

*Foreign Investment
Review Board*

Report 1996-97

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[Letter of Transmission]

Main Points

Changes to membership

- ❖ **Mr John Phillips, AM** was appointed Chairman of the Board on 16 April 1997 for a term of five years.

Proposals

- ❖ Foreign investment policy continued to be applied with the objective of encouraging worthwhile foreign investment, with the great majority of industry sectors essentially being free of restrictions.
- ❖ Of the 4,201 proposals decided in 1996-97:
 - ♦ 4,096 were approved (2,610 with conditions, mainly in the real estate sector) and 105 were rejected. This compared with 4,005 approvals (2,494 with conditions) and 85 rejections in 1995-96.
- ❖ The rejection rate was 2.5 per cent. All but seven rejections were in the real estate sector, mainly for developed residential real estate (ie, existing dwellings).
 - ♦ During 1996-97 there were 7 divestiture orders.
- ❖ Approvals in 1996-97 (either alone or in partnership with Australians) had proposed investment of around \$58.6 billion, the highest level of approvals to date. Approvals do not necessarily mean investments proceed.

- ♦ Compared with approvals in 1995-96, proposed investment increased for Manufacturing (from \$17.2 billion to \$21.2 billion); Resource Processing (from \$0.3 billion to \$2.6 billion); and Tourism (from \$1.4 billion to \$2.3 billion).
- ❖ The 168 largest proposals (each with proposed investment of more than \$50 million) accounted for about \$46 billion or 78 per cent of total proposed investment.
- ❖ Investors from the United States (\$18.0 billion), United Kingdom (\$5.5 billion), Netherlands (\$5.1 billion), Philippines (\$3.5 billion) and Singapore (\$2.6 billion), provided over half of the total proposed investment in relation to approvals in 1996-97.
- ❖ Major qualifications apply to these and other FIRB statistics, as described in Chapter 2. FIRB statistics are quite different in scope and coverage to ABS statistics on foreign investment, which are quoted in summary form in Chapter 3.

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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 1996-97 there were four part-time members and a full-time Executive Member:

- ❖ **Mr John Phillips, AM** was appointed Chairman of the Board on 16 April 1997 for a term of five years. He has extensive high level experience in the public, finance and business sectors including the position of Deputy Governor of the Reserve Bank of Australia. His present responsibilities include Chairman, the Australian Gas Light Company, Chairman, IJB Australia Bank Limited, and Deputy Chairman, Woolworths Limited.
- ❖ **Mr Ken Stone, AO** was appointed to the Board in May 1984 and was Acting Chairman from October 1992 until April 1997. 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 having been a Director of Schroders Australia 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 is currently a Director of the New South Wales Lotteries Corporation and Sedgwick (Holdings) Pty Ltd.

- ❖ **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 was provided by the Foreign Investment Review Branch of Treasury's Investment and Debt Division. During 1996-97, 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 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 98 legislation reviews to commence over the next four years, including a review of foreign investment policy which commenced in 1996-97.

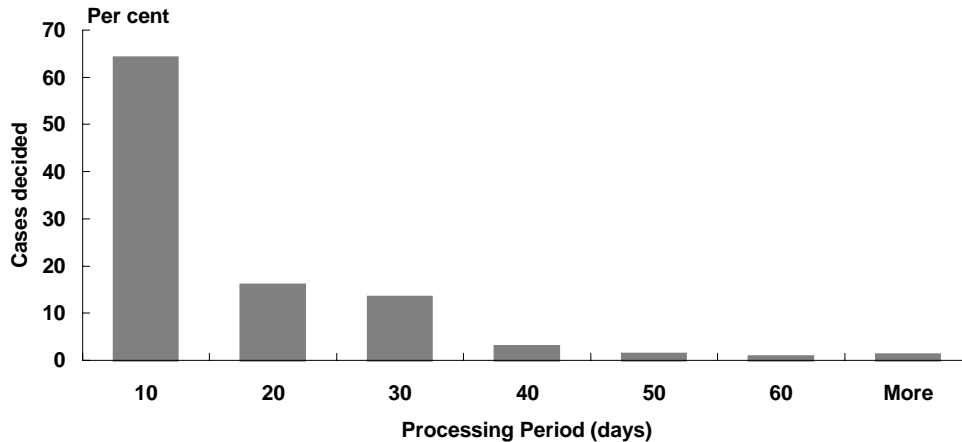
The 98 reviews are proposed to test consistency with the requirements of the national competition policy and examine costs imposed upon business. The review of foreign investment policy falls into the latter category.

1996-97 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 1996-97, 80 per cent of applications (3,370) were decided within 20 days of receipt of a completed application from the parties (refer **Chart 1.1**); 94 per cent of cases were decided within 30 days. Factors which resulted in cases taking more than 30 days to process included applicants needing to provide additional information and 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 the Board's responsibility to foster an awareness and understanding of the Government's policy and to provide 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 1996-97, the Executive gave a number of private sector presentations on requirements of the Government's foreign investment policy, particularly in

relation to real estate. The Executive continues to disseminate to potential investors information 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.

In 1996-97 the Board began the preparation of a Service Charter. A copy of the Service Charter, which is available as a brochure, is at Appendix E.

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 for comment to relevant state and federal government departments and authorities.

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 a 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.

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.

Conclusions are reached only after examination of the proposal as submitted and necessary consultations to determine whether it 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 the national interest.

Consultation Arrangements

In the examination of large or otherwise significant proposals, 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 to protect the information provided by the investor.

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 1996-97, the Board's Executive processed 11 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 two requests. Of the remaining requests received during 1996-97, three were still being processed as at 30 June 1997, one was withdrawn, and the Board denied access to documents for one application on the grounds that there were no documents held by the Board that matched the description in the request.

Monitoring and Compliance Activity

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

- ❖ unwind (by requiring 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. During 1996-97, Australia continued to participate in the OECD negotiations, involving all OECD Member Countries, for a Multilateral Agreement on Investment (MAI). In May 1997, the OECD Ministerial Council Meeting, with Australia's support, expressed its determination to resolve outstanding questions on the MAI with a view to concluding the Agreement by the 1998 Ministerial Council Meeting. OECD Ministers agreed that the MAI should set high standards for the liberalisation of investment regimes and investment protection and effective dispute settlement procedures. Australia looks forward to the development of an agreement providing a strong and comprehensive framework for international investment with a balanced outcome that should attract the adherence of both OECD Member Countries and a large number of non-member countries. Australia has continued to participate constructively in the MAI negotiations and, in that context, continues to liaise and consult with interested parties within Australia, including State and Territory Governments, relevant business industry and consumer groups.

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. APEC countries, including Australia, have lodged individual action plans that 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.

Australia has entered into bilateral investment treaties with a number of countries. In 1996-97, a treaty was signed with Chile. Australia also participated in continuing negotiations for bilateral investment treaties with five other countries. To date, Australia has signed IPPAs with Argentina, Chile, the 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 Brazil, India, Khazakhstan, Russia, Saudi Arabia and South Africa.

IPPAs add to Australia's bilateral relationships, particularly to the economic and investment aspects. IPPAs have the potential to enhance the climate of confidence and investment flows between Australia and other countries.

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 1996-97 was around \$93,000, slightly higher than the previous year. Around 80 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 \$1.7 million in 1996-97 compared with 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 1997, there were 18 officers in the Foreign Investment Review Branch of Treasury.

Foreign Investment Proposals

This chapter provides statistical information on the proposals submitted in 1996-97 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 relate to the administration of foreign investment policy and are therefore 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 FIRB 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, implementation could be over a number 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:

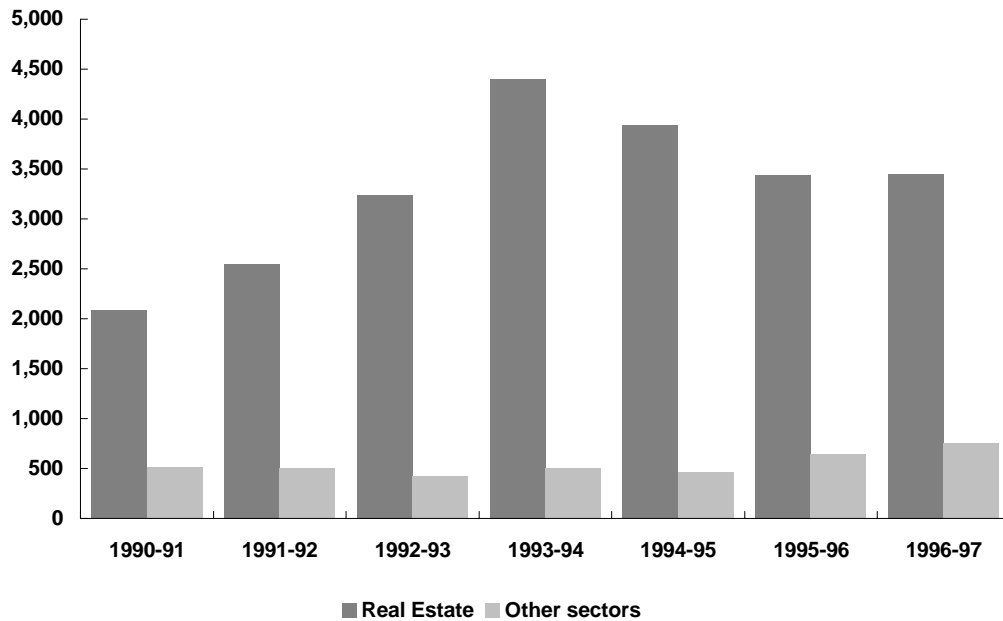
- ❖ The data are restricted to investments which fall within the scope of the *Foreign Acquisitions and Takeovers Act 1975* and the Government's foreign investment policy, including its application to foreign investment proposals for the purchase of publicly owned assets. Therefore, they do not cover 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 inflows of capital to Australia 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 include proposed investments made by foreign funds managers where the beneficiaries are Australian.

Applications Decided in 1996-97¹

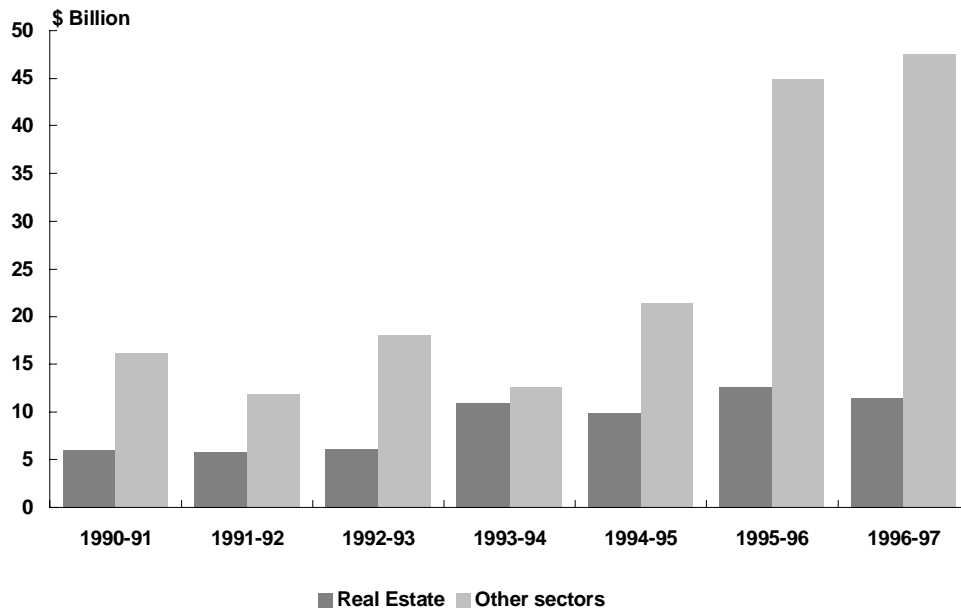
Chart 2.1 depicts the number of applications decided and **Chart 2.2** shows the value of proposed investment associated with applications decided, separated out for the real estate sector and other sectors, over the past seven years.

Chart 2.1: Applications Decided — Number



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

Chart 2.2: Applications Decided — Proposed Investment



The number of applications decided during 1996-97 was marginally higher than in 1995-96. This follows two years of decline after peaking in 1993-94. That peak reflected the significant number of applications in the real estate sector by People's Republic of China nationals temporarily resident in Australia, who have since become eligible for, or obtained, permanent residence status.

Proposed foreign investment associated with proposals decided in 1996-97 was slightly higher than the level in 1995-96. The high level of proposed foreign investment continued to reflect some major acquisitions of shares in the manufacturing sector and the privatisation of state owned assets. As privatisations often involve competing foreign bidders who each receive 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)
1993-94 to 1996-97**

Action	1993-94		1994-95		1995-96		1996-97	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Approved Unconditionally	1,734	16.2	1,435	20.2	1,511	43.5	1,486	41.9
Approved with Conditions	3,085	7.2	2,901	10.2	2,494	13.8	2,610	16.7
Total Approved	4819	23.5	4,336	30.3	4,005	57.3	4,096	58.6
Rejected	84	0.1	72	0.8	85	0.3	105	0.4
Total Decided	4903	23.5	4,408	31.2	4,090	57.6	4,201	59.0
Withdrawn	384	-	405	-	446	-	343	-
Total Considered	5,287		4,813		4,536		4,544	

There were 105 rejected proposals in 1996-97, or 2.5 per cent of all decided proposals. Of these, two were in the tourism sector, five in the services sector, and the remainder in the real estate sector.

The low rejection rate also reflects the consultative approach taken in the administration of foreign investment policy, particularly in respect of real estate proposals, whereby foreign investors are encouraged to discuss potential or actual proposals with the FIRB to ensure they are consistent with policy. As a result, proposals clearly inconsistent with policy may not proceed to a decision, ie they are not lodged or if lodged are withdrawn. Alternatively the proponent may modify a proposal to ensure it conforms with policy. The data for withdrawn cases 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.

The great bulk of conditional approvals occurs in relation to the real estate sector. Only 69 proposals outside the real estate sector were approved subject to conditions. Three main kinds of conditions applied in relation to these other sectors — those designed to protect the environment, 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 and those pertaining to levels of equity. Conditions for the 2,541 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 1996-97 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 approvals aggregating \$21.2 billion.
- ❖ Other major sectors were services (\$13.9 billion), real estate (\$11.4 billion²) and mineral exploration and development (\$4.8 billion).
- ❖ The \$1.3 billion increase in approvals compared with 1995-96 was more than accounted for by the increases in manufacturing, tourism and resource processing sectors.

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

Table 2.2: Approvals by Industry Sector 1996-97 (\$billion)

Industry Sector ^(a)	No of Approvals ^(b)	Acquisition Cost	Proposed Investment on Development ^(c)	Total Proposed Investment
Agriculture, Forestry & Fishing				
less than \$50m	20	0.1	..	0.1
\$50m and over	3	0.1	0.2	0.3
Total	23	0.2	0.2	0.4
Finance & Insurance				
less than \$50m	22	0.3	0.0	0.3
\$50m and over	13	1.7	0.1	1.8
Total	35	2.0	0.1	2.1
Manufacturing				
less than \$50m	116	1.1	0.1	1.2
\$50m and over	32	19.8	0.2	20.0
Total	148	20.9	0.3	21.2
Mineral Exploration & Development				
less than \$50m	108	1.2	0.2	1.3
\$50m and over	22	3.0	0.4	3.4
Total	130	4.2	0.6	4.8
Resource Processing				
less than \$50m	9	0.1	0.1	0.2
\$50m and over	5	0.2	2.2	2.5
Total	14	0.3	2.3	2.6
Services(Excl Tourism)				
less than \$50m	191	2.3	0.1	2.4
\$50m and over	34	10.4	1.0	11.4
Total	225	12.8	1.1	13.9
Tourism				
less than \$50m	44	0.4	0.1	0.5
\$50m and over	16	1.4	0.4	1.8
Total	60	1.8	0.5	2.3
Real Estate				
less than \$50m	3,309	5.5	1.2	6.6
\$50m and over	43	3.1	1.6	4.7
Total	3,352	8.6	2.8	11.4
Total				
less than \$50m	3,819	11.0	1.7	12.7
\$50m and over	168	39.7	6.2	45.9
TOTAL	3,987	50.8	7.9	58.6

Totals may not add due to rounding.

- (a) Data have been compiled by reference to the Australian and New Zealand Standard Industrial Classification published by the ABS, except proposals involving newspaper printing and publishing which have been allocated to service industries (the ABS classifies these under manufacturing). Acquisitions of diversified company groups are classified according to the industry of the major activity of the group. Acquisitions of real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.
- (b) Excludes 109 proposals involving financing arrangements and corporate restructures
- (c) ‘..’ indicates total proposed investment of less than \$50 million

Agriculture, Forestry & Fishing

There were 23 proposals in the Agriculture, Forestry and Fishing sector in 1996-97 (including the purchase of nine rural properties), the same number as in 1995-96, with total proposed investment of \$410 million (compared with \$350 million in 1995-96). There were two significant proposals, both involving Japanese interests in establishing new forestry plantations in Victoria, which combined had total anticipated expenditure in excess of \$200 million.

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

Total proposed investment in the finance and insurance sector in 1996-97 was unchanged from the previous year, viz \$2.1 billion. There were 35 proposals approved, comprising six new business proposals and 29 acquisitions. Of these, thirteen proposals involved proposed investment of \$50 million or more, ten of which involved expected investment in excess of \$100 million.

During the year, the major cases considered in this sector included competing bids for Axiom Funds Management Corporation by Deutsche Bank and Mercantile Mutual Holdings (Deutsche Bank being the successful bidder), and the Brunei Investment Agency's acquisition of a 13.4 per cent interest in Macquarie Bank.

Manufacturing

Proposed investment associated with the manufacturing sector increased from \$17.2 billion in 1995-96 to \$21.2 billion in 1996-97. Of the 148 proposals considered, 32 involved proposed investment of \$50 million or more and accounted for around 94 per cent of proposed expenditure.

The level of proposed investment included a number of large acquisitions in the food and beverage sector. In particular, San Miguel acquiring shares in Coca-Cola Amatil, ABN-AMRO and JB Were underwriting the market sale of shares held by

BHP in the Fosters Brewing Group and Simeon Wines acquiring shares in Australian Vintage; these together accounted for more than \$5 billion of the proposed investment in the manufacturing sector.

Total proposed investment associated with approvals for Victorian power companies exceeded \$10.5 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: 130 in 1996-97 compared with 90 in 1995-96. Total proposed investment, however, fell substantially from \$8.9 billion to \$4.8 billion reflecting the 1995-96 merger of CRA/RTZ valued at \$3.5 billion. The leading source countries were the United Kingdom, Canada and Germany. The number of proposals increased in all mineral sectors, with the exception of base metals. The largest rise in terms of expenditure was in the gold sector.

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: 1995-96 and 1996-97

Industry	Acquisitions				New Businesses			
	No of approvals		\$ million		No of approvals		\$ million	
	1995-96	1996-97	1995-96	1996-97	1995-96	1996-97	1995-96	1996-97
Gold	40	51	1,087	2,146	-	-	-	-
Oil and gas	9	22	1,891	1,040	1	2	610	65
Coal	19	23	933	488	2	1	541	350
Base metals	12	8	3,788	146	1	2	45	30
Other	6	18	41	400	-	3	-	101
Total	86	122	7,740	4,220	4	8	1,196	546

The number of proposals by foreign investors to invest in the gold industry increased from 40 in 1995-96 to 51 in 1996-97. Proposed investment increased from \$1.1 billion to \$2.1 billion. The largest acquisition in the gold industry in 1996-97 involved the purchase by LionOre Mining International Ltd, a publicly listed Canadian gold mining company, of 100 per cent of Forrestania Gold NL.

There were no proposals throughout the 1996-97 year involving the establishment of a new gold mine.

The number of proposals to invest in the oil and gas sector in 1996-97 rose to 24 compared with ten in 1995-96. However, there was a substantial fall in the associated level of total proposed investment from \$2.5 billion to \$1.1 billion. This decrease in expenditure is largely due to the contribution to the 1995-96 investment figures of two significant proposals (the acquisition by Mobil Exploration & Producing Australia Pty Ltd of the issued share capital of Ampolex Limited and the acquisition by Wandoo Petroleum Pty Ltd of Japan, of an interest in a new oil production facility at the Wandoo oil fields in Western Australia). The most significant proposals in 1996-97 involved the acquisition by the UK owned Cairn Energy Australia Pty Ltd of 100 per cent of Command Petroleum Ltd for \$366 million and, in 1996, Clyde Petroleum (Australia) Pty Limited, a subsidiary of UK based Clyde Petroleum plc, acquired all of the shares of Crusader Limited for \$172.8 million. In 1997, Gulf Canada Resources Limited, a Canadian company, purchased all of the shares of Clyde Petroleum plc, thus making Crusader Limited an indirect subsidiary of Gulf Canada Resources Limited.

Total proposed investment associated with proposals in 1996-97 in the coal industry fell from \$1.47 billion to \$838 million. The most significant proposal in 1996-97 involved the establishment of a new open cut coal mine (\$350 million) at Muswellbrook in the Hunter Valley, New South Wales by the Bengalla Joint Venture, owned by Australian, UK, Japanese, Korean and Taiwanese interests. Another significant proposal involved the Japanese owned Sumisho Coal Development Pty Ltd acquiring the 51 per cent interest in the North Goonyella Coal Mine (located in Queensland) that it did not already own (\$110 million).

There was a decline in total proposed investment in the base metals sector from \$3.8 billion in 1995-96 to \$176 million in 1996-97. 1995-96 investment figures were affected by the \$3.5 billion merger of CRA/RTZ. In 1996-97, the most significant proposed investment in the base metals sector involved an initial \$80 million acquisition by the Swiss owned Glencore Mining Pty Ltd of an interest in the Murrin Murrin Project in Western Australia.

Resource Processing

There were 14 approvals in the resource processing sector during 1996-97, with a total proposed investment of \$2.6 billion, a substantial increase over the level of \$319 million in 1995-96. Five proposals involved total proposed investment of

more than \$50 million each, including about \$1.5 billion by AUSI Limited to develop an iron processing plant in Western Australia.

Service Industries (excluding tourism)

During 1996-97, there were 225 proposals approved for investment in the service industries sector (excluding tourism), comprising 12 proposals to establish new businesses and 213 proposed acquisitions of interests in existing businesses. The total expected investment for the establishment of new businesses and acquisitions was \$1.0 billion and \$12.8 billion, respectively. The major source investors for this sector came from the United States, the Netherlands and the United Kingdom.

There were 34 proposals involving expected investment of \$50 million or more. Twenty-one of those involved proposed investment of over \$100 million, three of which were more than \$1 billion:

- ❖ The Government's sale of Brisbane and Melbourne Airports; and
- ❖ The \$2 billion takeover of TNT Limited by the Dutch postal and telecommunications company, KPN.

Tourism

There was a significant increase in proposed investment in the tourism sector in 1996-97 (increasing from \$1.4 billion in 1995-96 to \$2.3 billion). Of the 60 proposals approved during 1996-97, sixteen involved proposed investment of \$50 million or more, seven of which involved proposed investment in excess of \$100 million.

Some of the larger proposals involved the development of infrastructure for the Sydney Olympics in 2000. Two consortia of foreign investors were granted approval to subscribe for units in Stadium Australia Trust and shares in Stadium Australia Management, the entities established to design, construct, finance, operate and maintain the Homebush Olympic stadium. Other large proposals related to the hotel industry, including the Sheraton Towers Southgate Hotel in Melbourne, the Mercure and Princes Hotels in Perth and the Mercure and Novotel Hotels in Brisbane.

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 only 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. In the latter case, approval is subject to the property being sold when they cease to reside in Australia.

Acquisitions 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 number of approvals remained much the same as in 1995-96. However, there was an 8 per cent fall in the total proposed investment associated with proposals.

Real Estate for Development

During 1996-97, there were 2,224 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a decrease from the 2,421 proposals approved in 1995-96.

Table 2.4: Proposed Investment in Urban Real Estate by Type and Number of Proposals Approved in 1996-97 (\$billion)

	Number of Approvals	Consideration	Proposed Development Expenditure	Total Proposed Investment
For Development				
Residential				
- ordinary approvals	1,323	0.8	1.4	2.2
- off-the-plan				
. individual	460	0.1	-	0.1
. developer	438	3.5	-	3.5
- annual programs	3	0.1	0.1	0.1
Total Residential	2,224	4.5	1.5	6.0
Commercial	63	0.5	1.2	1.8
<i>Total for Development</i>	<i>2,287</i>	<i>5.0</i>	<i>2.8</i>	<i>7.8</i>
Developed				
Residential	929	0.3	-	0.3
Commercial	136	3.3	-	3.3
<i>Total Developed</i>	<i>1065</i>	<i>3.6</i>	<i>-</i>	<i>3.6</i>
TOTAL	3,352	8.6	2.8	11.4

Proposals in the ‘off the plan’ and annual program categories have zero proposed development expenditure recorded against them. 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 1,323 proposals by foreign interests to acquire residential real estate for development were approved, with a total proposed investment of \$2.2 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 1996-97, there were 460 proposals approved under the **'off-the-plan arrangements'**, involving proposed investment of around \$100 million for individuals to acquire residential property 'off the plan'. In addition, there were 438 applications approved (valued at \$3.5 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 **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 1996-97, there were three annual program arrangements approved involving residential real estate for development totalling \$100 million in proposed acquisition costs.

There were 63 proposals involving the purchase of land for **commercial development** involving total proposed investment of \$1.8 billion. The largest single approval was for the acquisition of an interest through The Prudential Development Trust in property in Pitt and Castlereagh Streets, Sydney.

There was an increase from 14 rejections in 1995-96 to 36 1996-97 in relation to the proposed acquisition of residential real estate for development, with proposed development expenditure valued at \$14.5 million. Of these, 17 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 either the acquisition price for the property (there is a normal expectation that proposed development expenditure should be equivalent to at least 50 per cent of the acquisition price) and/or by way of addition to the housing stock;
- ❖ 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 or the necessary planning approvals to undertake the proposed development.

In addition, 6 proposals were rejected as they did not meet the 'off the plan' criteria. Two commercial real estate for development proposals were 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 benefits from new investment in the construction industry and direct additions to the housing stock.

Of the 929 approvals *for developed residential real estate*, approximately 65 per cent related to temporary residents or companies buying for senior executives and a further 28 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 52 rejections in 1996-97 of proposed acquisitions of developed residential property. The total anticipated acquisition costs involved in these proposals was \$17 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 136 proposals to purchase interests in developed commercial property (eg, shopping centres, offices, warehouses, etc) involving total proposed investment of \$3.3 billion. Purchases of developed commercial property valued at less than \$5 million are exempt from the need to obtain prior approval.

There was one rejection of a proposal to acquire developed commercial property that involved a strata titled hotel. 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 52 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 1996-97 (\$million)

Location	For Development		Developed		Total
	Residential	Commercial	Residential	Commercial	
New South Wales	3,064	1,212	195	1,609	6,081
Victoria	628	293	41	819	1,782
Queensland	1,382	144	44	402	1,972
Western Australia	673	109	38	216	1,038
Other (a)	258	12	10	208	484
TOTAL	6,005	1,770	328	3,254	11,357
Number of Proposals	2,224	63	929	136	3,352

(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 time (ie, usually a requirement to commence continuous construction 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 1996-97 there were 7 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 1996-97 are shown by country, disaggregated by States in **Table 2.6** and by industry sector in **Table 2.7**.

The United States was the most important single source of proposed foreign investment in Australia approved during 1996-97. Other major sources included United Kingdom, Netherlands Phillipines and Singapore.

- ❖ Proposed investment from the United States of \$18 billion represented around 31 per cent of total proposed investment. This investment was concentrated in the manufacturing and services sectors and was principally directed towards the electricity sector in Victoria.
- ❖ Japanese proposed investment declined to \$1.3 billion in 1996-97 from \$2.7 billion in 1995-96.
- ❖ Singapore, Hong Kong and Malaysian sources proposed investment in real estate of \$4.3 billion in 1996-97.

Table 2.6: Proposed Investment by Country by State 1996-97 (\$billion)

	USA	UK	Japan	Singapore	Hong Kong	Malaysia	Other/Aust (a)	Total
NSW	1.7	1.1	0.5	1.1	0.8	0.4	5.6	11.3
QLD	0.4	0.1	0.3	0.2	0.0	0.3	4.0	5.2
Vic	10.0	2.4	0.3	0.3	0.6	0.3	2.0	15.8
WA	1.2	0.5	0.0	0.6	0.0	0.5	3.0	5.7
Other (b)	4.7	1.4	0.2	0.5	0.9	0.4	12.5	20.6
Total	18.0	5.5	1.3	2.6	2.3	1.9	27.1	58.6

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 1996-97 (\$million)

	Number of Proposals (c)	Agriculture Forestry & Fishing	Finance & Insurance	Manufacturing	Mineral Exploration & Development	Real Estate	Resource Processing	Services (excluding Tourism)	Tourism	Total
USA	374	3	229	11,091	485	863	821	4,245	288	18,026
UK	506	9	385	2,144	1,188	482	-	923	360	5,491
Netherlands	49	-	301	1,842	123	5	-	2,636	175	5,080
Philippines	22	-	-	3,400	-	59	-	-	3	3,462
Singapore	739	3	-	81	46	1,978	30	144	286	2,568
Hong Kong	165	-	1	696	141	1,274	-	47	120	2,279
Germany	103	4	453	128	663	56	730	49	85	2,169
New Zealand	91	9	40	388	51	146	-	1,278	84	1,996
Malaysia	365	1	-	56	198	1,031	6	255	339	1,885
Canada	89	-	35	38	806	18	-	511	-	1,408
France	70	-	378	204	48	188	-	70	436	1,325
Japan	190	220	3	100	333	169	377	21	52	1,275
Taiwan	56	11	-	633	-	57	-	-	-	702
Switzerland	62	9	117	32	102	260	-	167	-	688
Not Allocated(a)	436	-	-	-	-	3,515	-	-	-	3,515
World Other	899	120	181	237	234	711	650	511	9	2,652
Sub -total	4,216	389	2,123	21,070	4,418	10,812	2,614	10,857	2,237	54,519
Australia (b)	380	22	-	125	349	545	-	2,992	64	4,097
Total	4,596	411	2,123	21,195	4,767	11,357	2,614	13,849	2,301	58,617

Totals may not add due to rounding.

- (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 using Australian Bureau of Statistics (ABS) data.

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.

ABS data are based on different criteria from those used by the Foreign Investment Review Board — the Board's figures are an aggregation of the proposals submitted for approval, along with the proposed associated expenditures, while those of the ABS are estimates of actual transactions that have occurred. The limitations of the Foreign Investment Review Board data are explained in Chapter 2.

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 transactions, the inflow of foreign investment into Australia (FIA), minus the outflow of Australian investment abroad (AIA), and the current account balance. A current account deficit in Australia's balance of payments is balanced by a surplus on the capital account, after allowing for errors and omissions with a balancing item.

Table 3.1 provides a breakdown of the flow of foreign investment over the last five years. In 1996-97, the official sector (comprising general government and the Reserve Bank) repaid borrowings of \$2.4 billion net. The official AIA net outflow of \$5.7 billion was up significantly on the previous year, largely as a result of an increase in reserve assets.

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)

	1992-93	1993-94	1994-95	1995-96	1996-97
Foreign Investment in Australia					
Official	9.8	7.7	10.0	3.3	-2.4
Non-official					
Direct investment					
Equity	6.5	5.2	7.1	12.2	12.3
Debt	-1.3	0.5	-0.6	3.1	-0.8
Other	0.2	0.0	0.8	-0.4	-0.6
<i>Total direct investment</i>	<i>5.4</i>	<i>5.8</i>	<i>7.3</i>	<i>14.9</i>	<i>10.9</i>
Portfolio and other					
Equity	4.0	14.6	4.9	6.7	3.1
Debt	-2.4	-0.6	-0.6	16.5	15.4
other	0.4	0.7	0.4	0.6	0.2
<i>Total portfolio and other</i>	<i>1.9</i>	<i>14.7</i>	<i>4.7</i>	<i>23.8</i>	<i>18.8</i>
Total Non-official	7.3	20.5	12.0	38.8	29.7
<i>Total Foreign Investment In Australia</i>	<i>17.2</i>	<i>28.2</i>	<i>22.0</i>	<i>42.1</i>	<i>27.4</i>
Australian Investment Abroad					
Official	-4.0	1.6	-2.5	0.9	5.7
Non-official					
Direct investment					
Equity	4.9	4.8	3.5	5.7	7.0
Debt	-2.1	1.8	0.7	3.0	-4.9
Other	0.2	0.0	-0.3	0.2	0.1
<i>Total direct investment</i>	<i>3.0</i>	<i>6.6</i>	<i>3.8</i>	<i>9.0</i>	<i>2.2</i>
Portfolio and other					
Equity	-0.1	4.6	-0.5	2.4	2.2
Debt	5.2	1.7	-0.8	6.7	0.7
other	0.1	1.5	-0.6	0.5	1.2
<i>Total portfolio and other</i>	<i>5.2</i>	<i>7.9</i>	<i>-1.9</i>	<i>9.5</i>	<i>4.0</i>
Total Non-official	8.2	14.5	1.9	18.6	6.1
<i>Total Australian Investment Abroad</i>	<i>4.2</i>	<i>16.1</i>	<i>-0.6</i>	<i>19.5</i>	<i>11.8</i>
Net Foreign Investment	13.0	12.1	22.6	22.6	15.5

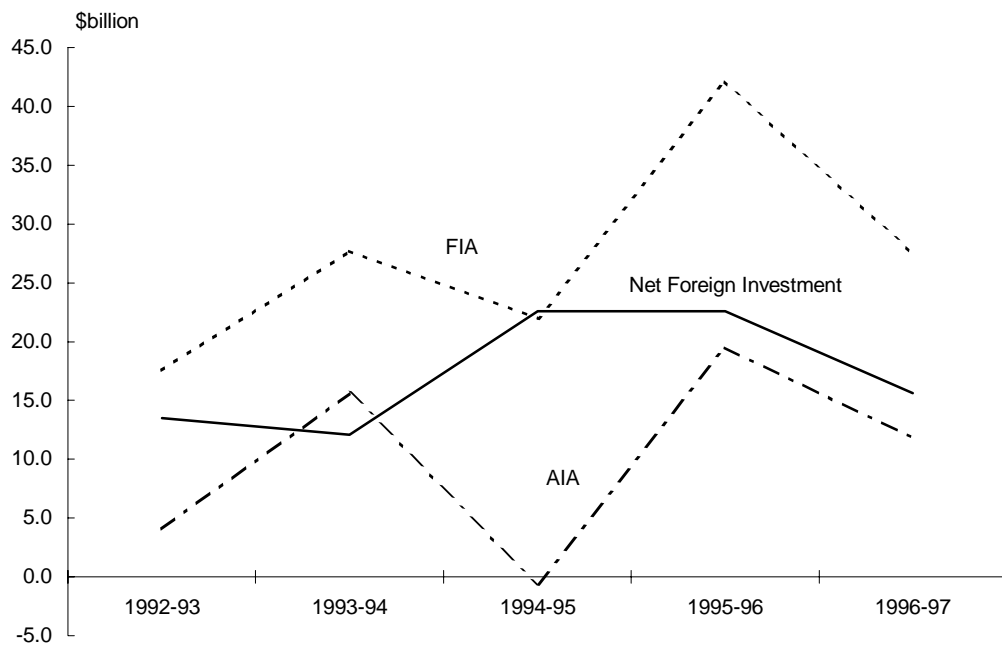
Source: ABS 5306.0 International Investment Position, Australia June Qtr 1997, Table 4

Note: Figures may not add due to rounding

Non-official FIA in 1996-97 was characterised by the continued use of portfolio debt and direct equity investment. Non-official AIA decreased in 1996-97 to a net outflow of \$6.1 billion after an unusually high net outflow of \$18.6 billion in 1995-96. Contributing to the reduced non-official AIA net outflow were a net inflow (repayments) of \$4.9 billion in lending to direct investment enterprises abroad and a decrease in lending to unrelated foreign enterprises from \$6.7 billion in 1995-96 to \$0.7 billion in 1996-97.

Chart 3.1 highlights the volatility of FIA and AIA flows over the past five years. An examination of the data indicates that while the amount of new investment in any one year has been volatile, it continues to be above flows recorded earlier in the decade.

Chart 3.1: Foreign Investment Flows



Foreign Investment Levels

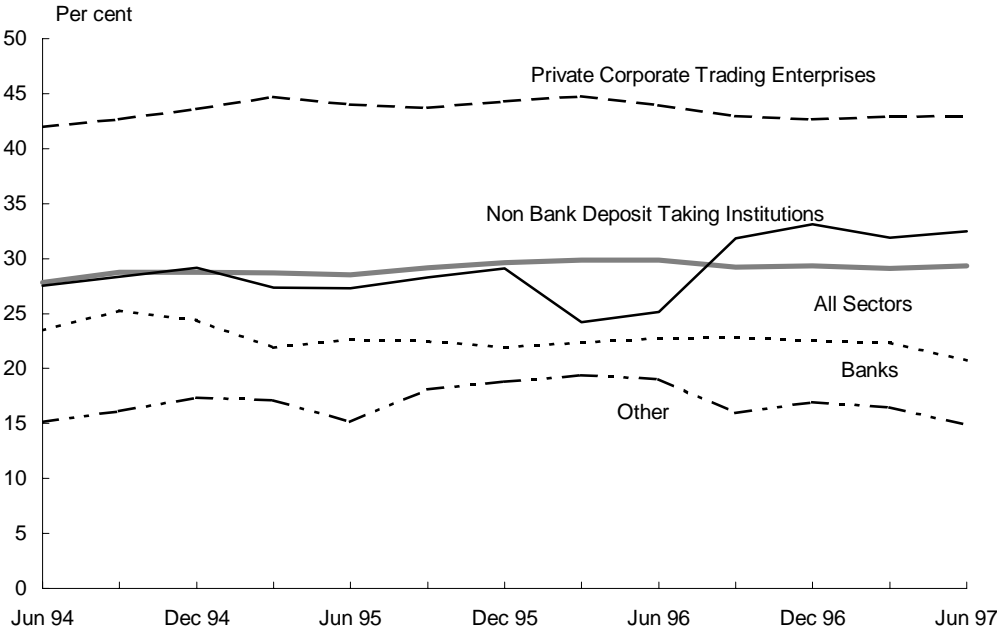
The ABS estimated level, or stock, of foreign investment in Australia as at 30 June 1997 was \$482 billion, comprising \$82 billion of official investment, \$157 billion in non-official direct investment and \$243 billion in non-official portfolio and other investment. This represented an increase of \$44 billion, or 10 per cent, over the level at 30 June 1996.

The actual level of AIA as at 30 June 1997 as measured by the ABS was \$174 billion, comprising \$26 billion in official investment, \$60 billion in non-official direct investment abroad, and \$88 billion in non-official portfolio and other investment. This represented an increase of \$23 billion, or 15 per cent, over the level at 30 June 1996. Equity investment accounted for approximately 75 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 34 per cent of the total stock of AIA as at 30 June 1997.

As can be seen in **Chart 3.2** foreign ownership of Australian enterprises in the equity market has steadied in recent years to be almost 30 per cent as at 30 June 1997.

Chart 3.2: Foreign Ownership of Australian Enterprise Groups



Summary of Australia's Foreign Investment Policy as at December 1997

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 interests of Australia.

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.

Prior approval

The types of proposals by **foreign interests** to invest in Australia which require prior approval and therefore should be notified to the Government are as follows:

- ❖ 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;
- ❖ portfolio investments in the media of 5 per cent or more and all non-portfolio investments irrespective of size;
- ❖ direct investments by foreign governments or their agencies irrespective of size;

- ❖ acquisitions of interests in urban land (including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts) that involve the:
 - acquisition of developed non-residential commercial real estate valued at \$5 million or more;
 - acquisitions of accommodation facilities irrespective of value;
 - acquisitions of vacant urban real estate irrespective of value;
 - acquisitions of residential real estate irrespective of value; and
- ❖ proposals where any doubt exists as to whether they are notifiable. (Funding arrangements that include debt instruments having **quasi-equity** characteristics will be treated as direct foreign investment.)

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 prior approval and therefore 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 resident visas or are holders, or entitled to hold, a 'special category visa'.

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

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

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

Proposed acquisitions of developed residential real estate by certain categories of foreign nationals temporarily resident in Australia for more than 12 months purchasing a residence for use as their principal place of residence while in Australia (and not for rental purposes) are normally approved. This category includes long-stay retirees.

All other proposals by foreign interests to acquire **developed residential real estate** are examinable and are not normally approved, except in the case of foreign companies, with an established substantial business in Australia, buying for named senior executives resident in Australia for periods longer than 12 months, provided the accommodation is sold when no longer required for this purpose. Whether a company is eligible, and the number of properties that may be acquired under this category will depend upon the extent of the foreign company's operations and assets in Australia. Unless there are special circumstances, foreign companies normally will not be permitted to buy more than two houses under this category. Foreign companies would not be eligible under this category where the property would represent a significant proportion of its assets in Australia.

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. Any proposed foreign takeover or acquisition of an Australian bank will be considered on its merits on a case by case basis.

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.

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.

Airports

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case by case examination in accordance with the standard notification requirements. In relation to the airports to be offered for sale by the Commonwealth, the *Airports Act 1996* stipulates a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports.

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. Proposals involving portfolio share holdings of 5 per cent or more must also be submitted for examination.

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 of 5 per cent or more or to establish a newspaper in Australia are subject to case-by-case examination. 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. Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50 per cent for non-portfolio shareholdings.

Telecommunications

Telstra Corporation Ltd (Telstra) is predominantly owned by the Commonwealth of Australia. In October 1997, the Government partially privatised Telstra through the sale of one third of its equity to institutional and individual investors. Aggregate foreign ownership in Telstra is restricted to 35 per cent of that one third equity and individual foreign investors are only allowed to acquire a holding of no more than 5 per cent of that one third equity.

Prior approval is required for foreign involvement in the establishment of new entrants to the telecommunications sector or investment in existing businesses in the telecommunications sector. Proposals above the notification thresholds will be dealt with on a case by case basis and will be normally approved unless judged contrary to the national interest.

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 (02) 6263 2940
or (02) 6263 3866

Enquiries

Enquiries may be directed to the contacts listed at the end of Appendix E to this report:

Current information on Australia's foreign investment policy:

<http://www.treasury.gov.au>

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.
20. Statement by the Treasurer, the Hon P. Costello, MP — Rationalisation of Notification Thresholds for Portfolio Investments in the Media Sector — 18 September 1996.
21. Statement by the Treasurer, the Hon P. Costello, MP — Uranium Sector — 19 November 1996.
22. Statement by the Assistant Treasurer, the Hon Rod Kemp, MP, — Foreign Investment Policy: Forced Divestiture of Residential Real Estate involving Australian Trustee — 11 December 1996.
23. Statement by the Treasurer, the Hon P. Costello, MP — Release of the Report of the Financial System Inquiry and Initial Government Response on Mergers Policy — 9 April 1997.

Publications

- ❖ Foreign Investment Review Board Reports: 1977 to 1997.
- ❖ Australia's Foreign Investment Policy — A Guide for Investors, Revised September 1992.

Current information on Australia's foreign investment policy:

<http://www.treasury.gov.au>

- ❖ Summary of Australia's Foreign Investment Policy
 - ◆ General
 - ◆ Real Estate

(updated regularly)

Press Releases — 1996-97

- No. 96/056 Statement by the Treasurer, the Hon P. Costello, MP — Bankers Trust Australia Ltd's portfolio investment in John Fairfax Holdings Ltd — 8 August 1996.
- No. 96/096 Statement by the Treasurer, the Hon P. Costello, MP — Rationalisation of notification thresholds for portfolio investments in the Media Sector — 18 September 1996.
- No. 96/097 Statement by the Treasurer, the Hon P. Costello, MP — Proposed acquisition by Air New Zealand of a 50 per cent interest in Ansett — 18 September 1996.
- No. 96/100 Statement by the Treasurer, the Hon P. Costello, MP — Australia/New Zealand: Closer Economic Relations (CER) investment and tax aspects — 25 September 1996.
- No. 96/106 Statement by the Treasurer, the Hon P. Costello, MP — Proposed alteration to the Articles of Association of Optus Communications Pty Ltd — 28 October 1996*.
- No. 96/108 Statement by the Treasurer, the Hon P. Costello, MP — KPN (Australia) Ltd — Acquisition of TNT Limited — 31 October 1996.
- No. 96/113 Statement by the Treasurer, the Hon P. Costello, MP — Uranium Sector — 19 November 1996.
- No. 96/030 Statement by the Assistant Treasurer, Senator the Hon Rod Kemp — Forced divesture of residential real estate involving Australian Trustee — 11 December 1996.
- No. 96/131 Statement by the Treasurer, the Hon P. Costello, MP — Brierley Investments Limited — Acquisition of a 25 per cent interest in John Fairfax Holdings Ltd — 16 December 1996.
- No. 97/028 Statement by the Treasurer, the Hon P. Costello, MP — Release of the report of the Financial System Inquiry and initial Government response on Mergers Policy — 9 April 1997.

- No. 97/029 Statement by the Treasurer, the Hon P. Costello, MP — Foreign Investment Review Board: Appointment of Mr John Phillips AM as Chairman — 16 April 1997.
- No. 97/037 Statement by the Treasurer, the Hon P. Costello, MP — Canwest's investments in the Ten Group Ltd (TGL) — 2 May 1997.
- * See also No. 97/091 Statement by the Treasurer, the Hon P. Costello, MP — Removal of foreign ownership restrictions specific to Optus and Vodafone. — 14 August 1997.

Chronology of Policy Measures

9 April 1997

In releasing the Final Report of the Financial System Inquiry, the Treasurer announced the removal of the blanket prohibition on a foreign takeover of any of the major banks and that any proposed foreign takeover or acquisition will need to be assessed, like any other proposed foreign takeover or acquisition, on the basis of its merits in accordance with the *Foreign Acquisitions and Takeovers Act 1975*. In making these assessments, however, the Government will apply the principle (as concluded by the Inquiry) that any large scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest.

19 December 1996

The *Telstra (Dilution of Public Ownership) Act 1996* was assented to. The Act places limits on foreign ownership. Aggregate foreign ownership is to be restricted to 35 per cent of the one third equity to be sold and individual foreign investors will be allowed to acquire a holding of no more than 5 per cent of that one third equity.

- ❖ (Note: The Treasurer announced that as from 14 August 1997, all proposals by foreign interests to invest in Optus and Vodafone will be subject to only the generally applicable provisions of foreign investment policy. These provisions also apply to new entrants to the telecommunications sector or investment in existing businesses in that sector.)

19 November 1996

The Treasurer announced the Government's decision that foreign investment policy in relation to the uranium sector will be the policy that currently applies to the mining sector generally. This means that foreign investment above the notification thresholds in the uranium sector, such as the establishment of a new mine, will be subjected to the well established 'contrary to the national interest' test and that no specific investment restrictions will apply.

9 October 1996

The *Airports Act 1996* was assented to. This Act limits foreign ownership of airport operator companies to 49 per cent.

18 September 1996

The Treasurer announced the Government's decision to lift to five per cent, with immediate effect, the notification threshold that applies to portfolio investments by foreign interests in the media sector. This change rationalised the notification thresholds for the media sector so that all portfolio investments, not only in John Fairfax Holdings Ltd, are subject to the same 5 per cent notification threshold.

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.

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 5 per cent.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 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.

The Foreign Investment Review Board Service Charter

Australia's Foreign Investment Policy and the Foreign Acquisitions and Takeovers Act place certain restrictions and requirements on foreign interests acquiring assets in Australia. Overall, foreign investment which is consistent with the needs of the Australian community is encouraged.

The Foreign Investment Review Board plays an important role in advising the Government on Foreign Investment Policy. This charter details the services provided by the Board and the standards of service people dealing with the Board can expect to receive. 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.

Executive assistance to the Board is provided by the Foreign Investment Review Branch of Treasury. The Executive provides secretariat services for the Board, writes

draft reports on proposals and is usually the first point of contact for foreign investment applicants.

Communication

Potential investors should seek early contact with the Executive of the Board. The Executive will explain policy and provide guidance on how best to submit a proposal. The address of the Executive and contact names and telephone/fax numbers are provided on the back of this brochure.

It is not necessary for foreign investors to employ advisers in the preparation of submissions. The Executive readily provides advice, including comment on draft submissions.

Proposals may be lodged by facsimile with the original being submitted by mail. An acknowledgement letter will be despatched within two days of receiving a proposal, giving details such as file reference number and an enquiries telephone number.

Officers will be contactable by telephone during normal business hours (the Executive switchboard is open between the hours of 8.30am-5.30pm) to discuss proposals. The officer handling your proposal will contact you by telephone or facsimile should additional information be required.

Professional Service

Every effort will be made to process proposals as quickly as possible. A decision will be taken on the great majority of proposals within 30 days of lodgement. Proposals which are notifiable but not examinable are usually decided within a few days. The time taken on a proposal will depend on its nature and the contents of the submission.

The Government recognises that much of the information that the Board will need in order to assess its attitude to a particular proposal will be sensitive commercial-in-confidence information. The Government will respect this confidential status and will award it appropriate security to ensure that it remains so.

In the event that action is taken by third parties to obtain access to confidential information held by the Government, it will not be made available without the permission of the person who first gave the information to the Board, except upon

order of a court of competent jurisdiction. In this respect, the Government will in the ordinary course pursue the defence of its policy through the courts.

In the examination of large or otherwise significant proposals, Government departments and authorities (including State 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.

Published Information

A general summary of policy and a summary specifically related to real estate are available from the Executive. The Board's Annual Report is available from Australian Government Info Shops.

The Board's Annual Report, policy summaries and the necessary forms applicable to proposals notifiable under the Act, are available on the internet. The internet address is: *<http://www.treasury.gov.au>*.

Comments and Suggestions

The Board welcomes comment on its processing of proposals and directs investors to the following contact points.

The Executive: Office and Contact Names:

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 (02) 6263 2940
Or (02) 6263 3866

Executive Member - Mr Tony Hinton
Tel: (02) 6263 3755
Fax: (02) 6263 2940

Assistant Secretary - Mr Peter Tormey
Tel: (02) 6263 3763
Fax: (02) 6263 2940

Enquiries

Enquiries may be directed to:

- ❖ Manufacturing & Resource Processing;
Real Estate Acquisitions in NSW & ACT Mr Peter Biggs
(02) 6263 3886
- ❖ Finance and Insurance, Services,
Tourism & Media;
Real Estate Acquisitions in Qld, NT Mr Vernon Joice
(02) 6263 3834
- ❖ Mining & Agricultural;
Real Estate Acquisitions in Vic, WA, SA & Tas. Mr Roy Nixon
(02) 6263 3764
- ❖ **General Enquiries** (02) 6263 3795