

**FOREIGN INVESTMENT  
REVIEW BOARD**

**REPORT 1995-96**

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## MAIN POINTS

### 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 4,090 proposals decided in 1995-96:
  - ◆ 4,005 were approved (2,494 with conditions, mainly in the real estate sector) and 85 were rejected. This compared with 4,336 approvals (2,901 with conditions) and 72 rejections in 1994-95.
- ❖ The rejection rate was 2.1 per cent. All rejections were in the real estate sector, mainly for developed residential real estate (ie, existing dwellings).
  - ◆ During 1995-96 there were 10 divestiture orders.
- ❖ Approvals in 1995-96 (either alone or in partnership with Australians) had proposed investment of around \$57.3 billion, the highest level of approvals to date (major qualifications apply to these and other FIRB statistics, as described in Chapter 2).
  - ◆ Compared with approvals in 1994-95, proposed investment increased for Manufacturing (from \$3.2 billion to \$17.2 billion); Services (from \$9.5 billion to \$14.6 billion); Mineral Exploration and Development (from \$2.6 billion to \$8.9 billion); Real Estate (from \$9.8 billion to \$12.4 billion); and Tourism (from \$1.3 billion to \$1.4 billion).
- ❖ The 156 largest proposals (each with proposed investment of more than \$50 million) accounted for about \$46 billion or 80 per cent of total proposed investment.
- ❖ Investors from the United States (\$23.9 billion), United Kingdom (\$13.1 billion), Japan (\$2.7 billion), Singapore (\$2.0 billion) and Hong

Kong (\$1.6 billion) provided around three quarters of the total proposed investment in relation to approvals in 1995-96.

## **REVIEW OF FOREIGN INVESTMENT POLICY**

- ❖ The Treasurer announced on 28 June 1996 a comprehensive schedule of legislation reviews. Some are underway and some are to commence in each of the four years to 1999-2000. The review of foreign investment policy is included in this schedule and is scheduled to commence in 1996-97.

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## **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**

In 1995-96 there were three part-time members 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 AVSUPER Pty Ltd and an Australia-India Council Board Member.
- ❖ **Ms Lynn Wood** was appointed to the Board in April 1995 for a term of five years. Ms Wood has considerable business experience in financial services including positions as Marketing Director of American Express International Inc and Citicorp Australia Limited and a Director of Schroders Australia Pty Ltd. She has also served as a Director of the Investments Funds Association of Australia and as a Member of the Economic Development Council of New South Wales. Ms Wood also had been 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 1995-96, 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 for 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.

## **REVIEW OF FOREIGN INVESTMENT POLICY**

The Treasurer announced on 28 June 1996 a comprehensive schedule of legislation reviews to commence over the next four years, including a review of foreign investment policy which is scheduled to commence in 1996-97.

The review schedule includes 98 reviews to be undertaken in accordance with the requirements of the national competition policy and reviews of legislation that impose costs upon business. The review of foreign investment policy falls into the latter category.

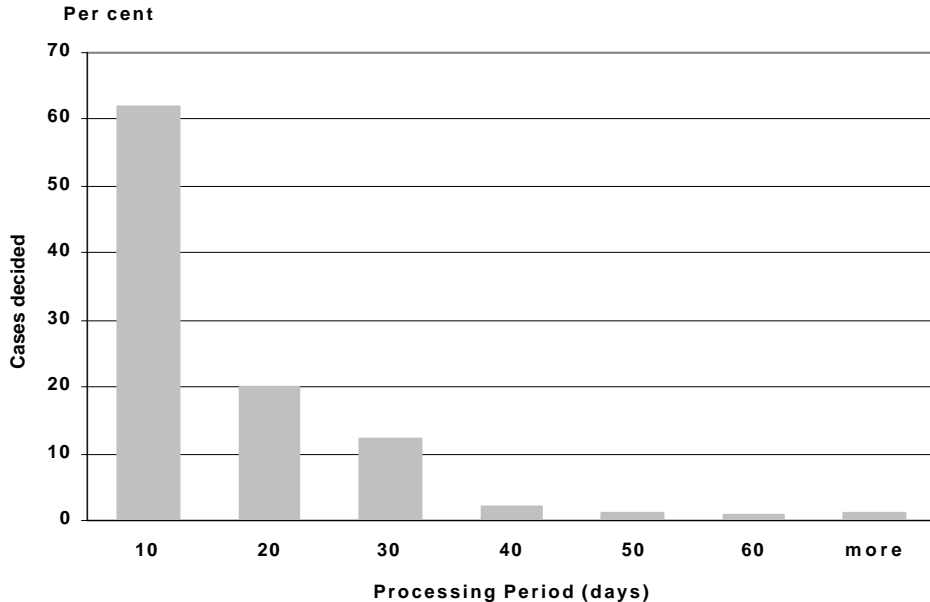
The final report of the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in relation to the Print Media was made to the Senate in the form of an oral report on 30 March 1995. The previous Government announced its response to the Reports on 26 September 1995.

### **1995-96 OUTCOMES**

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. 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 1995-96, 82 per cent of applications (3,353) were decided within 20 days of receipt of a completed application by the parties (refer **Chart 1.1**) and 94 per cent of cases decided within 30 days. Factors which resulted in cases taking more than 30 days to process included applicants needing to demonstrate compliance with previous approvals, environmental considerations and the complexity or sensitivity of the case.

**CHART 1.1 PROCESSING TIME FOR CASES DECIDED**



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 welcomes direct contact from the general public seeking advice on foreign investment policy questions.

During 1995-96, 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 on Australia's foreign investment policy.

Major proposals usually will be in the public domain and the Board welcomes submissions on them from third parties. Consideration of such submissions is an important part of the Board's examination process and its making of recommendations to the Treasurer or Assistant Treasurer.

## **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). Where appropriate proposals are referred to relevant government departments and authorities, both state and federal, for comment.

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. For the more significant cases, the Executive Member usually meets with the Treasurer and the Executive also discusses cases with the Assistant Treasurer. 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. Proposals are blocked

using foreign investment powers only in unusual circumstances, such as when major concerns arise in relation to Australia's key interests.

## **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 first undertaking full consultation with the person(s) who provided the information to the Board to ascertain whether the information can be released.

In 1995-96, the Board's Executive processed eight applications received under the Freedom of Information Act 1982 (FOI Act) for access to documents concerning foreign investment matters. 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 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 released to an applicant or whether there are justifiable grounds to withhold documents. As a result of these procedures, three applicants were granted a full release of documents and partial release was approved in respect of one request. Of the remaining requests received during 1995-96, two were still being processed as at 30 June 1996, one was withdrawn, and the Board denied access to documents for one. An internal review affirmed the Board's decision to deny access to the documents. The parties appealed to the Administrative Appeals Tribunal, but subsequently withdrew their appeal.

## **MONITORING AND COMPLIANCE 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 and companies who fail to obtain prior approval;
- ❖ prosecute persons and companies who fail to comply with an order to sell shares, assets or property; and
- ❖ prosecute persons and companies 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 purpose of avoiding the provisions of the FATA.

Monitoring of compliance with foreign investment policy continues to be a significant activity, particularly in respect of the real estate sector. In the real estate sector, attention has been focussed on fulfilment of development conditions attached to approval of proposals, schemes designed to avoid the application of the policy and policy evasion. Further information on real estate compliance activity is contained in Chapter 2.

## **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 is fully participating 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 has been a participant in enhancing the role of APEC, including in relation to foreign investment. 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. In 1996, APEC countries are formulating individual action plans that will set out how each country is to achieve the goal of free and open investment.

**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 providing '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 IPPAs with Argentina, Czech Republic, Hong Kong, Hungary, Indonesia, Laos, Lithuania, Papua New Guinea, the People's Republic of China, Peru, the Philippines, Poland, Romania, and Vietnam. Australia is currently negotiating with six other countries (Brazil, Chile, India, Korea, Russia, 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.

## **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 1995-96 was around \$91,000, slightly down on the previous year. Around 75 per cent of this expenditure was for remuneration of the Board members; the remainder was for local travel, car hire, printing expenses and incidentals. 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 around \$1.6 million in 1995-96. This expenditure was mainly for salaries, including on-costs such as superannuation, with other expenses being incurred for travelling, printing and advertising. 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 1996, there were 19 officers in the Foreign Investment Review Branch of Treasury.

## FOREIGN INVESTMENT PROPOSALS

This chapter provides statistical information on the proposals submitted in 1995-96 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 in the use of FIRB statistics, including making comparisons with earlier years.

The Board's statistics on foreign investment proposals essentially relate to the administration of foreign investment policy and, therefore, 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 'proposed investment' is used widely throughout this Report. Total proposed investment is the aggregation of:

- ❖ the proposed cost of acquisition (shares, real estate or other assets);
- ❖ the proposed cost of development following acquisition; and
- ❖ in the case of a new business, the proposed 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, it could be over a period of years;

also, more than one proposal may be approved in relation to the same asset.

- ❖ The statistics are not necessarily comparable over time. In particular, the major liberalisations to foreign investment policy that have occurred since the mid-1980s limits comparability over time.

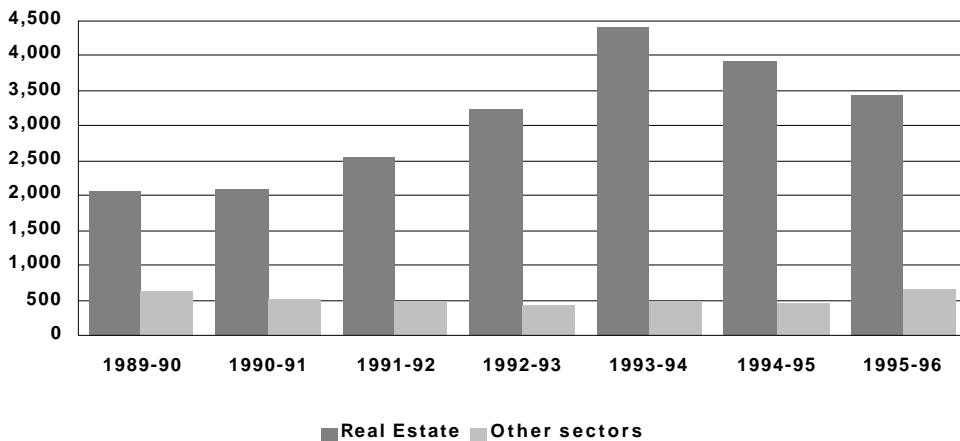
In addition, the statistics are not a comprehensive measure of all foreign investment inflow in any year, nor do they purport to measure changes in levels of foreign ownership of particular industries:

- ❖ 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 proposed 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'.
- ❖ The data also capture investments made by foreign funds managers where the beneficiaries are Australian.

## APPLICATIONS DECIDED IN 1995-96<sup>1</sup>

**Chart 2.1** depicts the number of applications decided and **Chart 2.2** shows 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 APPLICATIONS DECIDED - NUMBER



### CHART 2.2 APPLICATIONS DECIDED - PROPOSED INVESTMENT



<sup>1</sup> 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.

The number of applications decided during 1995-96 continued to decline after peaking in 1993-94. That peak reflected the significant number of applications in the real estate sector by Peoples Republic of China nationals temporarily resident in Australia, who have since become eligible for, or obtained, permanent residence status.

In contrast, proposed investment associated with proposals decided in 1995-96 was substantially higher than the levels recorded in previous years. This increase reflected the combination of a number of very large proposals (BTR/BTR Nylex, MCI/NewsCorp, RTZ/CRA, Mobil/Ampol Exploration and Simplot and Nestle's acquisition of Pacific Dunlop's food group) and the privatisation of state owned assets. As privatisations often involve competing foreign bidders who each received foreign investment approval, there is an element of double counting of proposed foreign investment. 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 Proposed Investment)  
1992-93 to 1995-96**

Action	1992-93		1993-94		1994-95		1995-96	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Approved Unconditionally	1,334	18.9	1734	16.2	1,435	20.2	1,511	43.5
Approved with Conditions	2,268	5.1	3,085	7.2	2,901	10.2	2,494	13.8
Total Approved	3,602	24.0	4819	23.5	4,336	30.3	4,005	57.3
Rejected	58	0.1	84	0.1	72	0.8	85	0.3
Total Decided	3,660	24.1	4903	23.5	4,408	31.2	4,090	57.6
Withdrawn	165	-	384	-	405	-	446	-
Total Considered	3,825		5,287		4,813		4,536	

Indicative of the continuing welcoming policy in relation to worthwhile foreign direct investment, there were only 85 rejected proposals in 1995-96, or 2.1 per cent of all decided proposals. All of these were in the real estate sector.

The low rejection rate also reflects the consultative approach taken in the administration of foreign investment policy whereby foreign investors are encouraged to discuss potential proposals with the FIRB to ensure they are consistent with policy. As a result, proposals clearly inconsistent with policy may not proceed and therefore may not be submitted for consideration. Alternatively the proponent may modify the proposal to ensure it conforms with policy. In addition, where a proposal is clearly inconsistent with policy, such as in developed residential real estate, proponents sometimes prefer to withdraw the proposal. The data for withdrawn cases therefore reflect

proposals that do not proceed for commercial or personal reasons, as well as those cases that are withdrawn by the parties instead of proceeding to a formal rejection.

Most conditional approvals occur in relation to the real estate sector. Only 55 proposals outside the real estate sector were approved subject to conditions. The conditions imposed in relation to these other sectors fell into mainly two 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. Conditions for the 2,439 real estate proposals approved with conditions related to specifying a period during which development should commence, requiring temporary residents to sell established properties when they cease to reside in Australia, or imposing a reporting requirement on 'off the plan' sales.

## APPROVALS BY SECTOR

### *Summary*

**Table 2.2** provides details for 1995-96 of approved proposals for each sector and the associated proposed investment on acquisitions and new businesses. The bulk of the total proposed investment is attributable to the proposed 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. While, 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 manufacturing sector attracted the most proposed investment, with \$17.2 billion associated with approvals.
- ❖ Other major proposed recipient sectors were services (\$14.6 billion), real estate (\$12.4 billion<sup>2</sup>) and mineral exploration and development (\$8.9 billion).

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<sup>2</sup> 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

**Table 2.2 Approvals by Industry Sector, 1995-96 (\$billion)**

<i>Industry Sector</i>	<i>No of Approvals</i>	<i>Acquisition Cost</i>	<i>Proposed Investment on Development</i>	<i>Total Proposed Investment</i>
<b>Agriculture, Forestry &amp; Fishing</b>				
less than \$50m	20	0.1	..	0.1
\$50m and over	3	0.1	0.2	0.2
Total	23	0.2	0.2	0.4
<b>Finance &amp; Insurance</b>				
less than \$50m	27	0.4	..	0.4
\$50m and over	7	1.6	..	1.6
Total	34	2.0	0.1	2.1
<b>Manufacturing</b>				
less than \$50m	98	1.2	0.1	1.3
\$50m and over	37	15.5	0.4	15.9
Total	135	16.7	0.6	17.2
<b>Mineral Exploration &amp; Development</b>				
less than \$50m	70	0.9	0.1	1.0
\$50m and over	20	6.8	1.2	8.0
Total	90	7.7	1.2	8.9
<b>Resource Processing</b>				
less than \$50m	11	0.1	..	0.1
\$50m and over	2	0.2	..	0.2
Total	13	0.3	..	0.3
<b>Services(Excl Tourism)</b>				
less than \$50m	192	2.1	0.2	2.2
\$50m and over	46	9.6	2.8	12.4
Total	238	11.6	3.0	14.6
<b>Tourism</b>				
less than \$50m	18	0.2	..	0.2
\$50m and over	11	0.9	0.4	1.3
Total	29	1.0	0.4	1.4
<b>Real Estate</b>				
less than \$50m	3,329	4.8	1.2	6.0
\$50m and over	30	4.4	1.9	6.4
Total	3,359	9.2	3.1	12.4
<b>Total</b>				
less than \$50m	3,765	9.7	1.7	11.3
\$50m and over	156	39.1	6.9	46.0
<b>TOTAL</b>	<b>3,921</b>	<b>48.8</b>	<b>8.6</b>	<b>57.3</b>

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

account is taken of real estate that is developed under an annual program by a foreign developer which is subsequently sold to Australian interests.

real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.

- (b) '.' indicates total proposed investment of less than \$50 million.
- (c) Excludes 84 proposals involving financing arrangements and corporate restructures.



- ♦ The increase in proposed investment over 1994-95 was more than accounted for by the increases in manufacturing, services, real estate and mineral exploration and development sectors.

### ***Agriculture, Forestry & Fishing***

There were 23 proposals in the Agriculture, Forestry and Fishing sector in 1995-96 (including the purchase of 13 rural properties), compared with 11 in 1994-95, with total proposed investment of \$350 million. The only acquisition valued at more than \$50 million, involved the German owned West Merchant Bank Limited purchasing all of the units in the Rural Property Trust. There were also two proposals involving the establishment of new forestry plantation businesses in Western Australia and Tasmania. The plantation at the Port of Bunbury in WA involves Japanese interests and the total proposed investment in the project is \$70 million. The other plantation, near Launceston in Tasmania, involves Japanese and Australian interests proposing to spend \$80 million on the project.

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 property.

### ***Finance & Insurance***

There was a small decrease in total proposed investment in the finance and insurance sector in 1995-96 compared with the previous year. The total expected investment was \$2.1 billion, compared with \$2.6 billion in 1994-95. There were 34 proposals approved, comprising four new business proposals and 30 acquisitions. Of these, seven proposals involved proposed investment in excess of \$50 million, two of which involved expected investment in excess of \$100 million.

The two major cases considered during the year were the acquisition of the Bank of Western Australia by the Bank of Scotland and the offshore merger of the Sun Alliance and Royal Insurance Groups.

### ***Manufacturing***

Proposed investment associated with the manufacturing sector increased substantially from \$3.2 billion in 1994-95 to \$17.2 billion in 1995-96. Of the 135 proposals considered, 37 involved proposed investment of \$50 million or more and accounted for around 92 per cent of proposed expenditure.

The increase in proposed investment reflected a number of very large high profile cases. In particular, BTR's proposal to acquire the outstanding equity in BTR Nylex and the sale of Pacific Dunlop's food division to Simplot and Nestle, together accounted for more than \$5½ billion of the proposed investment in the manufacturing sector.

Proposed investment in the manufacturing sector was also affected by the examination of proposals by foreign consortia bidding for Victoria's power companies. The total proposed investment associated with approvals for Victorian power companies exceeded \$6 billion. However, this includes competing bids submitted prior to the successful tenderer being named by the Victorian Government.

### ***Mineral Exploration & Development***

There was a significant increase in the number of investment proposals in the minerals sector approved in 1995-96 (90 compared with 61 in 1994-95) and total proposed investment also significantly rose (from \$2.6 billion to \$8.9 billion). This increase was mostly due to the increased investment activity in the base metals sector. In particular, the merger of the operations of CRA Ltd (CRA) and The RTZ Corporation Limited (RTZ) under a Dual Listed Companies structure. Also, there was increased activity in the gold and oil and gas sectors. In 1995-96 there were 86 proposed acquisitions and 4 new businesses. The leading source countries were the United Kingdom and the United States.

The number of approvals and total proposed investment on an industry basis, for the past two years are shown below in **Table 2.3**.

**Table 2.3 Minerals Sector Approvals by Number and Total Proposed Investment: 1994-95 and 1995-96**

Industry	Acquisitions				New Businesses			
	No of approvals		\$ million		No of approvals		\$ million	
	1994-95	1995-96	1994-95	1995-96	1994-95	1995-96	1994-95	1995-96
Gold	22	40	1,153	1,087	1	-	45	-
Oil and gas	6	9	59	1,891	-	1	-	610
Coal	14	19	169	933	2	2	232	541
Base metals	8	12	670	3,788	1	1	155	45
Other	6	6	63	41	1	-	17	-
<b>Total</b>	<b>56</b>	<b>86</b>	<b>2,114</b>	<b>7,740</b>	<b>5</b>	<b>4</b>	<b>449</b>	<b>1,196</b>

While the number of proposals by foreign investors to invest in the gold industry increased from 23 in 1994-95 to 40 in 1995-96, this increase was not matched by an increase in the total proposed investment level which actually fell from approximately \$1.2 billion to \$1.1 billion. The largest acquisition in the gold industry in 1995-96 involved the purchase by Homestake Mining Company, a listed US gold mining company, of the remaining 18.5 per cent interest in Homestake Gold of Australia Limited that it did not already own. There was also substantial activity by passive overseas institutional investors wishing to diversify their portfolio of Australian gold stocks. Generally, such proposals involved non-controlling interests of between 15 to 20 per cent. There were no proposals throughout the 1995-96 year involving the establishment of a new gold mine.

The number of proposals to invest in the oil and gas sector in 1995-96 rose to 10 compared with 6 in 1994-95 and there was a substantial jump in the associated level of total proposed investment to \$2.5 billion from \$59 million in 1994-95. This massive increase is primarily due to two proposals. The first involved the acquisition by Mobil Exploration & Producing Australia Pty Ltd of the issued share capital of Ampolex Limited. The other proposals involved Wandoo Petroleum Pty Ltd, of Japan, which sought approval to acquire an interest in an exploration permit and to develop, with Ampolex Limited, a new oil production facility at the Wandoo oil field in the Carnarvon Basin, WA.

Total proposed investment associated with proposals in 1995-96 in the coal industry also showed a marked increase, with \$1,474 million expected, compared to \$401 million in the 1994-95 year. There were 21 approved proposals in 1995-96 comprising 2 new mines and 19 acquisitions (compared with 16 proposals in 1994-95). There were two proposals to establish new coal mines in 1995-96, the most significant being a proposal by the

Anglo/Dutch controlled Shell Australia Ltd to develop the Moranbah North coal deposit in Queensland. Another significant proposal in the coal sector involved the Japanese owned ICR Australia Pty Ltd acquiring an interest in the Newlands Collinsville-Abbot Point coal mine project in Queensland.

There were 13 proposals in the base metals sector (12 acquisitions and one new mine), compared to 9 proposals in the previous year. While in 1994-95 these 9 proposals generated total proposed investment of \$825 million, the 13 proposals for the 1995-96 year generated \$3.8 billion worth of proposed investment. The most significant proposal in this sector was the decision by CRA and RTZ to merge their businesses under a single management and board of directors system involving a Dual Listed Companies structure. This merger has been valued at \$3.5 billion. It was approved on the basis that RTZ reduce over time its interest in CRA, thereby allowing Australians to have the opportunity to take a bigger stake in the company. The new development involves the establishment of a nickel mine in Western Australia with initial proposed investment of approximately \$45 million and an annual initial production of 12,000 tonnes of contained Ni in concentrates, commencing in July, 1997. The investment is being undertaken in a joint venture managed by Mining Project Investors Pty Ltd and a company related to the Outokumpu Group of companies (Finnish owned and controlled). Mining Project Investors Pty Ltd is owned by Outokumpu and The Pittston Company (US owned and controlled) each with some 31 per cent and the balance by Australian investors.

### ***Resource Processing***

There were 13 approvals in the resource processing sector during 1995-96, with a total proposed investment of \$319 million. Only two proposals involved total proposed investment of more than \$50 million, one involved an underwriting agreement, where the intention was to subsequently onsell the interest to institutional investors, and the other involved the acquisition of Manettas by Bidvest.

### ***Service Industries (excluding tourism)***

During 1995-96, there were 238 proposals approved for investment in the service industries sector (excluding tourism), comprising 23 proposals to establish new businesses and 215 proposed acquisitions of interests in existing businesses. The total expected investment for the establishment of new businesses and acquisitions was \$1.2 billion and \$13.4 billion,

respectively. The major source investors for this sector came from the United States and the United Kingdom.

There were 46 proposals involving expected investment of more than \$50 million. Four of those involved proposed investment of more than \$1 billion:

- ❖ MCI Communications Corporation proposal to invest in The News Corporation which involved a world-wide alliance with a link between MCI telecommunication expertise and NewsCorp's world-wide media empire;
- ❖ A Joint venture between Continental Cablevision of Australia Inc, Optus Communications Pty Limited, Pay TV Holdings Pty Limited (a subsidiary of Publishing and Broadcasting Limited) and Tallglen Pty Limited (a subsidiary of Seven Network Limited) to develop and own a broadband communications network in Australia; and
- ❖ Two proposals in relation to the sale of the electricity distribution companies Citipower and Powercor by the Victorian Government.

### ***Tourism***

There was a small increase in proposed investment associated with proposals in 1995-96 in the tourism sector (increasing from \$1.3 billion to \$1.4 billion). Of the 29 proposals approved during 1995-96, eleven involved proposed investment of more than \$50 million or more.

The larger proposals were concentrated in the hotel industry, with seven relating to the acquisition of interests in existing hotels and one for the establishment of a new hotel. The proposed acquisition of Dreamworld by Janola Dale generated significant public comment and debate.

Considerations in conditionally approving the proposal involved:

- ❖ The sale of Dreamworld was extensively marketed prior to and since its placement in receivership in July 1990, during which time there was ample time for any bidder, Australian or foreign, to make an acceptable offer.
- ❖ Determination of the best bid was a matter for the receiver, who after an open bidding process concluded that the bid by Janola Dale offered the best outcome for his clients, the IOOF Friendly Society

- ❖ The then Government was concerned not to prejudice the interests of IOOF members who had their investments tied up for 5 years.
- ❖ The conditions imposed by the Government were designed to prevent land banking.

### ***Urban Real Estate***

Urban land is broadly defined under the Foreign Acquisitions and Takeovers Act to be all land that is not used wholly and exclusively for carrying on a business of primary production. Reflecting concerns over foreign ownership of urban land, the policy in relation to this sector is restrictive. As a result, all proposals relating to urban real estate need to be submitted for examination, unless explicitly exempted by regulation (see **Appendix A**).

In the case of residential real estate, approval is granted where there are direct benefits through increasing the housing stock, such as the acquisition of vacant land for development and ‘off the plan’ sales to foreign interests. Those benefits are not generated by non-residents acquiring existing residences. Accordingly, the policy limits the acquisition of developed residential real estate to foreign owned companies operating in Australia seeking accommodation for their senior executives resident in Australia, and foreign nationals holding temporary resident visas valid for a stay in excess of 12 months; approval is subject to the property being sold when they cease to reside in Australia.

Acquisition of developed commercial property and vacant commercial properties for development, are generally approved unless they raise issues that are contrary to the national interest.

**Table 2.4** gives a breakdown of the proposed investment in urban real estate. The year was characterised by a 13 per cent reduction in the number of approvals, in contrast with a 27 per cent increase in total proposed investment associated with proposals.

**Table 2.4 Proposed Investment in Urban Real Estate by Type and Number of Proposals Approved in 1995-96 (\$billion)**

	Number of Approvals	Consideration	Proposed Development Expenditure	Total Proposed Investment
<b>For Development</b>				
Residential				
- ordinary approvals	1,385	0.7	2.0	2.8
- off-the-plan				
. individual	530	0.1	-	0.1
. developer	500	2.8	-	2.8
- annual programs	6	0.2	-	0.2
Total Residential	2,421	3.8	2.0	5.9
Commercial	62	0.3	1.1	1.3
<i>Total for Development</i>	<i>2,483</i>	<i>4.1</i>	<i>3.1</i>	<i>7.2</i>
<b>Developed</b>				
Residential	760	0.3	-	0.3
Commercial	116	4.9	-	4.9
Total Developed	876	5.1	-	5.2
<b>TOTAL</b>	<b>3,359</b>	<b>9.2</b>	<b>3.1</b>	<b>12.4</b>

#### Real Estate for Development

During 1995-96, there were 2,421 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a decrease from the 2,882 proposals approved in 1994-95.

Proposals in the 'off the plan' and annual program categories have zero proposed development expenditure recorded against them. As, in the case of 'off the plan' the consideration relates to the proposed sales revenue to foreign interests from newly completed dwellings. That is, the foreign person is acquiring a newly completed dwelling, but is not considered to be the developer. Information on development expenditure in relation to annual programs is collected on an ex-post basis, with developers required to report annually on actual acquisitions, development expenditures and details of any properties that are sold following development.

**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 1,385 proposals by foreign interests to acquire residential real estate for development were approved, with a total proposed investment of

\$2.8 billion. All such proposals carry with them a condition that continuous development must commence on the land/site within 12 months of approval having been granted. In addition, the parties are required to report on the completion of development to demonstrate compliance with the development condition. The Government views seriously any breaches of these development conditions (see later section on Compliance).

In 1995-96, there were 530 proposals approved under the ‘**off-the-plan arrangements**’, involving proposed investment of \$130 million for individuals to acquire residential property ‘off the plan’. In addition, there were 500 applications approved (valued at \$2.8 billion) 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. The 50 per cent limit on foreign sales been reached in only 92 developments approved since 1987 (out of a total of 3,716).

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 1995-96, there were six annual program arrangements, involving residential real estate for development totalling \$180 million in proposed acquisition costs.

The objective of Government 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 1995-96, there was one designation of an ITR at Joondalup.

There were 62 proposals involving the purchase of land for **commercial development**, involving total proposed investment of \$1.3 billion. The largest single approval was the acquisition and development of 400 George Street, Sydney by a property fund managed by BT Funds Management Limited.



There were 14 rejections in 1995-96 in relation to the proposed acquisition of residential real estate for development, with proposed development expenditure valued at \$28.9 million. Of these, 12 involved vacant land for development. The reasons for these rejections were usually 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; and/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, 11 proposals were rejected as they did not meet the 'off the plan' criteria. One commercial real estate for development proposal was rejected.

#### Acquisitions of Developed Real Estate

Foreign investment policy does not prevent either purchases of developed commercial real estate or certain specific 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, with significant established business operations in Australia, 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 to counter the potential for speculation and because of the lack of perceived direct benefits to Australia. This reflects the 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.

The number of proposals relating to developed residential real estate continued to decline in 1995-96. Of the 760 approvals *for developed residential real estate*, approximately 55 per cent related to temporary residents or companies buying for senior executives and a further 18 per cent related to Australian citizens acquiring properties with their foreign spouses. The remainder related to reorganisations and 'swaps' where foreign interests already owned developed property.

Reflecting the comparatively restrictive nature of the policy, there were 57 rejections in 1995-96 of proposed acquisitions of developed residential property. The total anticipated acquisition costs involved in these proposals was \$100 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 116 proposals to purchase interests in developed commercial property (eg, shopping centres, offices, warehouses, etc) involving total proposed investment of \$4.9 billion. Purchases of developed commercial property valued at less than \$5 million are exempt from the need to obtain prior approval.

There were two rejections of proposals to acquire developed commercial property that involved strata titled hotels. Under policy, individually strata titled hotel units are treated as residential real estate, whether they are used by owner occupiers as their residence, for investment purposes, short stay tourist accommodation or as serviced apartments. This approach is designed to protect the integrity of the foreign investment policy as it applies to residential real estate, by ensuring that the policy cannot be undermined through acquisition of 'commercial' properties that may potentially be used for residential purposes. With strata title arrangements, there can be no certainty that units acquired by individual foreign owners will not in fact be used for residential purposes. The use of strata titled units for short stay tourist accommodation is typically subject to a contractual arrangement between the parties, is normally subject to regular review by the parties and may involve a plethora of hybrid residential and short or long stay provisions and entitlements accruing to the owner.

Under policy guidelines, approval may be given to a single foreign investor acquiring all of the apartments in a strata titled development on condition that the apartments are used as an integral part of a hotel operation or for short stay tourism accommodation purposes, the strata plan is extinguished with all the apartments consolidated on a single title and that the apartments will not be separately on-sold. These conditions are imposed in order to ensure that the property is genuinely acquired and used for commercial tourism purposes.

## Real Estate by State

**Table 2.5** provides details of proposed investment in all categories of urban real estate for each State and Territory. New South Wales was the main location for proposed foreign investment in residential real estate, with 42 per cent of the total.

**Table 2.5 Total Proposed Investment in Urban Real Estate by Category of Real Estate and Location of Investment, Approved in 1995-96 (\$million)**

Location	For Development		Developed		Total
	Residential	Commercial	Residential	Commercial	
New South Wales	2,512	796	93	637	4,037
Victoria	469	192	31	350	1,041
Queensland	2,028	333	48	208	2,616
Western Australia	657	13	89	95	854
Other (a)	207	1	10	3,594	3,815
<b>TOTAL</b>	<b>5,873</b>	<b>1,335</b>	<b>271</b>	<b>4,884</b>	<b>12,363</b>
Number of Proposals	2,421	62	760	116	3,359

(a) 'Other' includes acquisitions of companies/trusts with real estate in more than one State or Territory and proposals in the ACT, NT, Tasmania and South Australia.

## RESIDENTIAL REAL ESTATE COMPLIANCE

Under policy, the purchase of developed residential real estate by foreign interests purely for the earning of rental income, for speculative purposes or where it may involve land banking is not permitted. There is also the concern that, where foreign interests acquire residential real estate for development, any stated development is carried out within a reasonable timeframe (ie, usually a requirement to commence within 12 months). Any failure by foreign interests to pursue stated development plans would be a breach of policy.

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

❖ During 1995-96 there were 10 divestiture orders.

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.

There are a number of processes that assist in ensuring compliance with policy.

- ❖ Information on Australia's foreign investment policy is disseminated directly by the Board through publications and in response to enquiries. In addition, information is provided by other government departments, such as by the Department of Immigration to applicants for temporary resident visas.
- ❖ Foreign persons will deal with a number of professionals/organisations, such as solicitors, financial institutions and real estate agents, all with an interest in ensuring that the purchasers have information on the need to comply with foreign investment policy.
- ❖ There is a reporting requirement placed on approvals with conditions to ensure that those conditions are complied with, for example on real estate for development.
- ❖ Assessment of new proposals includes examination of past compliance.
- ❖ All allegations of possible non-compliance are fully investigated.
- ❖ Sample checks on compliance are made by the Board's Executive.

## **APPROVALS BY COUNTRY OF INVESTOR**

Data on proposed investment associated with approvals in 1995-96 by country, disaggregated by States in **Table 2.6** and by industry sector are shown in **Table 2.7**.

The United States was the most important single source of proposed foreign investment in Australia approved during 1995-96. Other major sources included United Kingdom, Japan, Singapore and Hong Kong.

- ❖ Proposed investment from the United States of \$23.9 billion represented around 42 per cent of total proposed investment. This investment was concentrated in the manufacturing and services sectors and was principally directed towards Victoria.

- ❖ After declining for a number of years, Japanese proposed investment increased to \$2.7 billion in 1995-96 from \$0.9 in 1994-95.
  - ◆ Japanese proposed investment approved in 1995-96 was concentrated in the manufacturing, mineral exploration and development and real estate sectors.

**Table 2.6 Proposed Investment by Country by State 1995-96 (\$billion)**

	USA	UK	Japan	Singapore	Hong Kong	Other/Aust (a)	Total
New South Wales	1.6	0.5	0.2	0.4	0.8	3.3	6.8
Queensland	0.7	0.4	0.7	0.4	0.5	2.7	5.3
Victoria	8.6	1.5	0.4	0.2	0.1	2.6	13.3
Western Australia	0.4	1.1	0.8	0.5	0.0	1.5	4.3
Other (b)	12.6	9.6	0.7	0.5	0.2	4.0	27.6
<b>Total</b>	<b>23.9</b>	<b>13.1</b>	<b>2.7</b>	<b>2.0</b>	<b>1.6</b>	<b>14.1</b>	<b>57.3</b>

Totals may not add due to rounding.

(a) Includes proposed investment from Australian controlled companies.

(b) Includes investment in the ACT, NT, Tasmania and South Australia, off-shore takeovers and proposals where the investment is proposed to be undertaken in more than one State or Territory.

**Table 2.7 Total Proposed Investment Associated with Approved Proposals, by Country of Investors and Industry Sector 1995-96 (\$million)**

	Number of Proposals (c)	Agriculture Forestry & Fishing	Finance & Insurance	Manufacturing	Mineral Exploration & Development	Real Estate	Resource Processing	Services (excluding Tourism)	Tourism	Total
USA	326	50	65	6,708	2,226	3,829	20	10,641	351	23,890
UK	389	-	1,583	6,105	4,286	287	-	797	-	13,057
Japan	236	167	22	865	861	561	12	235	-	2,723
Singapore	876	5	-	19	2	1,200	7	304	454	1,990
Hong Kong	160	-	-	3	15	1,082	5	166	315	1,586
Switzerland	51	-	87	931	179	93	194	54	-	1,537
Malaysia	288	-	-	59	213	437	4	342	14	1,068
Netherlands	48	-	121	26	520	88	6	116	-	877
France	47	10	81	73	27	280	-	244	145	860
New Zealand	57	-	18	145	75	195	4	266	3	706
Germany	125	88	49	194	-	73	9	218	-	632
Canada	73	-	-	205	87	78	-	247	-	616
South Africa	41	-	3	243	168	67	51	-	-	530
PR of China	102	10	-	3	5	176	-	5	12	210
Not Allocated (a)	500	-	-	-	-	2,776	-	-	-	2,776
World Other	712	13	22	89	174	560	8	181	36	1,083
Sub -total	4,031	345	2,050	15,667	8,835	11,781	319	13,817	1,329	54,143
Australia (b)	297	5	18	1,544	101	570	-	827	93	3,157
<b>Total</b>	<b>4,328</b>	<b>350</b>	<b>2,068</b>	<b>17,210</b>	<b>8,936</b>	<b>12,351</b>	<b>319</b>	<b>14,644</b>	<b>1,422</b>	<b>57,300</b>

- (a) 'Off-the-plan' approvals to real estate developers have been recorded as not allocated to country because the country of investors is not known in advance.
- (b) 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.
- (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) 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 proposed 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 (FIA), minus the outflow of Australian investment abroad (AIA), equals the balance on capital account in Australia's balance of payments. For 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 is required.

**Table 3.1** provides a breakdown of the flow of foreign investment over the last five years. In 1995-96, borrowing by the official sector (comprising general government and the Reserve Bank) decreased by \$7.1 billion or around 73 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)**

	1991-92	1992-93	1993-94	1994-95	1995-96
<b>Foreign Investment in Australia</b>					
Official	1.1	9.8	7.7	9.7	2.6
Non-official					
Direct investment					
Equity	5.5	6.5	5.2	8.2	11.6
Debt	1.1	-1.3	0.5	-0.6	3.8
Other	0.2	0.2	0.0	1.0	0.0
<i>Total direct investment</i>	<i>6.8</i>	<i>5.4</i>	<i>5.8</i>	<i>8.6</i>	<i>15.4</i>
Portfolio and other					
Equity	1.1	4.0	14.6	4.9	6.7
Debt	6.6	-2.4	-0.6	-0.6	15.8
other	0.4	0.4	0.7	0.4	0.6
<i>Total portfolio and other</i>	<i>8.1</i>	<i>1.9</i>	<i>14.7</i>	<i>4.7</i>	<i>23.1</i>
Total Non-official	14.9	7.3	20.5	13.3	38.5
<i>Total Foreign Investment In Australia</i>	<i>16.1</i>	<i>17.2</i>	<i>28.2</i>	<i>23.0</i>	<i>41.1</i>
<b>Australian Investment Abroad</b>					
Official	-4.6	-4.0	1.6	-2.5	1.0
Non-official					
Direct investment					
Equity	2.7	4.9	4.8	3.7	7.9
Debt	-0.1	-2.1	1.8	0.7	2.3
Other	-0.1	0.2	0.0	-0.3	0.1
<i>Total direct investment</i>	<i>2.5</i>	<i>3.0</i>	<i>6.6</i>	<i>4.1</i>	<i>10.3</i>
Portfolio and other					
Equity	3.0	-0.1	4.6	-0.5	3.7
Debt	1.9	5.2	1.7	-1.0	6.5
other	-0.9	0.1	1.5	-0.5	0.6
<i>Total portfolio and other</i>	<i>4.0</i>	<i>5.2</i>	<i>7.9</i>	<i>-2.0</i>	<i>10.9</i>
Total Non-official	6.6	8.2	14.6	2.1	21.2
<i>Total Australian Investment Abroad</i>	<i>2.0</i>	<i>4.1</i>	<i>16.1</i>	<i>-0.4</i>	<i>22.2</i>
<b>Net Foreign Investment</b>	<b>14.1</b>	<b>13.1</b>	<b>12.0</b>	<b>23.4</b>	<b>19.0</b>

Source: ABS 5306.0 International Investment Position, Australia June Qtr 1996

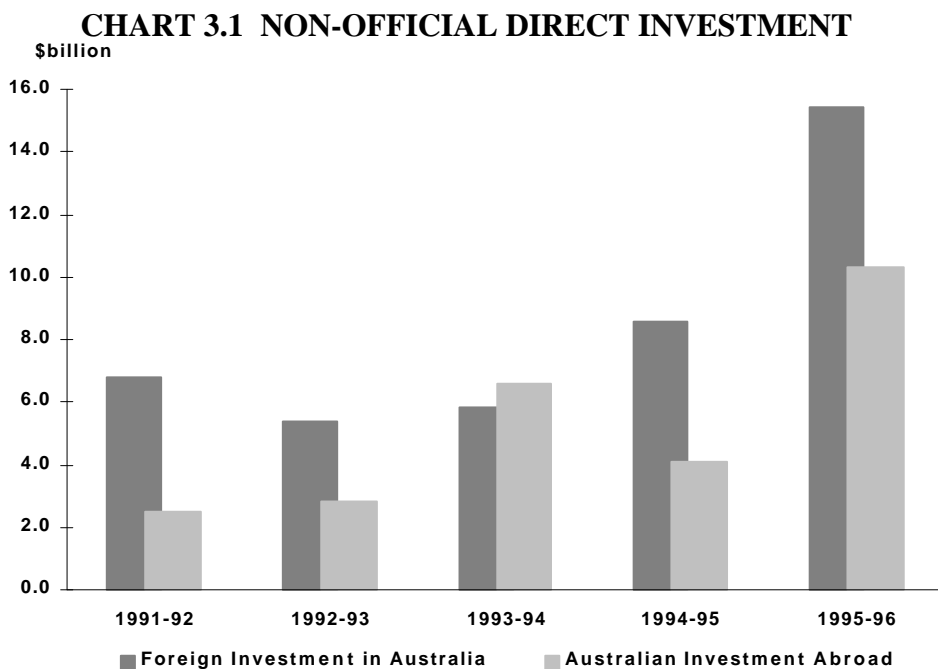
Note: Figures may not add due to rounding

Non-official FIA in 1995-96 was characterised by the return to the use of portfolio debt, which was \$15.8 billion in comparison to the repayment of portfolio debt over the previous three years. Non-official AIA increased



substantially in 1995-96 from \$2.1 to \$21.2 billion, however these flows were unusually low in 1994-95.

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. As can be seen in **Chart 3.1**, in recent years the gap between inflows and outflows of direct investment has been relatively small with direct AIA actually exceeding direct FIA in 1993-94.



## FOREIGN INVESTMENT LEVELS

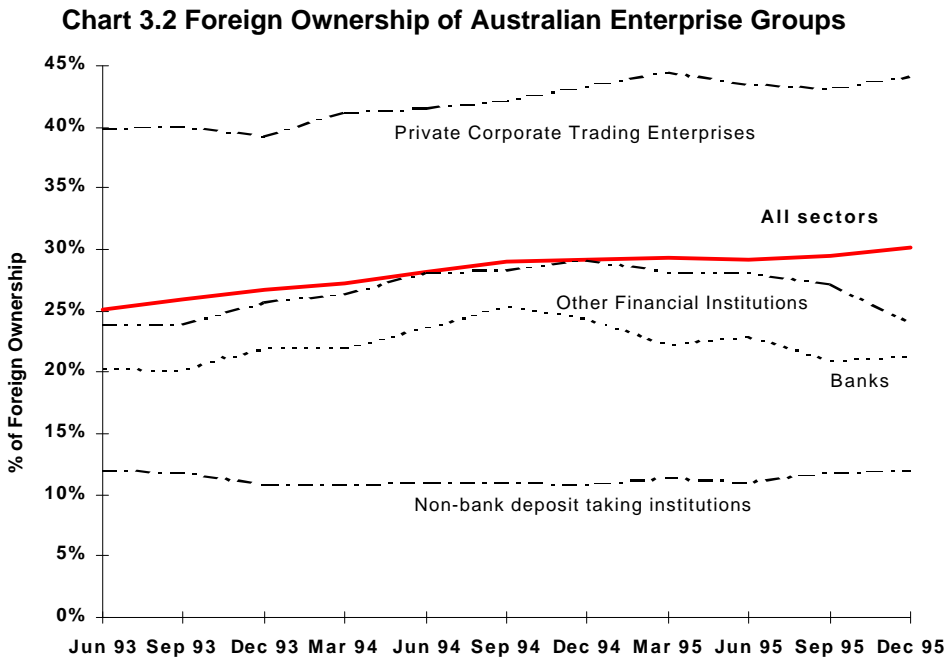
The ABS estimated level or stock of foreign investment in Australia as at 30 June 1996 was \$437 billion, comprising \$78 billion of official investment, \$143 billion in non-official direct investment and \$216 billion in non-official portfolio and other investment. This represented an increase of \$35 billion, or nine per cent, over the level at 30 June 1994.

The actual level of AIA as at 30 June 1996 as measured by the ABS was \$152 billion, comprising \$22 billion in official investment, \$57 billion in non-official direct investment abroad, and \$73 billion in non-official portfolio and other investment. This represented an increase of \$11 billion, or

eight 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 33 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 1996.

As can be seen in **Chart 3.2** foreign ownership of equity has grown steadily from 25 per cent as at 30 June 1993 to 30 per cent at 31 December 1995.



## **SUMMARY OF AUSTRALIA'S FOREIGN INVESTMENT POLICY AS AT 30 JUNE 1996**

### **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 require prior approval and therefore 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 developed non-residential commercial real estate valued at \$5 million or more;
- ❖ acquisitions of vacant urban real estate irrespective of value;

- ❖ acquisitions of accommodation facilities irrespective of value:
- ❖ 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, 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. All tourism proposals which incorporate an accommodation facility, irrespective of value, need to be notified.

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 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);
- ❖ Wirrina Cove Resort (SA); and
- ❖ Joondalup Resort (WA).

**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. Persons who only hold visitor or bridging visa's are not eligible for approval under this category.

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.

**Hotels and motels** operating under one title are normally approved (unless considered contrary to the national interest) under the tourism sector policy, other **accommodation facilities** such as guest houses, holiday flats, strata titled hotels and motels are examined under policy applying to the residential real estate sector.

### *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 as 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 national, metropolitan, suburban and provincial 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 other than for the exemption applying to portfolio investments in the Fairfax newspaper group - see below. The maximum permitted foreign interest direct investment involvement in national and metropolitan 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 without prior approval. Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50 per cent for non-portfolio shareholdings.

#### *Telecommunications*

Only the Commonwealth of Australia may hold shares in Telstra Corporation Ltd and these shares cannot be transferred. There are also some constraints on the extent of foreign investment in Optus Communications Pty Ltd, Australia's second general telecommunications company. 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.

Any new carriers post-1997 will be dealt with on a case by case basis according to the normal national interest criteria under the Foreign Acquisitions and Takeovers Act.

### **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<br>Real Estate - NSW & ACT               | Mr Mike Waslin<br>(06) 263 3886  |
| ❖ | Finance and Insurance, Services,<br>Tourism & Media<br>Real Estate - Qld, NT | Mr Vernon Joice<br>(06) 263 3834 |
| ❖ | Mining & Agricultural<br>Real Estate - Vic, WA, SA & Tas.                    | Mr Roy Nixon<br>(06) 263 3764    |
| ❖ | <b>General Enquiries</b>   | <b>(06) 263 3795</b>             |

As part of the program of increasing the number of digits in telephone numbers, Canberra numbers will have an extra '6' added to the front of telephone numbers in August 1997. The area code will also change to (02), as follows:

Old (06) 2xx xxxx

New (02) **62**xx xxxx

## 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.
11. Foreign Acquisitions and Takeovers Regulations (Amendment), No 416 — 17 January 1996.

### ***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.
19. Statement by the Treasurer, the Hon R. Willis, MP — Government Response to the Reports by the Senate Select Committee on Certain Aspects of Foreign Ownership Decisions in Relation to the Print Media — 26 September 1995

### ***Publications***

- ❖ Foreign Investment Review Board Reports: 1977 to 1995.
- ❖ Australia's Foreign Investment Policy — A Guide for Investors, Revised September 1992.
- ❖ Summary of Australia's Foreign Investment Policy
  - ◆ General
  - ◆ Real Estate

(updated regularly)

## **PRESS RELEASES — 1995-96**

No. 95/104 Statement by the Treasurer, the Hon R. Willis, MP — Proposed restructure of Optus Communications Pty Ltd and policy in relation to other carriers — 1 August 1995.

No. 95/125 Statement by the Treasurer, the Hon R. Willis, MP — Acquisition of Pacific Dunlop Limited Food Group — 8 September 1995.

No. 95/133 Statement by the Treasurer, the Hon R. Willis, MP — Government response to the reports by the Senate Select Committee on Certain aspects of foreign ownership decisions in relation to the print media — 26 September 1995.

No. 95/136 Statement by the Treasurer, the Hon R. Willis, MP — Establishment of a co-generation power plant at Osborne, South Australia — 28 September 1995.

No. 95/148 Statement by the Treasurer, the Hon R. Willis, MP — Independent Newspapers plc - increased ownership of Australian Provincial Newspapers Holdings Limited — 27 October 1995.

No. 95/179 Statement by the Treasurer, the Hon R. Willis, MP — CRA Ltd/RTZ Corporation Ltd — 13 December 1995.

No. 95/184 Statement by the Treasurer, the Hon R. Willis, MP — RTZ agrees to reduce its interest in CRA.

No. 95/188 Statement by the Treasurer, the Hon R. Willis, MP — Dreamworld Foreign Investment Proposal — 21 December 1995.

No. 95/191 Statement by the Treasurer, the Hon R. Willis, MP — MCI Communications Corporation and News Corporation Ltd — 22 December 1995.

No. 96/001 Statement by the Treasurer, the Hon R. Willis, MP — Janola Dale/Dreamworld — 4 January 1996.

No. 96/007 Statement by the Treasurer, the Hon P. Costello, MP — Mobil  
Exploration & Producing Australia Pty Ltd - acquisition of  
Shares in Ampolex Ltd — 29 March 1996.

## **CHRONOLOGY OF POLICY MEASURES**

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.

26 September 1995

The Treasurer announced that the limit on foreign ownership of provincial and suburban newspapers had been increased from 30 per cent to less than 50 per cent for non-portfolio shareholdings.