 20 April 1993.
20 January	Interim Order published.

FEBRUARY 1993

8 February	In response to a request, a brief was provided to the Treasurer on foreign investment policy in relation to mass circulation newspapers, with particular reference to the proposal from The Telegraph to increase its interest in Fairfax.

MARCH 1993

mid March	Treasury provided a brief to the 'incoming Government' following the Federal election on 13 March, drawing attention to the statutory deadline of 20 April.

APRIL 1993

5 to 18 April	In response to the Treasurer's requests, Treasury provided drafts of a cabinet submission on the application of foreign investment policy for mass circulation newspapers to The Telegraph's case.
20 April	Submission considered by Cabinet. The Government decided that no objections should be raised to the foreign investment proposal from The Telegraph to increase its interest in Fairfax to 25 per cent, on the condition that at no stage should its shareholding plus options to acquire shares exceed 25 per cent. The applicant was informed and a press statement was released.

ATTACHMENT B

PRESS RELEASE No.133

RALPH WILLIS

FRIDAY DECEMBER 13 1991

JOHN FAIRFAX LTD: RESTRUCTURED APPLICATION APPROVED UNDER FOREIGN INVESTMENT POLICY

Following rejection of an application last week by the former Treasurer, Mr Kerin, under the Government's foreign investment policy the Tourang consortium submitted a restructured application to acquire the Fairfax organisation.

The restructured application was considered by the Foreign Investment Review Board which passed its advice to me yesterday.

The restructured application involves a 15% reduction in foreign economic interest, compared with the application that was rejected, and Tourang have advised me they propose that an Australian management team run the Fairfax organisation. The question of signing the Fairfax journalists' charter of editorial independence is a matter for the Board of Fairfax to decide.

The restructured application involves a similar aggregate level of foreign economic interest to the O'Reilly application approved by Mr Kerin last week. The O'Reilly bid includes 20% foreign voting equity and approximately 5% of non-voting debentures which would be held by US bondholders. The restructured Tourang application includes 15% foreign voting equity, and approximately 10% of non-voting debentures about 5% of which would be held by US bondholders and 5% by US investment house Hellman & Friedman.

The Government has raised no objection to the restructured Tourang application under the Government's foreign investment policy.

The Tourang consortium has stated its intention to subsequently request approval to lift their stakes as closely as possible to the levels proposed in the Tourang application which Mr Kerin rejected last week. The consortium has been informed that such a proposition will continue to be rejected.

The matter of selecting a new owner for the Fairfax organisation is now one for the receiver.

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TREASURER

PRESS RELEASE

EMBARGO

FOREIGN INVESTMENT POLICY: FAIRFAX NEWSPAPER GROUP

Following its decision on 13 December 1991 to raise no objections under foreign investment policy to a revised Tourang proposal to bid for Fairfax, Government policy is to **not** approve further foreign direct investment in Fairfax.

The question has been raised, however, about the treatment of small portfolio holdings by foreigners, which may follow on from the proposed listing of Fairfax on the Australian Stock Exchange on 7 May 1992.

Consistent with the Government's longstanding treatment of portfolio investments and having regard to the practical realities, the Government has decided it will not object to small foreign portfolio shareholdings under 5 per cent each, in cases where the foreign investor is neither related to any other Fairfax investor (including The Daily Telegraph and Hellman & Friedman), nor represented on the Fairfax Board.

As set out in the Government's booklet Australia's Foreign Investment Policy: A Guide for Investors, in calculating foreign participation for the purposes of Australian equity guidelines under foreign investment policy, individual foreign portfolio shareholdings are normally disregarded unless they carry influence (eg through board representation).

While portfolio shareholdings are normally interpreted as investments under 15 per cent, in the case of Fairfax the Government has reduced this limit to 5 per cent.

23 April 1992

FAIRFAX.DOC

TREASURER

PRESS RELEASE

NO. 32

FOREIGN INVESTMENT POLICY: MASS CIRCULATION NEWSPAPERS

The Government has decided to increase the maximum permitted foreign interest involvement in mass circulation newspapers by a single shareholder to 25 per cent.

In considering this change in policy, the Government has also made a decision on the foreign investment application from The Telegraph PLC (Telegraph) to increase its interest in John Fairfax Holdings Limited (Fairfax) to 25 per cent.

This case has been assessed against the objective of limiting foreign involvement in mass circulation newspapers. It also reflects the valid need of foreign investors to safeguard their financial and managerial commitment to their newspapers.

The Government has agreed to the Telegraph increasing its shareholding in Fairfax from just under 15 per cent to 25 per cent. With foreign interest Hellman & Friedman having an active 5 per cent involvement, the total foreign interest involvement will be at the maximum of 30 per cent. While the Telegraph will be the largest single shareholder in Fairfax, Australian investors will still hold the majority of shares in Fairfax.

The Government has determined that a single foreign investor can have a shareholding of up to 25 per cent, and unrelated foreign interests can have (non-portfolio) shareholdings of up to 5 per cent.

Fairfax publishes The Sydney Morning Herald, The Age, The Australian Financial Review, Business Review Weekly and various other regional and community newspapers and magazines.

The Government will not countenance further increases in the permitted level of foreign involvement in mass circulation newspapers.

Canberra ACT
20 April 1993

Contact: Mr Robin Harris or
Mr Alan H Evans.
(06) 2777340.

TREASURER

PRESS RELEASE

NO. 146

EMBARGO

FOREIGN INVESTMENT POLICY - MASS CIRCULATION NEWSPAPERS

There appears to be some misconceptions regarding the statement by the Prime Minister on the matter of Conrad Black's shareholding in John Fairfax Holdings Limited (Fairfax).

The Government's position remains firmly that a single foreign investor can have a shareholding of up to 25 per cent, and unrelated foreign interests can have (non-portfolio) shareholdings of up to 5 per cent. The Government will not countenance further increases in the permitted level of foreign involvement in mass circulation newspapers. This is the position adopted by the Government and announced on 20 April 1993 (copy of press release attached).

There has not been and will not be any change to this policy.

Canberra

19 November 1993

Contact: Mr Robin Harris or
Mr Alan Evans
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