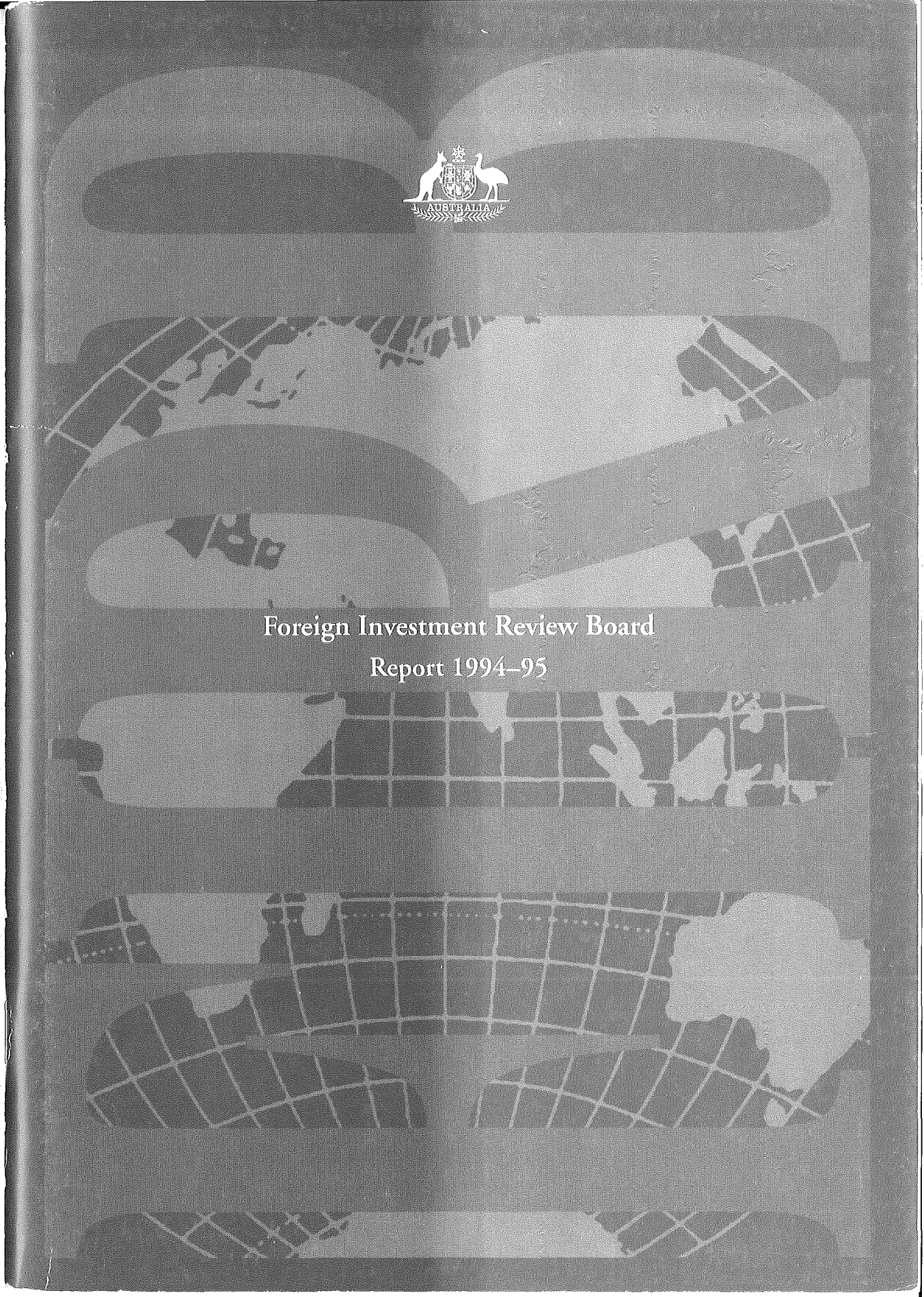


Foreign Investment Review Board
Report 1994–95

Foreign Investment Review Board

Report 1994-95

Australian Government Publishing Service
Canberra

ISBN 0 64 33186 0

Produced by the Australian Government Publishing Service

Foreign Investment Review Board

c/-Treasury Building
Canberra ACT 2600
Telephone (06) 263 2111
Overseas 61-6-263 2111
Fax (06) 263 2940

11 March 1996

The Hon Peter Costello, 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 1994-95. The report was originally provided to your predecessor, but has not yet been published.

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

Yours sincerely

K.C. Stone, AO
Acting Chairperson

Main Points

Changes to Membership

- **Mr Des Halsted,** who was appointed to the Board in October 1984, retired on 2 April 1995.

- **Ms Lynn Wood** was appointed to the Board on 3 April 1995 for a term of 5 years.

Proposals

- Foreign investment policy continued to be applied with the objective of encouraging worthwhile foreign investment, with there being few restrictions in the great majority of industry sectors.

- Of the 4,408 proposals decided in 1994-95:

  - 4,336 were approved (2,902, essentially in the real estate sector, with conditions) and 72 were rejected. This compared with 4,903 proposals decided in 1993-94 (3,085 approved with conditions and 84 rejections).

- The rejection rate was 1.5 per cent. Most rejections continued to be for developed residential real estate (ie, existing houses).

  - During 1994-95 there were 8 divestiture orders.

- Approvals in 1994-95 (either alone or in partnership with Australians) had associated expected investment of around $30.3 billion (major qualifications apply to these and other FIRB statistics, as described in Chapter 2).

  - Compared with approvals in 1993-94, expected investment increased for services (from $1.7 billion to $9.5 billion) and manufacturing (from $2.0 billion to $3.2 billion).

- The 116 largest proposals (each with expected investment of more than $50 million) accounted for about $21 billion or 69 per cent of total expected investment.

- Investors from the United States ($6.1 billion), United Kingdom ($4.0 billion), Singapore ($2.0 billion), France ($1.9 billion), Malaysia ($1.1 billion) and New Zealand ($1.1 billion) provided more than half of the total expected investment in relation to approvals in 1994-95.

Senate Inquiry

- The final report of the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in relation to the Print Media was made to the Senate on 30 March 1995. At the close of the financial year, the then Government was still considering its response to both the Interim and Final Reports.

Contents

Foreign Investment Review Board

Functions of the Board

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 main functions of the Board are:

- to examine proposals by foreign interests for acquisitions and new investment projects 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;
- to provide guidance, where necessary, to foreign investors so that their proposals conform with the policy; and
- to monitor and ensure compliance with foreign investment 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.

Membership

During 1994-95, there were four part-time members (though only three were members at any one time) and a full-time Executive Member:

- **Mr Ken Stone**, AO 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 Graham Maguire** was appointed to the Board in August 1993 for a term of five years. 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 and was a member of the Joint Committee on Public Accounts. He is a Director of Airservices Australia and an Australia-India Council Board Member.

- **Mr Des Halsted,** who was appointed to the Board in October 1984, retired from the Board on 2 April 1995. 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.

  - The Board would like to express its appreciation for the significant contribution Mr Halsted has made to the deliberations of the Board in over ten years as a member. The then Treasurer, in announcing Mr Halsted's retirement, indicated that the Government was very appreciative of Mr Halsted's efforts and publicly acknowledged his considerable contribution.

- **Ms Lynn Wood** was appointed to the Board on 3 April 1995 for a term of 5 years following the retirement of Mr Halsted. Ms Wood has considerable business experience across a number of sectors, including as a Director of Schroders Australia Pty Ltd and Marketing Director of David Jones Australia Pty Limited. Ms Wood is currently Joint Managing Director United Funds Management Limited.

- **Mr Tony Hinton** has been *ex-officio* Executive Member of the Board since August 1992 in his capacity as First Assistant Secretary of the Investment and Debt Division of the Treasury. Mr Hinton has been with Treasury since 1971 and has diverse experience across Treasury's various Divisions.

Relationship of the Executive to the Board

Executive assistance to the Board is provided by the Foreign Investment Review Branch of Treasury's Investment and Debt Division. During 1994-95, the head of the Executive was Mr Tony Hinton and the head of the Foreign Investment Review Branch was Mr Peter Tormey. The Executive provides secretariat services for the Board, writes draft reports on all proposals and is usually the first point of contact with foreign investment applicants.

In addition to its function as a secretariat for the Board, the Foreign Investment Review Branch also advises the Government on general foreign investment policy matters, including Australia's participation in multilateral and bilateral international agreements on investment (see page 8).

1994-95 Outcomes

The Board continues to ensure that proposals are dealt with quickly and efficiently and every effort is made to avoid unnecessary interference in business decision making. The information requirements for processing proposals have been designed to keep to a minimum the time taken (and hence the cost involved) in obtaining foreign investment approval. In 1994-95, the average processing time for applications declined slightly to 15 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.

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, the Board's Executive is readily available to meet 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. The Board and its Executive are ready to comment on proposals in draft form. The Board seeks to ensure transparency of the policy guidelines and the process involved in the administration of the policy by readily explaining policy and how it is administered.

The Executive is available for direct contact from the general public to provide advice on foreign investment policy questions. There has been an increasing number of telephone enquiries (over 60,000 in 1994-95).

During 1994-95, the Executive gave a number of private sector presentations concerning the requirements of the Government's foreign investment policy, particularly in relation to real estate. The Executive continues to disseminate information to potential investors through the booklet, 'Australia's Foreign Investment Policy: A Guide for Investors' and the provision of shorter summaries of particular aspects of policy where applicable.

It is open to third parties to make submissions to the Board on proposals. The Board, as part of its examination process, takes these submissions into account when examining proposals and making recommendations.

System for Processing of Proposals

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 Treasury's Foreign Investment Review Branch, with proposals being allocated on the basis of geographic location (for real estate proposals) or industry sector involved (sectors other than real estate).

The Board considers reports prepared by the Executive on major 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. 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.

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 at a formal Board meeting prior to seeking the decision of the Treasurer or Assistant Treasurer. Sometimes time constraints limit Board involvement to telephone discussions with the Executive Member; at times, it may not be possible to have Board involvement, other than by the Executive Member, before it is submitted for decision. However, the Board Members are informed each week of all of these cases.

There are also arrangements under which authority for approval, but not the rejection, of certain types of proposals that do not involve issues of significance, has been delegated to the Executive Member and the Branch and Section Heads within the Foreign Investment Review Branch.

The examination process involves reaching a conclusion after all necessary consultations as to whether a proposal conforms with the general and particular requirements of foreign investment policy. Approval will not be withheld on national interest grounds other than in unusual circumstances affecting Australia's vital interests and development.

Consultation Arrangements

In the examination of large or otherwise significant proposals, Government departments and authorities (including State and Commonwealth Government departments and authorities) with responsibilities relevant to the proposed activity of the foreign investor may also be consulted. This consultation is undertaken on a strictly confidential basis.

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 important 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 key stakeholders as an integral part of the administration of Australia's foreign investment policy.

Handling of Commercial-in-Confidence Information

The Board fully recognises that much of the information which is required in order to assess a particular proposal will be sensitive commercial-in-confidence information. The Government respects this confidential status and has appropriate security procedures in place to ensure that this status is fully protected.

In the event that action is taken by third parties to obtain access to confidential information held by the Board, it will not be made available without the prior permission of the person who first gave the information to the Board, except upon order of a court of competent jurisdiction. In this respect, the

Government will in the ordinary course pursue the defence of its policy through the courts.

In 1994-95, the Board's Executive processed five applications received under the Freedom of Information Act 1982 (FOI Act) for access to documents concerning foreign investment matters. 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 proposals. 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 was approved in respect of three requests. Of the remaining proposals, one was withdrawn, and the Board held no documents within the scope of the request for the other.

During 1994-95, two decisions by the Treasury to deny access to documents relating to Foreign Investment proposals were taken on appeal to the Administrative Appeals Tribunal. The appeals were held jointly. A conclusive certificate blocking release was issued in relation to these documents and the Tribunal upheld the validity of that certificate.

Compliance and Monitoring Activity

The Foreign Acquisitions and Takeovers Act 1975 (FATA) contains wide-ranging powers under which the Treasurer may take legal action to, *inter alia*:

- unwind (by seeking the parties to sell shares, assets or property) transactions that have gone ahead without prior foreign investment approval having been obtained where that purchase is inconsistent with policy;
- prosecute persons who fail to comply with an order to sell shares, assets or property; and
- prosecute persons who fail to comply with conditions attached to any approval given under the foreign investment legislation.

There are also general powers which make it an offence to provide false or misleading information or to enter into any schemes for the sole purpose of avoiding the provisions of the FATA.

Increased emphasis has been placed on monitoring and compliance with foreign investment policy, particularly in respect of ensuring compliance with conditions in the real estate area. Further details concerning residential real estate compliance are provided in Chapter 2.

Senate Select Committee Inquiry

The final report of the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in relation to the Print Media was made to the Senate in the form of an oral report on 30 March 1995. At the close of the financial year, the then Government was still considering its response to both the Interim and Final Reports of the Senate Select Committee.

International Aspects

OECD Multilateral Agreement on Investment. In May 1995, the OECD Ministerial Council Meeting decided to commence negotiations aimed at achieving by mid-1997 a Multilateral Agreement on Investment. Australia supports the basic objective of the proposed Agreement, namely the establishment of a strong and comprehensive framework for international investment, and will fully participate in the negotiations. At the Council meeting, Australia noted that what some countries seem to have in mind for the Agreement could cause difficulty for Australia in regard to the binding of State Governments and the removal of foreign investment screening processes.

Asia Pacific Economic Cooperation (APEC). Australia supports the global liberalisation of restrictions on foreign investment including in the context of APEC. APEC Ministers have endorsed a set of non-binding investment principles. The APEC Economic Leaders Declaration of Common Resolve released in Bogor, Indonesia on 15 November 1994 announced an agreement to adopt the long term goal of free and open trade and investment in the Asia Pacific region, with the industrialised economies achieving the goal of free and open trade and investment no later than 2010, and developing economies no later than 2020. The details of the implementation of the agreement to free and open investment in the Asia Pacific

region, announced in the APEC Leaders Declaration, will be developed in the period ahead.

Bilateral Investment Promotion And Protection Agreements (IPPAs). Australia's bilateral IPPAs with other countries promote the flow of capital for economic activity and development by entering into 'most favoured nation' commitments in regard to such matters as the admission and subsequent treatment of foreign investment, the giving of guarantees about expropriation/nationalisation, including the nature of compensation for such acts, and the establishment of mechanisms for resolving disputes over investment matters. A model IPPA text has been established to provide the basis on which these agreements can be negotiated.

To date, Australia has signed eleven IPPAs, namely with the People's Republic of China, Czech Republic, Hong Kong, Hungary, Indonesia, Laos, Papua New Guinea, Poland, Romania, Vietnam and the Philippines. During 1994-95, Australia completed IPPA negotiations with the Philippines, Lithuania, Peru and Argentina. Australia is currently negotiating with six other countries, Korea, Chile, Russia, India, Brazil, and South Africa.

Australia attaches importance to the conclusion of IPPAs. IPPAs add a further dimension to our bilateral relationships, particularly to the economic and investment aspects. IPPAs have the potential to play a role in enhancing the climate of confidence and investment flows among investors in a bilateral context.

Chapter 3 outlines aggregate trends in foreign investment in Australia and Australian investment abroad, with particular reference to APEC membership.

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. Government expenditure on the Board in 1994-95 was around $93,000, slightly up on the previous year. As in previous years, around 75 per cent of the expenditure was for remuneration of the Board members; the remainder was for local travel, car hire, printing expenses and incidentals. These costs are included in Treasury's 1994-95 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 $1,109,000 in 1994-95. This expenditure was mainly for salaries, with other expenses being incurred for travelling, printing and advertising. This was around $200,000 greater than expenditure reported for 1993-94, partly reflecting changed accounting procedures that enabled improved allocation of costs. 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 1995, there were 20 officers in the Foreign Investment Review Branch of Treasury.

Foreign Investment Proposals

This chapter provides statistical information on the proposals submitted in 1994-95 for examination under Australia's foreign investment policy and comments on some of the more significant cases. There is also a section covering the Board's monitoring and compliance activities in respect of residential real estate.

Limitations of the Board's Data

The Board urges particular caution on the use of FIRB statistics, including making comparisons with earlier years.

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.

The term 'expected investment' is used widely throughout this Report and total expected investment is the aggregation of:

- 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.

The statistics are not a reliable indicator of **trends** in foreign investment inflows because:

- they are inherently 'lumpy' (ie, the tendency for a few large investments to skew any one year's figures);
- they relate to proposals approved, which may or may not be implemented; and, if implemented, perhaps only over a period of years;

- 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 1994-95 lack comparability in a number of significant respects with the figures for earlier years (see **Appendix D** for full details of policy changes).

In addition, the statistics are not a comprehensive measure of all foreign investment inflow in any year, nor do they purport to measure changes in levels of foreign ownership of particular industries:

- the data 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 both in existing areas and into related areas and sales by foreign investors to Australian residents;
  - The notification/examination thresholds for the various sectors are in the policy summary at **Appendix A**.
- the figures 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;
- the figures do not necessarily reflect changes in foreign ownership levels since, in some cases, the vendor as well as the purchaser comes within the definition of a 'foreign interest'. Moreover, there may be significant sales by foreign investors to Australians which are not included.

Applications Decided in 1994-95[1]

Chart 2.1 depicts the number of applications decided and **Chart 2.2** the value of proposed investment associated with applications decided, separated out for the real estate sector and other sectors, over the past seven years.

Chart 2.1: Annual Number of Applications Decided

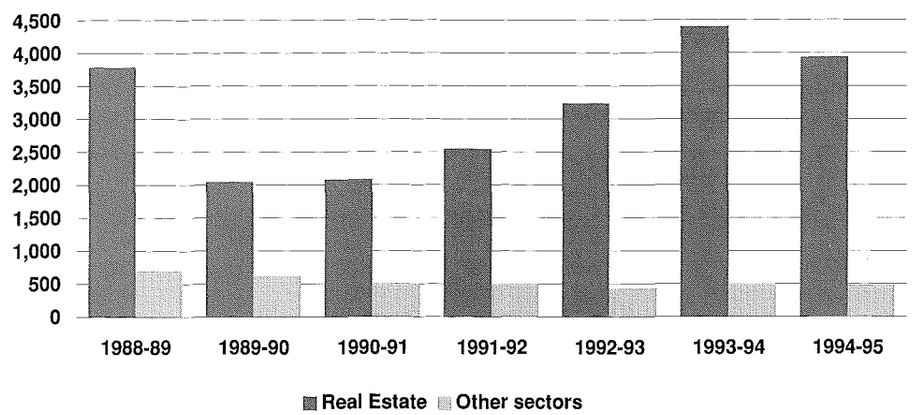
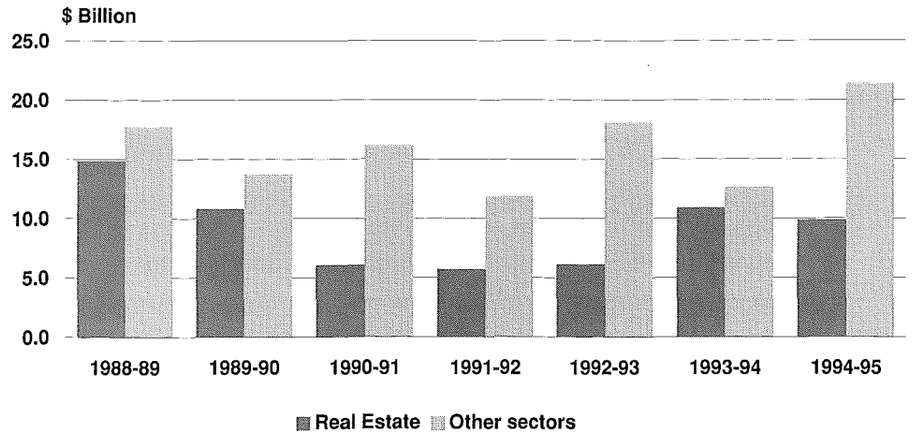


Chart 2.2: Annual Value of Applications Decided



The number of applications decided was slightly down on 1993-94, but was still high in relation to past years. Proposed investment associated with applications

1 The ensuing discussion relates only to proposals upon which a decision was taken. Those applications that were found not to be cases or were withdrawn are not included except for Table 2.1.

decided increased by around 25 per cent compared with the previous year to $31.2 billion, marginally below the historical high of $32.6 billion in 1988-89. A breakdown on the outcome for applications submitted over the last four years is provided in **Table 2.1**.

Table 2.1: Applications Considered (Number and Expected Investment) 1991-92 to 1994-95

	1991-92		*1992-93*		*1993-94*		*1994-95*	
Action	*No.*	*$b*	*No.*	*$b*	*No.*	*$b*	*No.*	*$b*
Approved Unconditionally	1,048	12.0	1,334	18.9	1,734	16.2	1,435	20.2
Approved with Conditions	1,933	3.8	2,268	5.1	3,085	7.2	2,901	10.2
Total Approved	2,981	15.8	3,602	24.0	4,819	23.5	4,336	30.3
Rejected	66	1.8	58	0.1	84	0.1	72	0.8
Total Decided	3,047	17.6	3,660	24.1	4,903	23.5	4,408	31.2
Withdrawn	227	-	165	-	384	-	405	-
Total Considered	3,274		3,825		5,287		4,813	

Indicative of the continuing welcoming policy in relation to worthwhile foreign direct investment, there were only 72 rejected proposals in 1994-95 or about 1.5 per cent of all decided proposals. There were only three rejections not in the real estate sector:

- The proposed restructure of Optus Pty Ltd has subsequently been approved in a modified form in 1995-96. This rejection had the effect of significantly increasing the value of the proposals rejected for 1994-95 compared with the previous two years;
- The acquisition of a small existing mine by a Swiss company was subsequently approved in a revised form; and
- The proposed acquisition by Australian Medical Enterprises Ltd (AME) of Hanly Moir Pathology Pty Ltd, has been overtaken by the successful on-market bid for AME by the Australian-controlled Mayne Nickless Group.

Nevertheless the number of rejected proposals needs to be interpreted with care and reflects the 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.

Only 47 proposals outside the real estate sector were approved subject to conditions (or 1.6 per cent of all such proposals). The conditions imposed in relation to these other sectors fell into two main groups — those designed to protect the environment, and those designed to protect the tax base by ensuring that agencies of foreign governments do not claim sovereign immunity in relation to *Australian* taxes or charges. Of the 2,854 real estate proposals approved with conditions, these mainly 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 1994-95 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. The skewing of the foreign investment data towards acquisition costs is a consequence of the notification requirements, as the expansion of existing businesses generally do not need to be submitted for foreign investment approval. Bearing in mind the limitations of the Board's data noted at the beginning of this chapter, the following general points can be made:

- The real estate sector had attracted the most expected investment with $9.8 billion[2] associated with approvals;
- Other major expected recipient sectors were services ($9.5 billion), manufacturing ($3.3 billion), finance and insurance ($2.6 billion) and mineral exploration and development ($2.6 billion);

2 Total expected investment in the real estate sector may be 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.

Table 2.2: Approvals by Industry Sector, 1994-95 ($ billion)

Industry Sector	*No. of Approvals*	*Acquisition Cost*	*Expected Investment on Development*	*Total Expected Investment*
Agriculture, Forestry & Fishing				
less than $50m	9	..	..	..
$50m and over	2	0.3	0.0	0.3
Total	11	0.3	..	0.3
Finance & Insurance				
less than $50m	24	0.2	0.0	0.2
$50m and over	13	2.3	0.1	2.4
Total	37	2.6	0.1	2.6
Manufacturing				
less than $50m	67	0.7	..	0.7
$50m and over	13	2.1	0.5	2.6
Total	80	2.8	0.5	3.2
Mineral Exploration & Development				
less than $50m	50	0.5	0.1	0.6
$50m and over	11	1.6	0.4	1.9
Total	61	2.1	0.5	2.6
Resource Processing				
less than $50m	5	..	0.0	..
$50m and over	4	0.9	0.1	0.9
Total	9	0.9	0.1	1.0
Services (Excl Tourism)				
less than $50m	139	1.5	0.2	1.7
$50m and over	23	4.2	3.6	7.8
Total	162	5.8	3.7	9.5
Tourism				
less than $50m	31	0.4	0.1	0.5
$50m and over	8	0.7	0.1	0.8
Total	39	1.2	0.2	1.3
Real Estate				
less than $50m	3,828	4.8	0.7	5.5
$50m and over	42	2.7	1.5	4.2
Total	3,870	7.5	2.2	9.8
Total				
less than $50m	4,153	8.3	1.1	9.4
$50m and over	116	14.9	6.1	21.0
TOTAL	4,269	23.1	7.2	30.3

Totals may not add due to rounding.

(a) Data have been compiled by reference to the Australian and New Zealand 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) Excludes proposals involving financing arrangements and corporate restructures.

- Compared with 1993-94, growth in total expected investment was recorded in services, finance and insurance, manufacturing, resource processing and agriculture, forestry and fishing. Falls were recorded in mineral exploration and development, tourism, and real estate.

Agriculture, Forestry & Fishing

1994-95 was a difficult year for Australian agriculture with drought conditions affecting the eastern states resulting in a significant decline in production, exports and income of Australia's farm sector. The forecast for 1995-96 is considerably brighter with demand for Australian wool, grains and food products set to rise. The net value of Australian farm produce is forecast to rise by 56 per cent in 1995-96 (after a 33 per cent fall in 1994-95) to $3.1 billion, with prices for wool, beef and dairy products forecast to rise.

There were 11 proposals all in the agriculture sector in 1994-95 (including the purchase of 6 rural properties), involving total expected investment of $320 million. In the previous year, there were 17 proposals and total expected investment of $115 million. On the face of it, this increases goes against expectations given the difficult conditions experienced in the rural sector in 1994-95. However, the majority of the $320 million is accounted for by the separate and competing bids by Australian Metal Holdings Ltd and AA Holdings Ltd to acquire Colonial Mutual Life Assurance Society Ltd's 50 per cent shareholding in Australian Agricultural Company Ltd. As such there is an element of double counting.

The statistics on aggregate acquisitions of rural properties need to be interpreted with caution. Acquisitions of rural properties valued at less than $3 million where a proponent proposes to continue to operate the property as a rural business are exempt under the Foreign Acquisitions and Takeovers Act 1975. Similarly, acquisitions of 'hobby farms' are treated as acquisitions of residential real estate and are not included in the statistics for rural properties.

Finance & Insurance

There was a significant increase in total expected investment in the finance and insurance sector in 1994-95 compared with previous years as further rationalisations occurred throughout the finance and insurance sector. The total

expected investment for these approvals was $2.6 billion, compared with $720 million in 1993-94. There were 37 proposals approved, comprising one new business proposal and 36 acquisitions. Of these, 13 proposals involved expected investment in excess of $50 million, five of which involved expected investment in excess of $100 million.

The most significant of these cases was the acquisition of a majority interest in National Mutual Life Association of Australasia Limited (National Mutual) by AXA SA (AXA) of France for $1.1 billion. AXA's investment in National Mutual would ensure that National Mutual's capital base exceeded the requirements of the new Life Insurance Act, as well as raising additional capital to enable National Mutual to pursue new opportunities in Australia and the Asia Pacific region.

The Government's decision in relation to the AXA proposal was subject to the following conditions:

- National Mutual Holdings remaining a separate entity headquartered in Australia;
- the Chair and the majority of the Board of National Mutual Holdings being Australian citizens;
- AXA not increasing its proposed 51 per cent shareholding without the prior approval of the Government; and
- AXA transferring its existing Asian life insurance interests to National Mutual Holdings, and pursuing its Asia Pacific life insurance business strategy through that company.

The new business proposal involved Global Project & Structured Finance Ltd and GE Australia Ltd acquiring a 50 per cent interest in a new joint venture business known as Infrastructure Investment Corporation Ltd established to undertake infrastructure investment in Australia and New Zealand.

Manufacturing

Expected investment associated with the manufacturing sector increased from $2 billion in 1993-94 to $3.2 billion during 1994-95. Around 86 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 80

proposals considered, 13 involved expected investment of $50 million or more and accounted for around 79 per cent of expected expenditure.

Given the long involvement of foreign investors in the manufacturing sector (particularly United Kingdom, United States and Japan), a large proportion of investment that occurs is not included in FIRB data as the expansion of existing businesses does not require notification.

Major proposals approved during the year included the Caltex Australia Limited and Ampol Limited merger of their petrol refining operations, Glaxo plc's acquisition of the pharmaceutical business of Wellcome Australia as a result of its offshore takeover of Wellcome plc and Malaysia Mining Corporation Berhad Group's acquisition of a 45 per cent interest in National Consolidated Limited.

Further evidence of the positive role foreign investment can play in the provision of necessary infrastructure is given by the two proposals to establish new manufacturing operations in 1994-95. The Smithfield Power Partnership acquired a lease of vacant land to develop a gas-fired co-generation power station in Smithfield, NSW at a total development cost in excess of $160 million. Wyuna Water Pty Ltd received approval to develop and operate water plants in Woronora and Illawarra, NSW at a total development cost of $160 million.

Mineral Exploration & Development

Most energy and mineral commodities prices consolidated significantly in 1994-95 above their 1993-94 average and are forecast to firm further during 1995-96. Weak economic growth in Japan held back demand and prices for certain key commodities until the last quarter of 1994-95, notably coal, iron ore and base metals[3].

Investment proposals in the minerals sector approved in 1994-95 were comparable to those in the previous year (61 compared with 62 in 1993-94), but total expected investment fell from $3.6 billion to $2.6 billion, largely due to a marked decrease in investment activity in the oil and gas sector. There were 56 acquisitions and 5 new businesses. The leading source countries were the United Kingdom ($508 million) and the United States ($323 million). Australian

3 See ABARE: Australian Commodities, Forecasts and Issues, June Quarter 1995.

controlled companies with some foreign ownership were expected to invest $185 million.

On an industry basis, the number of approvals and total expected investment for the past two years are shown in **Table 2.3**. There was one rejection in the minerals sector in 1994-95. The proposed acquisition of a small existing mine by a Swiss company was rejected on the basis that the Government had reason to doubt the bona fides of one of the principals of the company. Subsequent information proved that the subject principal was no longer connected with the acquiring company (either directly or indirectly). On the basis of this information, a revised proposal was submitted and consequently approved.

Table 2.3: Minerals Sector Approvals by Number and Total Expected Investment: 1993-94 and 1994-95

Industry	Acquisitions				New Businesses			
	No. of approvals		$ million		No. of approvals		$ million	
	1993-94	1994-95	1993-94	1994-95	1993-94	1994-95	1993-94	1994-95
Gold	22	22	1,150	1,153	-	1	-	45
Oil and gas	10	6	1,018	59	2	-	790	-
Coal	8	14	188	169	-	2	-	232
Base metals	3	8	127	670	-	1	-	155
Other	15	6	335	63	2	1	42	17
Total	**58**	**56**	**2,818**	**2,114**	**4**	**5**	**832**	**449**

Foreign investor proposals in the coal industry rose from $188 million in 1993-94 to $400 million in 1994-95. There were sixteen approved proposals including 2 new mines and 14 acquisitions compared with 8 proposals (no new mines) in 1993-94. World coal prices rose for the first time in five years (after cumulative price falls of around 15 per cent in the four years to 1994) and demand conditions for steaming coal were expansive while coking coal remained flat (the value of total coal exports declined from $7.2 billion in 1993-94 to $6.8 billion in 1994-95). Domestic coal consumption rose from 53 million tonnes in 1993-94 to 54 million tonnes in 1994-95.

There were two proposals to establish new coal mines in 1994-95, the most significant being a proposal by the US controlled Caltex Oil (Australia) Pty Ltd in joint venture with Nippon Oil (Australia) Pty Ltd of Japan and the Australian owned AMP Society Ltd to establish a new coal mine known as Bayswater No.3 near Muswellbrook, NSW with total investment of approximately $204 million. This new mine is expected to be operational by 1998.

There was a decrease in proposals to invest in the oil and gas sector in 1994-95, reflecting an overhang in expectations after a sustained period of deterioration in price conditions (average oil prices improved in the last quarter of 1994-95 for the first time in three years). Given the long lead times in developing new oil and gas projects the Board's figures on total expected investment for the oil and gas sector tend to be lumpy. There were 6 approved acquisitions in the oil and gas sector, with total expected investment of $59 million (well down from ten proposals and $1,018 million in 1993-94).

The number of proposals to invest in the gold industry was steady at 23 in 1994-95, compared with 22 in 1993-94 and total expected investment rose marginally from $1,150 million to $1,200 million. Australian gold production achieved a record 256 tonnes in 1994-95 compared with the previous record of 255 tonnes in 1993-94. The sustained increase in production was achieved largely by significant expansion of the reserve bases at existing mines (not reviewable under foreign investment policy) and the discovery of further new, large scale gold deposits associated with high levels of exploration expenditure. By far the largest acquisition in the gold industry in 1994-95 involved the purchase by Goldfields Limited, a then wholly owned subsidiary of Renison Goldfields Consolidated Limited (approximately 40 per cent owned by the Hanson Group of the UK), of Pancontinental Mining Ltd by way of a Part A takeover offer with a consideration of approximately $450 million. There was one proposal for a new gold mine in 1994-95, the first in three years: the Shell Company of Australia Ltd sought approval to develop the Union Reefs gold mine located near Pine Creek, Northern Territory at an estimated cost of $45.1 million.

World base metals prices rose strongly through 1994-95 (after a sharp correction in early 1995) and have consolidated at levels significantly higher than the average of 1993-94. With the exception of copper, ongoing demand growth and further moderate supply growth are expected to consolidate and strengthen these gains into 1995-96. There were nine proposals in the base metals sector (eight acquisitions and one new mine), with total expected investment of $825 million, well up from the three proposals (all acquisitions) and expected investment of $127 million in 1993-94. Placer Pacific (Osborne) Pty Ltd is to establish a new copper/gold mine at Cloncurry, Queensland for an initial total investment of $155 million.

Resource Processing

There were nine approvals in the resource processing sector during 1994-95, with a total expected investment of $967 million. Two large proposals accounted for almost all of proposed expenditure, namely Carter Holt Harvey Limited's acquisition of Bowater Corporation of Australia Limited and Alcoa International Holdings Company increasing its interest in Alcoa of Australia Limited.

There was one proposal to establish a new resource processing plant. BHP Petroleum entered into an unincorporated joint venture with Diamond R&D Australia, a subsidiary of Japan's Mitsubishi Corporation to participate in the establishment and operation of a reduced scale methanol research plant at Laverton, Victoria at a cost of approximately $70 million. This project involves the production of methanol in Australia using leading edge technology and has the potential to significantly value-add to remote natural gas reserves.

Service Industries (excluding tourism)

During 1994-95, the Board approved 162 proposals for investment in the service industries sector (excluding tourism), comprising 15 proposals to establish new businesses and 147 proposed acquisitions of interests in existing businesses. The total expected investment for the establishment of new businesses and acquisitions was $3.7 billion and $5.8 billion, respectively. The major source investors for this sector came from the United States, Singapore, United Kingdom and France.

Two proposals were rejected; one involved a restructure of Optus Communications Pty Ltd (Optus) and the other involved the proposed acquisition by Australian Medical Enterprises Ltd of Hanly Moir Pathology Pty Ltd. In relation to Optus, the original proposal was considered to be inconsistent with the Government's stated policy of majority Australian ownership in Optus. (A revised proposal has since been submitted by Optus and has been approved.) The rejection of the Australian Medical Enterprises proposal highlights the role the foreign investment screening process can play. In considering the case, the Government was particularly concerned about the past activities of Australian Medical Enterprise's then parent company which had been under investigation in the United States for, inter alia, overservicing.

There was continued foreign interest in the media sector, including in regional newspapers, radio and pay television. Of the 15 proposals to establish new

businesses, the establishment of a broadband communications network by Optus Vision Pty Ltd with anticipated expenditure of $3 billion was the most significant, accounting for 80 per cent of the total expected development expenditure by new foreign businesses. A proposed new cable pay TV business involving a joint venture between News Ltd and Telstra Ltd was also approved.

There were 23 approvals involving acquisitions with expected expenditure of $50 million or more. The more significant proposals in this sector considered by the Board were in the transport, entertainment, retail and wholesale trade, communications, media, pay-TV and business service industries. These included the proposal by Tenneco Gas International Inc to acquire an interest in the Pipeline Authority of South Australia, the proposal by The Capital Group Companies, Inc to acquire an interest in various Australian media groups and the proposal by Coles Myer Limited to buy back Kmart Corporation's interest in Coles Myer Limited.

Tourism

ABS statistics show numbers of international tourists arriving in Australia were up on 1993-94 figures. However, other ABS statistics on the tourism industry[4] show conditions in the sector were not conducive to increased foreign investment in 1994-95. Conditions of oversupply (the number of guest rooms rose slightly and number of bed spaces rose by an additional 5,000 beds) combined with low occupancy rates for hotels/motels produced an environment of flat or declining returns on investments in the tourism sector. Average takings per room night only regained their June quarter 1990 level in the March quarter 1995.

Against this backdrop, it is not surprising that Board statistics show expected investment significantly lower at $1.3 billion for approvals in 1994-95 from a high of $4.1 billion in 1993-94. There were no proposals for the establishment of any new hotel or motel business in 1994-95 and much of the activity was in the acquisition of existing hotels etc. **Table 2.4** provides a disaggregation of tourism investment by country of investor and location of investment.

4 ABS Tourism Indicators ABS Cat No. 8634.0.

Table 2.4: Expected Investment Associated with Tourism Approvals[(a)], by Country of Investor and Location of Investment, 1993-94 and 1994-95 ($million)

	USA		Japan		Singapore		Germany		Hong Kong		World Other		Sub-total		Aust		Total (b)	
Location	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95	93-94	94-95
NSW	475	310	274	-	365	141	375	-	123	-	123	77	1,736	529	250	-	1,986	529
Qld	43	99	339	-	44	40	-	-	-	-	264	41	690	180	2	30	691	210
Vic	-	-	-	-	94	62	-	-	11	65	87	62	192	189	500	-	692	189
SA	2	-	-	-	22	91	-	-	-	-	178	22	201	113	-	-	201	113
NT	1	76	-	-	10	-	-	-	-	-	-	30	11	106	1	-	12	106
WA	-	-	-	-	131	6	-	-	-	21	28	17	159	44	-	-	159	44
ACT	61	-	-	-	-	-	-	-	-	-	-	-	61	-	-	-	61	-
Tas	-	-	-	-	9	-	-	-	-	-	-	-	9	-	-	-	9	-
Other (c)	6	13	12	-	171	-	-	-	-	-	49	69	338	82	-	36	338	117
Total	**587**	**499**	**625**	**-**	**845**	**339**	**375**	**-**	**-**	**86**	**829**	**319**	**3,395**	**1,243**	**723**	**66**	**4,148**	**1,308**

Totals 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 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 accordingly.

(c) Comprises expenditure to be undertaken in more than one State or Territory.

The statistics also show a collapse in proposals for Japanese investment in tourism from $625 million in 1993-94 to nothing in 1994-95. While consistent with declines shown by other source countries, including Singapore and Germany, this decline was perhaps exacerbated by the financial difficulties many Japanese property developers experienced as the Japanese economy went into recession and domestic property values declined.

A total of 39 proposals involving new businesses and acquisitions in the tourism sector were examined in 1994-95. There were 3 proposals to establish new tourism businesses, involving total expected investment of $100 million. There were 36 proposals involving acquisitions of existing tourism projects and businesses for which total expected investment amounted to $1.21 billion. The most significant cases in the tourism sector were the acquisition by the ITT Sheraton Group of the Grand Hotel and Tattersall's Building in Sydney, and the acquisition by Hotel Plaza Ltd and associates of the Hotel Nikko, Sydney.

The comparative figures for the preceding year were eight new business proposals (involving expected investment of $1.8 billion) and 63 proposed acquisitions of existing businesses (with total expected investment amounting to $2.3 billion).

Urban Real Estate

Table 2.5 gives a breakdown of the expected investment in urban real estate. A number of factors operating in the real estate sector contributed to both a fall in the number of approvals in 1994-95 (down from 4,320 proposals in 1993-94 to 3,870 proposals) and in the total expected investment associated with those approvals (down by $1.0 billion to $9.8 billion in 1994-95).

Most economic indicators began to show a marked downturn in activity in the housing sector from around the third quarter of 1994 reflecting softer demand conditions and excess supply in many urban centres. This change in domestic demand and supply conditions could be expected to lead to some decline in foreign demand (with some time lag) because of a negative change in perceptions about the ease of onsale and prices achieved after construction and the difficulty in securing long term tenants with already high vacancy rates in some markets. Details on the policy as applied to the purchase of urban real estate are at Appendix A.

Table 2.5: Expected Investment in Urban Real Estate by Type and Number of Proposals Approved in 1994-95 ($billion)

	Number of Approvals	Consideration	Expected Development Expenditure	Total Expected Investment
For Development				
Residential				
- ordinary approvals	1,673	0.5	1.1	1.6
- off the plan				
. individual	589	0.1	..	0.1
. developer	612	3.6	..	3.6
- annual programs	8	0.4	..	0.4
Total Residential	2,882	4.7	1.1	5.8
Commercial	50	0.4	1.1	1.5
Total for Development	*2,932*	*5.1*	*2.2*	*7.3*
Developed				
Residential	817	0.2	-	0.2
Commercial	121	2.3	-	2.3
Total Developed	*938*	*2.5*	-	*2.5*
TOTAL	**3,870**	**7.6**	**2.2**	**9.8**

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

Real Estate for Development

Consistent with the basic welcoming approach to foreign investment, the policy applied to real estate where development is expected is very liberal. During 1994-95 there were 2,882 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a slight increase over the 2,710 proposals approved in 1993-94. Total expected investment associated with those proposals amounted to $5.8 billion, of which $0.5 billion constituted acquisitions costs for ordinary approvals and $1.1 billion the expected development expenditure. The remainder of the acquisition costs ($4.2 billion) comprised $3.7 billion of developer and individual 'off the plan' approvals and $0.4 billion of annual programs.

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). Some 1,673 proposals by foreign interests to acquire residential real estate for development were approved, with a total expected investment of $1.6 billion consisting of $0.5 billion for acquisitions and $1.1 billion for the associated development expenditure. All such proposals carry with them a condition that

continuous construction must commence on the land/site within 12 months of approval having been granted. The Government views seriously any breaches of these development conditions (see later section on Compliance).

The **'off the plan arrangements'** (see Appendix A) are an important, flexible element of the Government's policy on foreign purchases of newly developed houses, townhouses etc. In 1994-95, there were 589 proposals approved, involving expected investment of $140 million for individuals to acquire residential property 'off the plan'. In addition, there were 612 applications approved (valued at $3,580 million) from real estate developers seeking 'advance approval' to sell property, 'off the plan' to foreign persons. The Board's figures 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 is necessarily a significant lag between the granting of approvals and receipt of reports due to construction time.) The returns to date indicate that sales to foreign interests averaged around 19 per cent of total sales by number and 22 per cent by value. It is interesting to note that in only 66 developments has the 50 per cent limit on foreign sales been reached.

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 developments undertaken. In 1994-95, there were ten annual program arrangements, eight involving residential real estate for development totalling $440 million in expected acquisition costs and two involving commercial acquisitions of $20 million.

Finally, though not shown separately in the statistics, the Government's policy on designating **Integrated Tourist Resorts** is designed to facilitate foreign purchases of residential real estate in the context of resorts, the primary purpose of which is to service the tourist market. During 1994-95, there were no designations of ITRs.

There were 50 proposals (including the two annual programs) involving the purchase of land for commercial development involving total expected investment of $1.5 billion. The most significant of these approvals was Central Pacific Pty Ltd'*s* acquisition of the Queen Victoria site in Melbourne.

There were 25 rejections involving the acquisition of residential real estate for development in 1994-95 with expected development expenditure valued at $13.3 million. Of these 12 were vacant land for development or redevelopment and the most common reasons for these rejections were one or more of the following:

- 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);
- the proposed timetables for development were unsatisfactory; or
- 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.

In addition, twelve proposals were rejected as they did not meet the 'off the plan' criteria. There were no rejections involving commercial real estate for development.

Acquisitions of Developed Real Estate

Foreign investment policy does not restrict either purchases of developed commercial real estate or certain categories of purchase of developed residential real estate (essentially purchases of houses, etc for own use by resident foreign workers, foreign students (below $300,000) and foreign companies buying for their senior executives (generally subject to a limit of two houses per company). The policy does restrict, however, foreign nationals purchasing existing houses, etc due to the potential for speculation and the lack of perceived direct benefits to Australia. This reflects the firm view that foreign investment in the residential sector should be channelled into development where there are multiplier benefits from new investment in the construction industry and direct additions to the housing stock.

There was a marked decrease in the number of proposals and value of expected investment in developed residential real estate in 1994-95. Of the 817 approvals *for developed residential real estate,* approximately 64 per cent were from persons from the Peoples Republic of China 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.

Reflecting the comparatively restrictive nature of the policy, there were 43 rejections of proposed acquisitions of developed residential property in 1994-95. The total anticipated acquisition costs involved in these proposals was $19.6 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.

There were 122 proposals to purchase developed commercial property (eg shopping centres, offices, warehouses etc) involving total expected investment of $1.5 billion. Purchases of developed commercial property valued at less than $5 million are exempt from the need to obtain prior approval.

There was one rejection of a proposal by a Hong Kong based company to acquire developed commercial property in St. Kilda, Victoria. That company had previously been given foreign investment approval to acquire vacant commercial land in Melbourne but had onsold the land without development and without informing the Government of the sale. Pending a satisfactory explanation of its actions, the Government decided to withhold any further foreign investment approvals and thereby rejected the proposed acquisition of the aforementioned St. Kilda property. Following a satisfactory explanation of the party's actions and an undertaking to fully comply in future with the Government's foreign investment policy, a revised proposal was submitted and subsequently approved.

Real Estate by State

Table 2.6 provides details of expected investment in all categories of urban real estate for each State and Territory. Queensland is the main location for expected foreign investment in residential real estate, with 37 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 1994-95 ($million)

Location	Developed Residential	Residential for Development	Developed Commercial	Commercial for Development	Total
New South Wales	131	1,901	1,187	526	3,745
Victoria	27	583	372	363	1,345
Queensland	42	2,173	314	193	2,722
Western Australia	25	695	328	335	1,384
Other (a)	8	456	54	70	587
TOTAL	**233**	**5,808**	**2,254**	**1,487**	**9,783**
Number of Proposals	817	2,882	121	50	3,870

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

Residential Real Estate Compliance

The policy does not permit the purchase of developed residential real estate purely for the earning of rental income, for speculative purposes or where it may involve land banking. There is also the concern that where foreign interests acquire residential real estate for development that any stated development is carried out within a reasonable timeframe (ie, commenced within 12 months). Any failure by foreign interests to pursue their stated development plans would be a serious breach of policy and therefore contrary to the national interest.

A foreign interest found to be in breach of the residential real estate policy may be ordered to sell the subject property which may result in a significant capital loss for the purchaser and/or be penalised by way of a prosecution for an offence under Section 26A of the Foreign Acquisitions and Takeovers Act 1975 (the Act). Section 26A provides for financial or prison penalties on conviction.

The Treasurer has the power under Section 36 to serve a notice in writing requiring a person capable of giving information or producing documents relevant to the exercise of the Act to supply the information within a specified time.

During 1994-95 there were 8 divestiture orders and 2 Section 36 notices issued. It is envisaged that there will be increased monitoring of compliance with policy, including conditions imposed, with particular relevance to the real estate sector where systematic monitoring will be pursued and the powers available to the Government used to secure compliance with the policy.

Approvals by Country of Investor

Expected investment by country of investor for approvals in 1991-92 to 1994-95 are summarised in **Table 2.7**. Country data for 1994-95 are disaggregated by States in **Table 2.8** and by industry sector in **Table 2.9**.

The United States remained the most important single source of expected foreign investment in Australia approved during 1994-95. Other major sources included United Kingdom, Singapore, France, Malaysia and New Zealand.

- The decline in recent years in Japanese expected investment continued in 1994-95 and was approximately one ninth of the level in 1989-90.
  - In 1994-95, Japanese expected investment was concentrated in the real estate and services sectors and was principally directed towards New South Wales.
- The United Kingdom returned to being the second largest source of investment having been replaced by Singapore in 1993-94.

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

Country of investor	*1991-92* *$b*	*1992-93* *$b*	*1993-94* *$b*	*1994-95* *$b*
United States	1.9	3.9	4.4	6.1
United Kingdom	1.9	4.2	1.6	4.0
Singapore	0.7	0.9	2.8	2.0
France	0.4	0.7	0.2	1.9
Malaysia	0.4	0.4	0.9	1.1
New Zealand	1.0	0.6	0.8	1.1
Japan	2.6	2.0	1.5	0.9
Hong Kong	0.6	0.8	1.1	0.8
Other foreign	3.3	5.9	6.8	8.2
Australia	3.0	4.8	3.3	4.3
Total	**15.8**	**24.0**	**23.5**	**30.3**

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

Table 2.8: Expected Investment by Country by State 1994-95 ($billion)

	USA	UK	Singapore	France	Japan	Other/Aust (a)	Total
New South Wales	1.1	0.8	0.6	0.3	0.5	3.9	7.3
Queensland	0.3	0.1	0.6	0.0	0.1	2.2	3.3
Victoria	0.4	0.5	0.3	0.0	0.2	1.9	3.2
Western Australia	0.5	0.5	0.2	0.3	0.1	1.7	3.4
Other (b)	3.8	2.1	0.3	1.0	0.0	5.8	13.1
Total	**6.1**	**4.0**	**2.0**	**1.9**	**0.9**	**15.4**	**30.3**

Totals 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 1994-95 ($million)

Industry Sector	USA	UK	France	Other EC	NZ	Japan	Singa-pore	Mal-aysia	Other ASEAN	Hong Kong	P.R. China	World Other	Sub-total	Aust (a)	Total
Agric, Forestry & Fishing	11	170	-	-	2	28	-	-	-	-	-	106	316	1	318
Mineral Explor. & Develop	323	508	187	29	54	97	-	99	-	55	38	987	2,377	185	2,562
Resource Processing	432	-	-	-	351	101	1	1	-	-	14	-	898	69	967
Manufacturing	1,083	795	228	293	14	64	7	317	18	30	6	377	3,232	17	3,249
Finance & Insurance	516	66	1,115	151	10	21	7	12	2	208	0	353	2,460	179	2,639
Services (excl Tourism)	2,669	1,889	139	328	242	177	197	133	45	58	31	349	6,258	3,242	9,500
Tourism	499	19	85	12	4	-	339	137	17	86	-	45	1,243	66	1,308
Real Estate (b)	556	564	103	157	418	429	1,480	399	359	369	137	4,243	9,215	566	9,781
Total	**6,090**	**4,011**	**1,856**	**970**	**1,095**	**916**	**2,030**	**1,098**	**441**	**807**	**225**	**6,460**	**26,000**	**4,325**	**30,324**
Number of Proposals (c)	256	300	42	150	58	203	995	184	644	209	267	983	4,291	315	4,606

(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.

Aggregate Foreign Investment

This chapter summarises trends in foreign investment in Australia and Australian investment abroad.

Foreign investment in Australia refers to the stock of financial assets in Australia owned by non-residents and capital transactions which increase or decrease this stock. Conversely, Australian investment abroad refers to the stock of foreign financial assets owned by Australian residents and capital transactions which increase or decrease that stock.

Australian Bureau of Statistics (ABS) foreign investment data, as well as studies by the Bureau of Industry Economics (BIE) on 'Investment abroad by Australian Companies Issues and Implications' and 'Foreign Direct Investment in APEC' are used to interpret Foreign Direct Investment (FDI) and AIA trends.

ABS data is 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 (AIA), 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 1994-95, borrowing by the official sector (comprising general government and the Reserve Bank) increased by $4.2 billion or around 50 per cent.

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 in another country which gives the investor a 'significant influence' (either potentially or actually exercised), over the key policies of the 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)

	1990-91	1991-92	1992-93	1993-94	1994-95
Foreign Investment in Australia					
Official	0.7	2.1	10.9	8.4	12.6
Non-official					
Direct Investment					
Equity	7.1	4.3	6.6	5.4	7.7
Debt	1.0	1.3	-1.3	0.5	-0.6
Other	-0.3	0.3	0.2	0.0	1.0
Total direct investment	*7.7*	*5.8*	*5.5*	*6.0*	*8.2*
Portfolio and other					
Equity	3.2	1.1	4.0	14.6	2.9
Debt	10.4	6.0	-2.4	-0.8	-0.6
Other	-0.2	0.4	0.4	0.7	0.4
Total portfolio and other	*13.5*	*7.5*	*1.9*	*14.6*	*2.8*
Total Non-official	*21.2*	*13.3*	*7.4*	*20.6*	*10.9*
Total Foreign Investment in Australia	*21.9*	*15.4*	*18.3*	*29.0*	*23.5*
Australian Investment Abroad					
Official	1.9	-4.6	-4.0	1.6	-2.5
Non-official					
Direct Investment					
Equity	-3.5	1.2	4.6	4.7	4.1
Debt	2.6	-0.3	-1.9	1.6	0.9
Other	0.0	-0.1	0.2	0.0	-0.3
Total direct investment	*-0.9*	*0.8*	*2.8*	*6.3*	*4.7*
Portfolio and other					
Equity	2.4	2.7	-0.2	4.6	-0.5
Debt	1.2	1.7	5.2	1.7	-0.9
Other	-0.3	-0.9	0.1	1.5	-0.5
Total portfolio and other	*3.4*	*3.5*	*5.2*	*7.9*	*-1.8*
Total Non-official	*2.5*	*4.3*	*8.0*	*14.2*	*2.9*
Total Australian Investment Abroad	*4.3*	*-0.3*	*4.0*	*15.8*	*0.4*
Net Foreign Investment	17.6	15.7	14.3	13.2	23.1

Source: ABS 5306.0 International Investment Position, Australia December Qtr 1995.

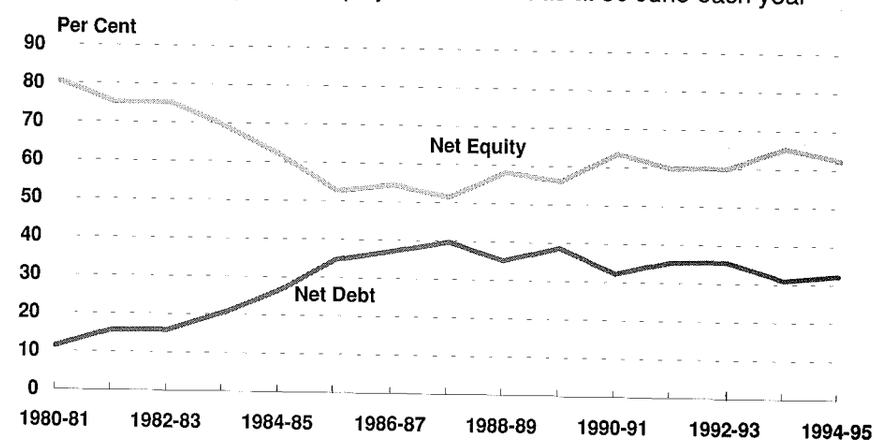
Non-official foreign investment in Australia in 1994-95 was characterised by a continuation of the repayment of debt (some $1.2 billion in debt was retired in 1994-95), and by total equity investment of $10.6 billion.

Non-official AIA in 1994-95 fell significantly to a net outflow of $2.9 billion (total non-official AIA equity investment for the year was $3.6 billion) compared with an outflow of $14.2 billion in 1993-94.

An examination of the data indicates that the perception that direct investment is a one way street — namely inwards to Australia — is a false one. While the amount of new investment in any one year has been volatile, there have been dramatic increases in AIA. In recent years the gap between inflows and outflows of direct investment has been relatively small. Essentially this is a reflection of the globalisation of the Australian economy.

Equity vs Debt Composition of Net Direct Investment Stocks

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



Source: Chart based on ABS date contained in ABS 5306.0 International Investment Position, Australia December Quarter 1995.

Chart 3.1 provides details of movements in net equity and net debt as a proportion of the stock of non-official net direct investment since 1980-81. 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 AIA. Since late 1987-88, the proportion of net equity

has increased reflecting a shift in emphasis back to direct equity investment in Australia.

Foreign Investment Levels

The ABS estimated level or stock of foreign investment in Australia as at 30 June 1995 was $401 billion, comprising $75 billion of official investment, $129 billion in non-official direct investment and $197 billion in non-official portfolio and other investment. This represented an increase of $30 billion, or eight per cent, over the level at 30 June 1994.

The actual level of AIA as at 30 June 1995 as measured by the ABS was $141 billion, comprising $23 billion in official investment, $52 billion in non-official direct investment abroad, and $66 billion in non-official portfolio and other investment. This represented an increase of $8 billion, or 6 per cent, over the level at 30 June 1994. Equity investment accounted for approximately 73 per cent of the level of non-official AIA.

Non-official direct investment (essentially private sector investment) accounted for 32 per cent of the total stock of foreign investment in Australia, and 37 per cent of the total stock of AIA as at 30 June 1995.

Australian Investment Abroad

There has been a sharp increase in the trend of both the stock of investment and in the net flow of investment of AIA.

- By 30 June 1995, total AIA stocks as measured by the ABS were valued at $141 billion, and have increased at an annual average rate of 16 per cent since 1980.

- The BIE estimate the stock of non-official (broadly private sector) AIA grew very rapidly during the 1980s, accumulating at an annual average of 29 per cent, and has continued to grow in the early 1990s, although more moderately at around 10 per cent.

- The BIE estimate that AIA grew strongly over the 1980s at rates quicker than the OECD, including that of Japan, and quicker than Australia's growth in exports and GDP.

APEC

The growing significance of AIA and FDI flows in an APEC context as reported by the BIE is summarised below:

- Between 1985 and 1992 the value of APEC's inward and outward FDI stock more than doubled. In 1992 APEC accounted for about half of the world's stock of inward and outward FDI. While Japan and the US dominate APEC's FDI outflows accounting for over 80 per cent in 1992, APEC's developing Asian members are becoming an increasingly important recipient of FDI accounting for 53 per cent of APEC's global FDI inflows (from APEC and non-APEC sources).

- One of the most significant developments in the expansion of FDI in APEC over the last decade has been the increase in intra-regional FDI flows. In 1992, 52 per cent of APEC's inward FDI was sourced from other APEC members.

- In 1992-93, 84 per cent of Australia's outward FDI was received by APEC economies. APEC economies accounted for 40 per cent of FDI inflows into Australia over the same period.

Policies governing investment in APEC economies have an important bearing on the direction and size of current and future FDI flows in the region. While many APEC governments have made considerable efforts to liberalise their foreign investment policies in recent years, substantial barriers to the free flow of FDI in the Asia Pacific region remain. Generally, governments in developing APEC member economies use more complex and extensive foreign investment policies than governments in developed APEC economies. As multilateral pressure grows for further liberalisations of capital flows, Australian investors are seeking reciprocal liberal treatment for AIA in foreign markets.

Summary of Australia's Foreign Investment Policy as at 30 June 1995

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 direct investment 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 (over $3 million for rural properties);
- plans to establish new businesses involving a total investment of $10 million or more;
- 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 at $5 million or more;

- acquisitions of urban real estate 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 at $20 million or more, 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; 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.

In relation to investments by foreign interests in these sectors, all proposals above certain thresholds need to be notified. Notification thresholds are, over $3 million for purchases of rural properties, over $5 million for acquisitions of substantial interests in other existing businesses, $10 million or more for the establishment of new businesses and $20 million or more for offshore takeovers.

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.

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

Approvals of proposals may be made subject to the parties meeting certain conditions. In practice, such conditions relate almost entirely to the time period for real estate development or to environmental requirements.

Real Estate

Proposed acquisitions of **residential real estate** are exempt from examination in the case of Australian citizens living abroad and foreign nationals who are the holders of permanent visas or are holders, or entitled to hold, a 'special category visa'.

Acquisitions of **residential real estate for development** (including vacant building allotments) by foreign interests are normally approved subject to a specific condition requiring continuous construction to commence within 12 months. Applications to acquire existing residences for redevelopment may be approved under this category provided that the proposal provides for substantial redevelopment expenditure in relation to the acquisition cost of the property and/or an increase in the housing stock. Once the development condition has been fulfilled, there is no restriction on the subsequent use of the property by the foreign investor, ie. it may be rented out, sold or retained for the foreign investor's own use.

Foreign interests may apply to acquire home units, town houses, house/land packages, etc in a new development, either **'off the plan'**, during the construction phase or when the dwelling is newly completed, provided that it has never been occupied or sold and provided no more than 50 per cent of the dwellings in any one development are sold to foreign interests. This category includes acquisitions that are part of extensively redeveloped buildings where the building's use has undergone a change from non-residential (eg, office, warehouse, hotel and motel) to residential and the cost of redevelopment is at least 50 per cent of the total acquisition cost based on purchase price or market value of the property, whichever is the greater.

Developers of four properties or more may apply in advance to sell up to 50 per cent of residences to foreign investors. Where such approval has been granted, it is not necessary for individual investors to apply. A property purchased under this category is not subject to any restriction on its subsequent use, ie, it may be rented out, sold to Australian interests or other eligible purchasers, or retained for the foreign investor's own use. However, when the property is sold it is treated as developed residential estate and its sale is subject to the restrictions applying to that category of residential real estate. Developers are required to provide a copy of their approval letter to each prospective purchaser and to report all sales (ie, Australian and foreign) to the Board. The initial report is due within six months and thereafter on a six monthly basis until all the dwellings in the developments have been sold or occupied.

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'** (ITR) are exempt from examination. The following 10 resorts had been designated as ITRs to date:

- 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).

Developed residential real estate means existing houses, flats or units. Acquisitions of 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). This latter category includes long-stay retirees, and students 18 years of age and over studying courses of more than twelve months duration at recognised tertiary institutions. In the case of students a limits of $300,000 is normally applied.

Applications by Australian citizens and their foreign spouses to purchase residential real estate as joint tenants are normally approved.

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

Domestic Services

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.

International Services

Foreign airlines can generally expect approval to acquire up to 25 per cent of the equity in an Australian international carrier (other than Qantas) individually or up to 35 per cent in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 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 licence. No more than 20 per cent of directors may be foreign persons.

- For all subscription television broadcasting services licences, 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 limits 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 ie, a maximum of 30 per cent. In the case of the Fairfax newspaper group, individual portfolio shareholdings by foreign interests of less than 5 per cent are permitted.

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 of 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.

Applications

Applications for foreign investment approval should be addressed to:

The Executive Member
Foreign Investment Review Board
C/o The Treasury
CANBERRA ACT 2600

Facsimile: (06) 263 2940 or (06) 263 3866

Enquiries

Enquiries may be directed to:

❖ Manufacturing & Resource Processing Real Estate — NSW & ACT	Mr Mike Waslin (06) 263 3886
❖ Finance and Insurance, Services, Tourism & Media Real Estate — Qld, NT	Mr Vernon Joice (06) 263 3834
❖ Mining & Agricultural Real Estate — Vic, WA, SA & Tas.	Mr Roy Nixon (06) 263 3764
❖ **General Enquiries**	**(06) 263 3795**

A booklet setting out foreign investment policy requirements, **Australia's Foreign Investment Policy: A Guide for Investors**, is available from Australian Government bookshops.

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.

10. Foreign Acquisitions and Takeovers Regulations (Amendment), No 295 — 31 August 1994.

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 1995.
- 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 — 1994-95

No. 8 Statement by the Treasurer, the Hon R. Willis, MP — National Mutual — 31 January 1995.

No. 41 Statement by the Treasurer, the Hon R. Willis, MP — Foreign Investment Review Board — Appointment of Ms Lynn Wood — 4 April 1995.

Chronology of Policy Measures

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.