

**FOREIGN INVESTMENT  
REVIEW BOARD**

**REPORT 1997-98**

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# *Main Points*

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## **Changes to Membership**

- ❖ **Mr Ken Stone, AO** retired from the Board with effect from 31 March 1998.
- ❖ **Mr Richard Murray** succeeded Mr Tony Hinton as the Executive Member on 1 May 1998.

## **Proposals**

- ❖ Foreign investment policy is applied with the objective of encouraging worthwhile foreign investment.
- ❖ Of the 4,375 proposals decided in 1997-98:
  - 4,261 were approved (2,567 with conditions, mainly in the real estate sector) and 114 were rejected. This compared with 4,096 approvals (2,610 with conditions) and 105 rejections in 1996-97.
- ❖ During 1997-98 there were 14 divestiture orders.
- ❖ Approvals in 1997-98 involved proposed investment (either alone or in partnership with Australians) of around \$79.5 billion. This represented a 35 per cent increase on the previous year's approvals of \$58.6 billion and was the highest level to date. Approvals do not necessarily mean investments proceed.
  - Compared to 1996-97, approvals increased; for services (excluding tourism) from \$13.9 billion to \$19.5 billion, for real estate from \$11.4 billion to \$16.3 billion, for mineral exploration and development \$4.8 billion to \$8.6 billion and for manufacturing from \$21.2 billion to \$23.5 billion

### *Main Points*

- ❖ The 224 largest proposals (each with proposed investment of more than \$50 million) accounted for about \$64 billion or 80 per cent of total proposed investment.
- ❖ Investors from the United States doubled their proposed investment in Australia compared to the previous year. United States total proposed investment in relation to approvals increased from \$18.0 billion in 1996-97 to \$36.3 billion in 1997-98. As a percentage of total proposed investment by all countries, United States proposed investment increased from 30 per cent to 45 per cent.

# *Foreign Investment Review Board*

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## **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.

## Membership

There were two changes to the composition of the Board during 1997-98. Mr Ken Stone, AO retired from the Board with effect from 31 March 1998. Further, Mr Richard Murray succeeded Mr Tony Hinton as the Executive Member on 1 May 1998. As at 30 June 1998 the Board comprised three 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, IBJ Australia Bank Limited, and Deputy Chairman, Woolworths Limited.

**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 Investment 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 Richard Murray** was the *ex officio* Executive Member of the Board at the close of 1997-98. He has been with Treasury since 1970 and has diverse experience across Treasury's various divisions. He was the Minister (Economic) in the Australian High Commission, London for the period August 1993 to January 1997.

## **Retirement of Mr Ken Stone, AO**

**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 the Secretary of the Victorian Trades Hall Council, Junior Vice-President of the Australian Council of Trade Unions and National Director of the Australian Trade Union Training Authority. The Board and the Government have extended their appreciation to Mr Stone for his dedicated service.

## **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 1997-98 the Executive was headed by Mr Hinton, First Assistant Secretary of the International and Debt Division, until succeeded in that position by Mr Murray. The head of the Foreign Investment Review Branch to 2 February 1998 was Mr Peter Tormey until succeeded by Ms Janine Murphy. The Executive provides secretariat services for the Board, writes draft and final 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 Executive 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 legislative reviews to commence over the next four years, including a review of foreign investment policy.

The 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.

In the context of the review the Government has made it clear that the general preclusion of foreign interests buying developed residential real estate will

## *Chapter 1*

continue and any approval for foreign interests to acquire vacant land for development will be on the condition that continuous development commences within 12 months of approval.

During 1997–98 the Board continued to consider issues and to provide advice to the Treasurer on matters relevant to the review of foreign investment policy.

### **Administration of Foreign Investment Policy**

The number of cases received in 1997-98 was 4,765 (4,544 in 1996-97). Of these 4,375 (4,201) were decided. Additionally, the Executive handled over 40,000 incoming telephone calls during the year with regard to specific potential proposals and the operation of foreign investment policy more generally.

Under the *Foreign Acquisitions and Takeovers Act 1975* statutory time limit for reaching a decision is 30 days, with up to a further ten days to notify the parties. There is scope for an interim order extending the period of examination for up to a further 90 days. In 1997-98 there were 111 (85) interim orders and 92 (110) final orders issued. Interim orders are usually sought where the applicant has failed to provide adequate information to assess the proposal against the national interest test within the 30 day statutory deadline. Final orders are issued where a proposal is inconsistent with Australia's foreign investment policy and not in the national interest, including where the applicant has failed to comply with conditions applying to a previously approved proposal.

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 application to particular proposals. The Board and the Executive are ready to comment on proposals in draft form.

The Executive welcomes direct contact from the general public seeking advice on foreign investment policy questions. Alternatively, information can be obtained from the Treasury website at <http://www.treasury.gov.au>. This

website is kept up to date and contains forms to be used when lodging an application.

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 1997-98 the Board produced a Service Charter (**Appendix E**), which is available as a brochure.

From time to time developments in market practices raise special issues for the administration of foreign investment policy. One current issue is the increasing use of option arrangements in the acquisition by foreign parties of interests in companies and real estate.

It has been the practice under foreign investment policy for a one year period to be available, from the date of approval, for completion of an approved acquisition. This approach has been justified on several grounds as it:

- ❖ limits potential difficulties should there be a change in foreign investment policy;
- ❖ reduces the likelihood that the nature of the proposal could change (eg proponent changing its activities, size, or ownership) without the possibility of re-assessment;
- ❖ places a limit on the time within which a foreign party is able to speculate on asset values (including urban land); and
- ❖ it is identical to the time within which development must occur on vacant land and thereby prevents foreigners from using options to circumvent the development condition.

However, there are some occasions where the normal working of the one year condition may be varied. An example is where the use of an option agreement is fundamental to the success of the proposal and is otherwise clearly not contrary to the national interest. In these situations an option agreement with more than one year to the exercise date may be approved, either outright or subject to certain conditions. Foreign investment policy guidelines have been amended to clarify this situation (see **Appendix A**).

## **Cost of the Board's Operations**

Consistent with the proper discharge of its functions, the Board is concerned to ensure that its operating costs are minimised. Government expenditure on the Board in 1997-98 was some \$111,000, slightly higher than the revised previous year expenditure of \$103,000. Around 80 per cent of this expenditure was for remuneration of Board members; the remainder was for local travel, car hire, printing expenses and incidentals. 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 \$2.3 million in 1997-98 compared with around \$1.7 million in 1996-97. 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.

Reasons for the increase in Government expenditure on the Executive were that the cost of legal expenses and advertising services increased dramatically and a greater amount of short term overseas and domestic travel resulted from commitments associated with consultation on, and participation in, the now discontinued negotiations for developing a Multilateral Agreement on Investment.

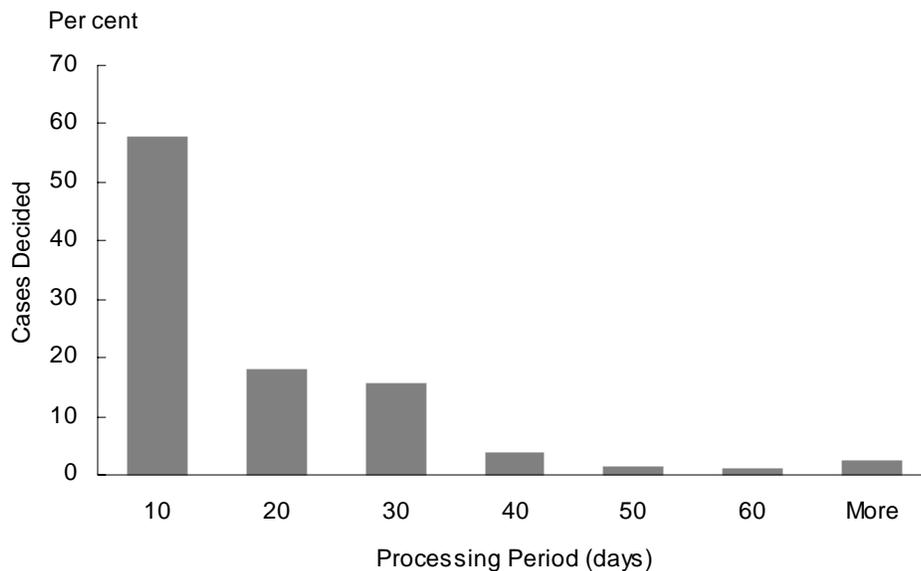
At 30 June 1998, there were 21 officers in the Foreign Investment Review Branch of Treasury. This compares with 18 officers at the end of June 1997.

## **1997-98 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 1997-98, 76 per cent of applications (3322) were decided within 20 days of receipt of a completed application (refer **Chart 1.1**); 91 per cent of cases were decided within 30 days. Factors which resulted in cases taking more than 30 days to process include delays in applicants providing necessary information and in demonstrating compliance with previous approvals, environmental considerations and the complexity or sensitivity of the case.

**Chart 1.1: Processing Time for Cases Decided**



## Processing of Proposals

After proposals have been submitted to the Board or its Executive, the initial work is handled within the Foreign Investment Policy area of the Commonwealth Treasury. Within the Foreign Investment Policy area proposals will be allocated to one of three specialist units depending on the industry sector involved (broadly classified between primary, secondary and tertiary sectors) or in the case of commercial and residential real estate generally on the basis of the geographic location of the assets being acquired (see page 66 for more details).

## *Chapter 1*

The Board considers reports prepared by the Executive on major 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. Where time constraints make a formal meeting impracticable the Board's involvement will be by telephone or other form of electronic communication.

There are also arrangements under which authority, for approval of certain types of proposals that do not involve issues of significance, is delegated to senior staff of the Executive.

Conclusions are reached only after examination of the proposal as submitted and necessary consultations to determine whether it conforms to the general and particular requirements of foreign investment policy including the proponent's fulfillment of conditions attached to past approvals. Proposals are blocked using foreign investment powers only in circumstances involving major national interest concerns. Reasons for rejecting substantial commercial proposals are published in press releases of the Treasurer (see **Appendix C**).

## 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 be consulted. Consultation is undertaken on a strictly confidential basis to protect the information provided by the investor.

The Board acknowledges the assistance received during 1997-98 from the relevant Commonwealth and State departments and authorities whose advice and comments are important in assessing the implications of proposals. The Board regards its liaison with key stakeholders as an integral part of the administration of Australia's foreign investment policy.

An example of the consultation process relates to the Environment Impact Assessment process. The Board supports the workings of the *Environment Protection (Impact of Proposals) Act 1974*. It does this by recommending to the Treasurer or Assistant Treasurer (the action Minister) that projects, subject to foreign investment approval with significant environment aspects, be designated. Where the action Minister agrees with the Board he will 'designate' the proponent (the person or body responsible for the proposal).

Designation allows the proposal to be referred to the Minister for the Environment who will make an environment assessment of the project. Within 28 days of receiving written comments relating to a Public Environment Report and 42 days from receipt of the final Environmental Impact Statement, the Minister for the Environment will provide recommendations to the action Minister. The action Minister, after taking into account such recommendations will make a final decision on the project. The Minister for the Environment does not have veto power over this decision.

Many proposals also require assessment under State/Territory environment legislation. To avoid duplication, arrangements are made with the States and Territories to facilitate joint or cooperative assessments of proposals. These arrangements are in accordance with the Environment Impact Assessment principles agreed under the *Intergovernmental Agreement on the Environment* and the *ANZECC Basis for a National Agreement on Environment Impact Assessment*.

## Handling of Commercial-in-Confidence Information

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

In the event that action is taken by third parties to obtain access to confidential information held by the Board, it will not be made available without the permission of the person(s) who provided the information to the Board, except upon order of a Court of a competent jurisdiction.

In 1997-98, 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 Executive) in 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 a 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 in 1997-98 were granted a full release of documents and partial release was approved in respect of four requests. Of the remaining requests one was still being processed at 30 June 1998 (although some requested information had been released), one was withdrawn, and access to documents was denied for two applications. Denied access in one instance was because the documents could not be found to exist and in the other because it would have resulted in an unreasonable diversion of resources.

## Monitoring and Compliance Activity

The *Foreign Acquisitions and Takeovers Act 1975* (the Act) contains wide-ranging powers under which the Treasurer may take legal action to protect and enforce the intent of the Government's foreign investment policy (see **Appendix A**). The powers include the ability 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 that 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 Act.

Monitoring of compliance with foreign investment policy continues to be a significant activity, particularly in respect of the real estate sector. Close attention is given to proposals designed to avoid the application of policy, and/or the fulfillment of conditions attached to approval.

In examining proposals the applicant's compliance with any conditions relating to past proposals is taken into account. Instances of lack of compliance with conditions may result in future proposals not being approved.

During 1997-98, compliance activities of the Executive were improved by the appointment of an additional full-time compliance officer. Further information on real estate compliance is contained in Chapter 2.

## **International Aspects**

### ***OECD Multilateral Agreement on Investment***

During 1997-98, Australia participated in the OECD negotiations (subsequently discontinued) for a Multilateral Agreement on Investment (MAI). OECD Ministers at their Ministerial Council Meeting in April 1998, re-affirmed their continuing support for an MAI, with the aim of reaching a successful and timely conclusion of an MAI and seeking broad participation in it. However, Ministers decided on a 6 month period of assessment and further consultation between the negotiating parties and with interested parts of their societies.

During the pause in the OECD negotiations, members of the Foreign Investment Review Branch intensified their consultations, including with State and Territory Governments, Business Groups, Union Groups and other non-governmental organisations. Members of the Executive prepared Treasury's Submission to the Parliamentary Joint Standing Committee on Treaties that was tasked with inquiring into the MAI and on 11 March 1998 and 6 May 1998 they appeared before the Committee.

In October 1998, the French Government withdrew from the negotiating group. This led to the cessation of negotiations. The Assistant Treasurer noted that the Australian Government had indicated for some time that it had a number of serious concerns with the draft text of the proposed treaty as it stood. He also reiterated the Government's commitment not to sign any treaty unless it is demonstrably in the national interest (see Assistant Treasurer Press Release No 42 of 2 November 1998, available from the Treasury website <http://www.treasury.gov.au> ).

### ***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. Under the agreement, industrialised economies are to achieve the goal of free and open trade and investment no later than 2010, and the developing economies no later than

2020. The details of the implementation of the agreement to free and open investment in the Asia Pacific region will be developed in the period ahead. APEC countries, including Australia, have lodged individual action plans (IAPs) that set out how each country is to achieve the goal of free and open investment. The review of Australia's foreign investment policy (see page 3) has been included as part of Australia's IAP.

### **Bilateral Investment Promotion and Protection Agreements (IPPAs)**

Australia's bilateral IPPAs with other countries promote the flow of capital for economic activity and development. The IPPAs provide 'most favoured nation' commitments in regard to treatment of foreign investment, give undertakings about expropriation/nationalisation, including the nature of compensation for such acts, and establish mechanisms for resolving disputes over investment matters. A model IPPA text has been established, and was updated in early 1998, to provide the basis on which these agreements can be negotiated.

Australia has entered into IPPAs with a number of countries. In 1997-98, treaties were signed with Pakistan and the Ukraine. To date, Australia has signed IPPAs with Argentina, Chile, the Czech Republic, Hong Kong, Hungary, Indonesia, Laos, Pakistan, Papua New Guinea, the People's Republic of China, Peru, the Philippines, Poland, Romania, Ukraine and Vietnam. Australia is currently negotiating further agreements with Egypt, India, Lebanon, Lithuania and Russia.

By promoting confidence in the regulatory environment relating to foreign investment, IPPAs have the potential to enhance investment flows between Australia and other countries.

## *Foreign Investment Proposals*

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This chapter provides statistical information on the proposals submitted in 1997-98 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).

## Chapter 2

- ❖ they relate to proposals approved, which may not be implemented, or which could be implemented over a number of years.
- ❖ the statistics are not necessarily comparable over time. In particular, the major liberalisations of foreign investment policy that have occurred since the mid-1980s limit comparability over time.

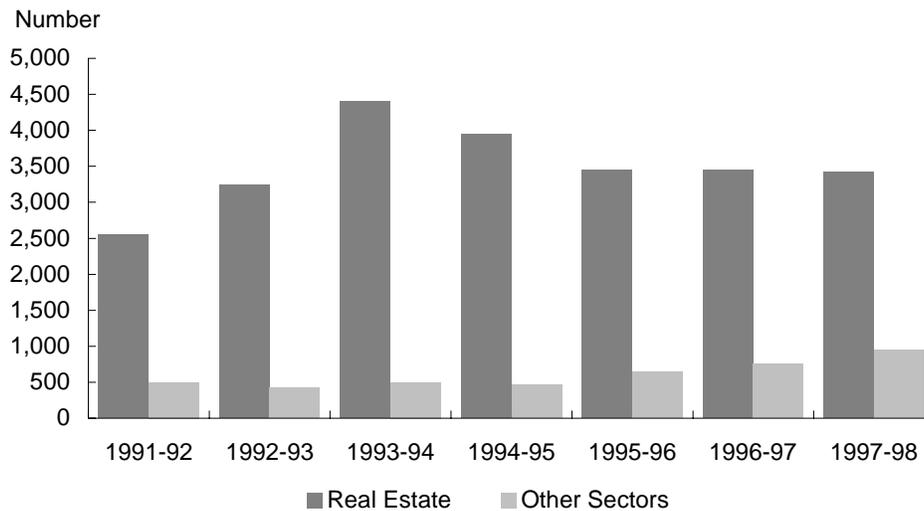
In addition, the statistics are not a comprehensive measure of all foreign investment inflow in any year, nor do they purport to measure changes in levels of foreign ownership of particular industries.

- ❖ The data are restricted to investments which fall within the scope of the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and the Government's foreign investment policy, including its application to foreign investment proposals for the purchase of publicly owned assets. 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 specified 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 funds to be invested would be contributed by Australians where 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. For example the acquisition by a foreign interest of a business operating in Australia, may involve no inflow of capital to Australia where the purchase is financed from existing Australian operations.
- ❖ The figures do not necessarily reflect changes in foreign ownership levels as, in some cases, both the vendor and purchaser are defined as a 'foreign interest'.
- ❖ The data also include proposed investments made by foreign funds managers where the beneficiaries are Australian.

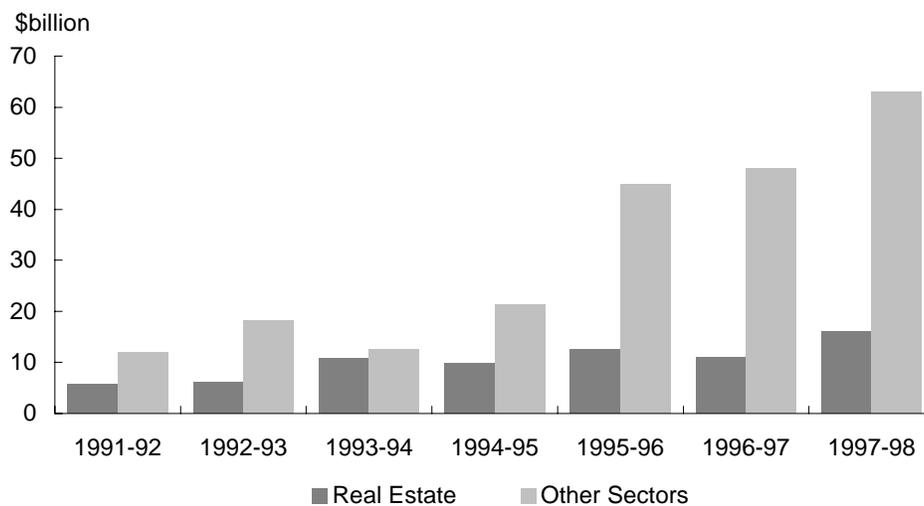
## Applications Decided in 1997-98<sup>1</sup>

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

**Chart 2.1: Applications Decided — Number**



**Chart 2.2: Applications Decided — Proposed Investment**



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

The number of applications decided during 1997-98 was around 4 per cent higher than in 1996-97 but 12 per cent below the peak of 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.

The value of proposed foreign investment associated with applications decided in 1997-98 was over a third higher than the level in 1996-97. 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) 1994-95 to 1997-98**

Action	1994-95		1995-96		1996-97		1997-98	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Approved Unconditionally	1,435	20.2	1,511	43.5	1,486	41.9	1694	54.3
Approved with Conditions	2,901	10.2	2,494	13.8	2,610	16.7	2567	25.2
Total Approved	4,336	30.3	4,005	57.3	4,096	58.6	4,261	79.5
Rejected	72	0.8	85	0.3	105	0.4	114	0.1
Total Decided	4,408	31.2	4,090	57.6	4,201	59.0	4375	79.7
Withdrawn	405	-	446	-	343	-	390	-
Total Considered	4,813		4,536		4,544		4,765	

There were 114 rejected proposals in 1997-98, or 2.6 per cent of all decided proposals. Of these, one was in the tourism sector and the remainder in the real estate sector.

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 to 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 low rejection rate reflects the consultative approach taken in the administration of foreign investment policy, particularly in respect of real estate proposals.

The great bulk of conditional approvals were in the real estate sector. Only 86 proposals outside the real estate sector were approved subject to conditions. Three main kinds of conditions were applied in the non-real estate sectors: to protect the environment; 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 to restrict levels of equity. For real estate, 2,481 proposals were approved with conditions relating to the period during which development should commence, the need for temporary residents to sell established properties when they cease to reside in Australia, or the imposition of reporting requirements on 'off the plan' sales.

## Approvals by Sector

### *Summary*

**Table 2.2** provides details for 1997-98 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 does not require foreign investment approval. Bearing in mind the limitations of the Board's data noted at the beginning of this chapter, the following general points can be made.

- ❖ The manufacturing sector attracted the highest level of proposed investment, with approvals aggregating \$23.5 billion.
- ❖ Other major sectors were services — excluding tourism (\$19.5 billion), real estate (\$16.3 billion<sup>2</sup>) and mineral exploration and development (\$8.6 billion).
- ❖ The \$20.9 billion increase in approvals compared with 1996-97 was characterised by significant increases in proposed investment across all industry sectors with the exception of the Agriculture, Forestry & Fishing sector which experienced broadly similar levels of proposed investment compared to the previous year.

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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 1997-98 (\$billion)**

Industry Sector <sup>(a)</sup>	Number of Approvals <sup>(b)</sup>	Acquisition Cost	Proposed Investment on Development	Total Proposed Investment
<b>Agriculture, Forestry &amp; Fishing</b>				
less than \$50m	30	0.3	..	0.3
\$50m and over	1	0.1	-	0.1
Total	31	0.3	..	0.4
<b>Finance &amp; Insurance</b>				
less than \$50m	32	0.3	0.1	0.4
\$50m and over	18	4.0	0.4	4.4
Total	50	4.3	0.6	4.8
<b>Manufacturing</b>				
less than \$50m	124	1.8	0.1	1.8
\$50m and over	46	19.1	2.5	21.6
Total	170	20.9	2.6	23.5
<b>Mineral Exploration &amp; Development</b>				
less than \$50m	110	1.1	0.2	1.3
\$50m and over	28	5.5	1.9	7.3
Total	138	6.6	2.0	8.6
<b>Resource Processing</b>				
less than \$50m	3	..	..	..
\$50m and over	3	0.2	2.6	2.9
Total	6	0.2	2.7	2.9
<b>Services(Excl Tourism)</b>				
less than \$50m	289	3.3	0.3	3.6
\$50m and over	46	14.6	1.3	15.9
Total	335	17.9	1.6	19.5
<b>Tourism</b>				
less than \$50m	69	0.7	0.1	0.8
\$50m and over	19	2.6	0.2	2.8
Total	88	3.3	0.3	3.6
<b>Real Estate</b>				
less than \$50m	3,251	5.9	1.3	7.2
\$50m and over	63	5.0	4.1	9.1
Total	3,314	10.9	5.4	16.3
<b>Total</b>				
less than \$50m	3,908	13.3	2.1	15.4
\$50m and over	224	51.1	13.0	64.1
<b>TOTAL</b>	<b>4,132</b>	<b>64.4</b>	<b>15.1</b>	<b>79.5</b>

Note: 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 129 proposals involving financing arrangements and corporate restructures.

(c) ‘..’ indicates an investment figure of less than \$50 million.

(d) ‘-’ indicates an investment figure of zero.

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

The number of proposals to invest in the Agriculture, Forestry and Fishing sector increased from 23 in 1996-97 to 31 in 1997-98. However, total proposed investment decreased from \$410 million in 1996-97 to \$379 million in 1997-98. The acquisition by Agreserves Australia Limited, a company associated with the Church of Jesus Christ of Latter-Day Saints in Australia, of three rural properties in the Murrumbidgee and Lachlan Valleys of New South Wales (total value \$61 million) was the only proposed investment of more than \$50 million. Other significant proposals throughout the year included the acquisition by the US owned Liverpool Limited Partnership of an interest in the Rural Property Trust, and the acquisition by US interests of three rural properties in New South Wales (total value of \$31 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 Act. 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 increased from \$2.1 billion in 1996-97 to \$4.8 billion in 1997-98. There were 50 proposals (up from 35 in 1996-97) approved, comprising 11 new business proposals and 39 acquisitions. Of these, 18 proposals involved proposed investment of \$50 million or more, 11 of which involved expected investment in excess of \$100 million.

The most significant proposals resulted from a number of offshore mergers of international financial corporations, including the Travelers Group Inc/Citibank merger, the Commercial Union Plc/General Accident Plc merger and the merger of the Zurich Insurance Company and the financial services business of BAT Industries Plc.

### ***Manufacturing***

Proposed investment associated with the manufacturing sector increased from \$21.2 billion in 1996-97 to \$23.5 billion in 1997-98. The 46 proposals involving investment of \$50 million or more accounted for around 92 per cent of proposed expenditure.

As was the case in the previous year the level of proposed investment included a number of large acquisitions in the food and beverage sector. In particular, Kirin Brewery Co Limited acquired shares to the value of \$1.2 billion in Lion Nathan Limited and Coca-Cola Holdings (Overseas) Limited acquired shares in Coca-Cola Amatil Limited for an estimated value of \$1 billion. Manufacturing of non-metallic mineral products was another sector that experienced significant activity. Owens Illinois (Australia) Pty Limited, acquired BTR Nylex Limited for an estimated \$2.6 billion and CVC Capital Partners Limited and DLJMB Overseas Partners II C.V. (on behalf of various funds and investors) acquired all the shares in ACI Australia Limited for a total cost of over \$1 billion (including assumption of various intergroup loans).

Total proposed investment associated with approvals for power companies was \$3.4 billion for 1997-98. While this was a large component of proposed manufacturing investment it was considerably smaller than the \$10.5 billion proposed for investment in power companies in 1996-97.

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

There was a moderate increase in the number of approved investment proposals in the minerals sector in 1997-98 (138 compared with 130 in 1996-97). Total proposed investment, however, increased substantially from \$4.8 billion to \$8.6 billion. This dramatic increase in the value of proposed investment can be attributed to a number of large proposals (over \$1 billion in value) and a number of moderately large proposals (over \$100 million in value). The largest proposals were in the base metals and gold industry sectors. The leading source countries were the USA and South Africa. The increase in the total number of proposals was reflected in all industry sectors, with the exception of oil and gas, with the largest rise (in terms of expenditure) in the base metals 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**. The largest proposal in the gold industry in 1997-98 involved the acquisition by Homestake Mining Company, a US publicly listed gold mining company, of Plutonic Resources Limited by way of a scheme of arrangement (value of \$986 million). There were two proposals in the 1997-98 year to establish new gold mines. One being the re-establishment of the Beaconsfield gold mine in Tasmania by Allstate Exploration NL, as manager of the Beaconsfield Mine Joint Venture (valued at \$111 million). However, the other proposal did not proceed.

The level of total proposed investment in the oil and gas sector in 1997-98 increased from \$1.1 billion in 1996-97 to \$1.8 billion. This increase was more than accounted for by one large proposal involving the establishment of the new Laminaria and Corallina oil fields in the Timor Sea by Woodside Oil Limited at an estimated cost of \$1.35 billion. Another significant proposal during 1997-98 involved the acquisition by Mitsui & Co., Ltd and Mitsui Oil Exploration Co., Ltd and Japan National Oil Corporation of an interest in a Timor Sea exploration permit (\$96 million is expected to be spent over the next three years on exploration activities).

Whilst there was a substantial increase in total proposed investment in the coal industry, one major proposal did not proceed. One significant proposal in 1997-98 that did proceed was the US owned Lehman Brothers Holdings Inc's takeover of Peabody Investments Australia (valued at \$600 million). In addition there were two proposals during the year to establish new coal mines: a \$45 million joint venture to establish a new mine at Coppabella in Queensland, and a \$11 million joint venture to establish a new mine at Glennies Creek in the Hunter Valley of New South Wales.

In 1997-98, there was a dramatic increase in total proposed investment in the base metals sector. The greatest contributor to proposed investment in this sector was the acquisition by Billiton plc of a 53 per cent interest in QNI Limited (valued at \$1.1 billion).

**Table 2.3: Minerals Sector Approvals by Number and Total Proposed Investment: 1996-97 and 1997-98**

Industry	Acquisitions				New Businesses			
	No of approvals		\$ million		No of approvals		\$ million	
	1996-97	1997-98	1996-97	1997-98	1996-97	1997-98	1996-97	1997-98
Gold	51	53	2,146	2,423	-	2	-	173
Oil and gas	22	18	1,040	334	2	2	65	1,425
Coal	23	26	488	1,899	1	3	350	67
Base metals	8	10	146	1,297	2	-	30	-
Other	18	23	400	787	3	1	101	200
<b>Total</b>	<b>122</b>	<b>130</b>	<b>4,220</b>	<b>6,740</b>	<b>8</b>	<b>8</b>	<b>546</b>	<b>1,865</b>

### **Resource Processing**

There were 6 approvals in the resource processing sector during 1997-98, with a total proposed investment of \$2.9 billion. This compared with 14 approvals with a value of \$2.6 billion for the previous year. The largest of the approved proposals, at an estimated value of \$2.5 billion, was the Phillips Petroleum Company proposal for the development and construction of a hydro-carbon processing facility at Wickham Point near Darwin.

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

During 1997-98, there were 335 proposals approved for investment in the service industries sector (excluding tourism), comprising 20 proposals to establish new businesses and 315 proposed acquisitions of interests in existing businesses. The total expected investment for the establishment of new businesses and acquisitions was \$1.4 billion and \$18.1 billion, respectively. The major source investors for this sector came from the United States and the United Kingdom.

There were 46 proposals involving expected investment of \$50 million or more. Twenty-eight of those involved proposed investment of over \$100 million, four of which were more than \$1 billion. Major proposals involved:

- ❖ the Government's sale of various regional airports;
- ❖ the acquisition of existing, or the development of new, energy transmission networks;
- ❖ the establishment of a number of new mobile telephony businesses; and
- ❖ Cable & Wireless Plc's acquisition of Bell South's interest in Optus.

### **Tourism**

There was a significant increase, from \$2.3 billion in 1996-97 to \$3.6 billion in 1997-98, in proposed investment in the tourism sector. Of the 89 proposals examined during 1997-98, one was rejected. Of the 88 approved proposals, nineteen involved proposed investment of \$50 million or more, ten of which involved proposed investment in excess of \$100 million.

The significant proposals included proposals involving the Sydney Harbour Casino and acquisitions by the BT Hotels Trust and Tourism Asset Holdings Limited of interests in various hotels and resorts.

The rejected proposal involved the proposed acquisition by HSH Hotels (Australia) Ltd of the Powerhouse Boutique Hotel in Brisbane. This proposal was rejected by the Government due to the failure of an associated company of HSH to comply with the development conditions applying to its acquisition of a development site in Perth. Although HSH had sought an extension to the development conditions, it was not on terms that were acceptable to the Government.

### **Urban Real Estate**

Urban land is broadly defined under the 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 it is clear that it would not be contrary to the national interest, such as in cases where there is an increase in the housing stock, the acquisition of vacant land for development and 'off the plan' sales to foreign interests. 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 twelve months. In the latter case, approval is subject to the property being sold when the purchaser ceases to reside in Australia. Additionally, the

dwelling must be the foreign person's principal place of residence in Australia and not used for rent or lease.

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 approved investments in urban real estate. The number of approvals remained much the same as in 1996-97. However, there was a 43 per cent increase in the total proposed investment associated with proposals. A significant part of this increase can be attributed to a near doubling in proposed development expenditure from \$2.8 billion in 1996-97 to \$5.4 billion in 1997-98.

**Table 2.4: Investment in Urban Real Estate by Type and Number of Proposals Approved in 1997-98 (\$billion)**

	Number of Approvals	Consideration	Proposed Development Expenditure	Total Proposed Investment
<b>For Development</b>				
Residential				
ordinary approvals	978	0.5	1.4	1.9
off-the-plan				
individual	438	0.1	-	0.1
developer	420	4.5	-	4.5
annual programs	3	0.2	-	0.2
Total Residential	1,839	5.4	1.4	6.8
Commercial				
ordinary Approvals	93	0.6	3.9	4.5
annual programs	4	..	-	..
<i>Total for Development</i>	<i>1,936</i>	<i>6.0</i>	<i>5.3</i>	<i>11.3</i>
<b>Developed</b>				
Residential	1,226	0.4	-	0.4
Commercial	152	4.5	..	4.5
<i>Total Developed</i>	<i>1378</i>	<i>4.9</i>	<i>..</i>	<i>4.9</i>
<b>TOTAL</b>	<b>3,314</b>	<b>10.9</b>	<b>5.4</b>	<b>16.3</b>

Note: Totals may not add due to rounding.

(a) '..' indicates an investment figure of less than \$50 million.

### *Real Estate for Development*

During 1997-98, there were 1,839 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a decrease from the 2,224 proposals approved in 1996-97 and 2,421 in 1995-96.

Proposals in the 'off the plan' and annual program categories have zero proposed development expenditure recorded against them. In the case of 'individual off the plan' the consideration relates to the proposed amount payable by foreign interests for newly completed dwellings. 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 978 proposals (1,323 in 1996-97) by foreign interests to acquire residential real estate for development were approved, with a total proposed investment of \$1.9 billion (\$2.2 billion in 1996-97). All such approvals have 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 1997-98, there were 438 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 420 applications approved (valued at \$4.5 billion) from real estate developers seeking 'advance approval' to sell property 'off the plan' to foreign persons. While the number of 'off the plan' approvals for developers was some 4 per cent down on the previous year their value increased by \$1 billion. One of the largest proposals based on investment size was for 'off the plan' sales at the Glades Resort in Mudgeeraba, Queensland to Dong Ah Australia Pty Limited.

The Board's figures overstate the likely extent of foreign purchases as 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 and completion of sales.)

The **annual program** arrangements are designed to avoid the need for established real estate developers to notify individual acquisitions of property. Such developers 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. The granting of an annual program for acquisitions of land for development does not relieve the developer of responsibility for complying with the general requirements of foreign investment policy. For example, additional investment in relation to acquisitions of existing businesses, or for the establishment of new businesses with total investment of \$10 million or more would require an additional application, separately submitted to the FIRB for examination. In 1997-98, applications were approved for three annual programs. These arrangements involved residential real estate for development totalling broadly around \$200 million in proposed acquisition costs.

Approval was given to 97 proposals to purchase land for **commercial development** involving total proposed investment of \$4.5 billion. This was a significant increase on 1996-97 when approval was given to 63 proposals with a total estimated value of \$1.8 billion.

There was an increase from 44 rejections in 1996-97 to 50 rejections in 1997-98 in relation to the proposed acquisition of residential real estate for development (including 'off the plan' dwellings), with proposed development expenditure valued at \$54.2 million. Of these, 22 involved vacant land for development and 17 involved the redevelopment of developed real estate. Seven proposals were rejected as they did not meet the 'off the plan' criteria. Usually there were one or more of the following reasons for these rejections:

- ❖ the planned development expenditures were not considered significant in relation to the acquisition price for the property (there is a normal expectation that proposed development expenditure should be equivalent to at least 50 per cent of the acquisition price);
- ❖ the proposal did not add to the housing stock;

- ❖ the proposed timetables for development were unsatisfactory;
- ❖ the property proposed to be acquired for the purpose of demolition and redevelopment was not considered to be at the end of its economic life, for example it was rented out as a residence;
- ❖ the prospective foreign purchasers had not established, to the Government's satisfaction, that they had the technical and financial capacity, nor the necessary planning approvals, to undertake the proposed development within an acceptable timeframe; and/or
- ❖ the applicant had breached conditions associated with a previously approved application.

### *Acquisitions of Developed Real Estate*

Generally, foreign investment policy enables the purchase of developed commercial real estate by foreign persons. Conversely, it restricts the purchase by foreign persons of developed residential real estate. However, certain categories of foreigners are able to purchase developed residential real estate under particular conditions. These include foreign persons who hold a temporary resident visa and who are able to stay in Australia for a period longer than twelve months. Such persons are generally resident foreign workers or foreign students. For foreign students an additional restriction is that the developed real estate must generally be valued below \$300,000. For temporary residents, foreign investment approval is conditional on the dwelling purchased being the person's principal residence, not being rented or leased and being sold to an Australian or other eligible person when the party finally returns to their homeland.

Additionally, foreign companies with significant established business operations in Australia may buy established residences for their senior executives who must be resident in Australia (generally subject to a limit of two houses per company). Such properties must be sold to an eligible purchaser when they are no longer needed for the purpose for which they were purchased.

The policy on foreign purchase of developed residential real estate is otherwise restrictive to help reduce the possibility of excess demand building up in the existing housing market while aiming to encourage investment in the supply of new dwellings. The cumulative effect should be

to maintain greater stability of house prices and the affordability of housing for the benefit of Australian residents.

Of the 1,226 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 spouse. The remainder related to reorganisations and ‘swaps’ where foreign interests already owned developed property of comparable value.

Reflecting the comparatively restrictive nature of the policy, there were 63 rejections in 1997-98 (52 in 1996-97) of proposed acquisitions of developed residential property. The total proposed acquisition costs involved in these proposals was \$20 million. These proposals were rejected because the prospective buyers did not fall into one of the eligible categories and, in some cases, involved the prior unapproved acquisition of property which resulted in the purchaser being required to sell the property.

In 1997-98 there were 152 approvals to purchase interests in *developed commercial property* (eg, shopping centres, offices, warehouses, etc) involving total proposed investment of \$4.5 billion. This was a significant increase on the 136 approvals valued at \$3.3 billion in 1996-97. Acquisitions of developed commercial property valued at less than \$5 million are exempt from the need to obtain prior approval.

### *Real Estate by State*

**Table 2.5** provides details of approved 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 47 per cent of the total in 1997-98. Victoria was second with 26 per cent; a significant increase on the 11 per cent recorded in 1996-97. However, Queensland came second to New South Wales in total approvals to invest in urban real estate across all categories.

**Table 2.5: Total Proposed Investment in Urban Real Estate by Category of Real Estate and Location of Investment, Approved in 1997-98 (\$million)**

Location	For Development		Developed		Total
	Residential	Commercial	Residential	Commercial	
New South Wales	3,152	1,056	225	1,674	6,106
Victoria	1,826	130	74	396	2,426
Queensland	1,125	3,180	64	579	4,947
Western Australia	324	87	63	75	549
Other (a)	340	92	14	1,780	2,228
<b>Total</b>	<b>6,767</b>	<b>4,545</b>	<b>440</b>	<b>4,504</b>	<b>16,256</b>
Number of Proposals	1,839	97	1226	152	3,314

(a) 'Other' includes acquisitions of companies/trusts with real estate holdings 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).

The policy is directed at maintaining greater stability of house prices and the affordability of housing for the benefit of Australian residents (see **Appendix A**). Any failure by foreign interests to pursue stated development plans is considered to 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 the Act. Section 26A provides for financial penalties or imprisonment on conviction.

❖ During 1997-98 there were 14 divestiture orders.

There are a number of processes that assist in ensuring compliance with the residential real estate 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 seeking temporary resident visas.

- ❖ In purchasing property, foreign persons may deal with a number of professionals and organisations, such as solicitors, financial institutions and real estate agents, who have an interest in ensuring that foreign purchasers have information on the need to comply with foreign investment policy.
- ❖ There is a reporting requirement placed on approvals to improve compliance with conditions imposed, 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.

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.

## **Approvals by Country of Investor**

Data on proposed investment associated with approvals in 1997-98 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 during 1997-98. Other major sources included the United Kingdom, Malaysia and South Africa.

- ❖ Approved proposed investment from the United States of \$36 billion was double that of last year and represented around 45 per cent of total approved investment. This proposed investment was concentrated in the manufacturing and services sectors.
- ❖ Approved proposed investment from the UK also increased substantially from \$5.5 billion in 1996-97 to \$8.4 billion in 1997-98.

- ❖ Japanese investment proposals approved totalled \$2.2 billion in 1997-98 up from \$1.3 billion in 1996-97.
- ❖ Singapore, Hong Kong and Malaysian proposed investment in real estate of \$4.3 billion was approved in 1997-98 (unchanged from 1996-97).
- ❖ South Africa emerged as a major foreign investor in 1997-98 with approved investment proposals of \$3.4 billion, a significant increase on the \$0.4 billion approved in 1996-97.

**Table 2.6: Proposed Investments by Country by State 1997-98 (\$billion)**

	USA	UK	Malaysia	South Africa	Canada	France	Other/Aust (a)	Total
NSW	5.1	0.9	0.4	0.4	0.1	0.5	6.2	13.6
Victoria	3.8	0.7	2.1	0.6	-	0.5	3.6	11.3
WA	4.4	0.3	0.6	0.2	0.2	-	3.8	9.7
Queensland	1.2	0.7	0.2	1.2	0.3	0.1	3.3	6.9
Other (b)	21.8	5.8	0.2	1.0	2.2	1.4	5.8	37.9
Total	36.3	8.4	3.5	3.4	2.8	2.5	22.7	79.5

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.

Chapter 2

**Table 2.7: Total Proposed Investment Associated with Approved Proposals, by Country of Investors and Industry Sector 1997-98 (\$ million)**

	Number of Proposals (c)	Agriculture Forestry & Fishing	Finance & Insurance	Manufacturing	Mineral Exploration & Development	Real Estate	Resource Processing	Services (excluding Tourism)	Tourism	Total
USA	524	158	1,985	13,036	2,697	2,108	2,538	12,320	1,505	36,347
UK	766	23	1,453	2,863	690	463	34	2,578	248	8,351
Malaysia	209	4	96	98	224	2,542	224	79	240	3,507
South Africa	149	-	75	201	1,448	70	-	1,558	3	3,356
Canada	116	-	191	2,009	536	28	-	58	-	2,821
France	86	5	25	196	-	1,166	-	458	640	2,491
Japan	189	-	61	1,276	427	245	-	223	-	2,232
Singapore	444	-	-	37	10	1,282	-	37	412	1,778
Germany	172	-	7	245	153	272	6	618	262	1,563
Taiwan	75	51	-	1,430	-	32	-	-	-	1,513
Netherlands	65	-	198	520	357	17	-	75	-	1,168
Switzerland	71	13	530	96	297	128	-	83	-	1,149
New Zealand	66	18	-	588	130	243	-	70	13	1,062
Hong Kong	115	4	6	10	9	466	-	413	27	936
Not Allocated(a)	422	-	-	-	-	4,530	-	-	-	4,530
World Other	885	41	15	564	133	981	-	418	245	2,396
Sub -total	4,354	318	4,641	23,171	7,112	14,572	2,801	18,988	3,597	75,200
Australia (b)	370	61	184	296	1,493	1,684	101	516	2	4,338
<b>Total</b>	<b>4,724</b>	<b>379</b>	<b>4,825</b>	<b>23,467</b>	<b>8,605</b>	<b>16,256</b>	<b>2,902</b>	<b>19,505</b>	<b>3,599</b>	<b>79,538</b>

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***

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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 financial transactions that increase or decrease this stock. Conversely, Australian investment abroad refers to the stock of foreign financial assets owned by Australian residents and financial transactions that 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. A current account deficit in Australia's balance of payments is balanced by a surplus on the capital and financial account, after allowing for errors and omissions. The balance on the financial account represents net financial transactions, the inflow of foreign investment into Australia, minus the outflow of Australian investment abroad.

International investment statistics are divided into 'direct', '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, under the ABS framework, to indicate 'significant influence' by an investor. *Portfolio investment* is the cross-border investment in equity and debt securities (other than direct investment). *Other investment* is a residual group that comprises many different kinds of investment. *Reserve assets* are those financial instruments available to and controlled by the Reserve Bank of Australia.

**Table 3.1** provides, for the last five years, a breakdown of the flow of foreign investment measured by ABS statistics, while **Chart 3.1** provides, from the same data, a summary of major trends in foreign investment flows.

**Table 3.1: Foreign Investment Flows (\$billion)<sup>(a)</sup>**

	1993-94	1994-95	1995-96	1996-97	1997-98
<b>Foreign Investment in Australia</b>					
Direct investment					
Equity & Reinvested Earnings	5.3	7.4	12.5	11.2	10.2
Other capital	-0.4	0.1	0.5	-0.2	-1.4
Portfolio investment					
Equity	14.6	4.9	6.7	2.6	14.6
Debt	6.3	9.2	20.8	14.3	0.6
Other Investment	1.3	2.5	0.4	7.5	8.4
<i>Total Foreign Investment In Australia</i>	<i>27.1</i>	<i>24.2</i>	<i>40.9</i>	<i>35.4</i>	<i>32.4</i>
<b>Australian Investment Abroad</b>					
Direct investment					
Equity & Reinvested Earnings	-3.4	-3.4	-6.4	-6.3	-3.1
Other capital	-0.5	0.0	-1.5	0.5	-0.1
Portfolio investment					
Equity	-4.6	0.6	-3.0	-4.3	3.1
Debt	2.2	3.7	1.2	0.7	-0.2
Other Investment	-5.3	1.1	-9.5	-3.6	-8.7
Reserve Assets	-1.0	2.0	-0.8	-5.2	-0.6
<i>Total Australian Investment Abroad</i>	<i>-12.8</i>	<i>3.8</i>	<i>-20.0</i>	<i>-18.2</i>	<i>-9.6</i>
<b>Net Foreign Investment (b)</b>	<b>14.3</b>	<b>28.0</b>	<b>20.8</b>	<b>17.2</b>	<b>22.8</b>

Note: Figures may not add due to rounding.

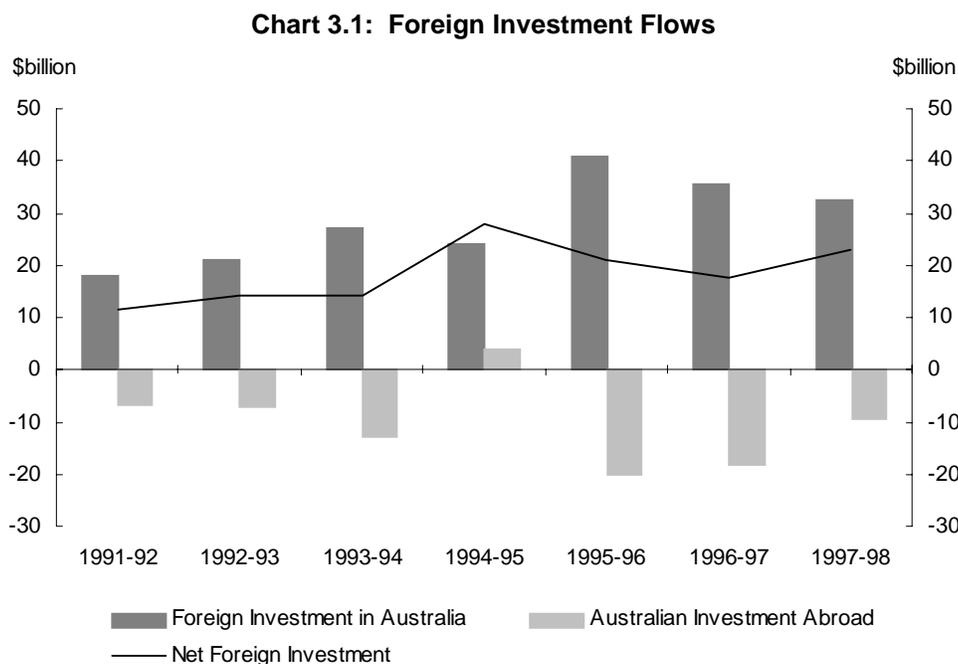
(a) In keeping with balance of payment conventions, credit entries are shown without sign and debit items are shown as negative entries. Thus, investment flows going from Australia to offshore destinations are shown as a negative.

(b) The net foreign investment figure has been derived from determining the difference between foreign investment in Australia and Australian investment abroad. No adjustment has been made to this figure to account for price changes, exchange rate changes and other adjustments.

Source: ABS 5302.0 Balance of Payments and International Investment Position, Australia, September Qtr 1998.

On 29 September 1997, the ABS announced a change in the basis of compilation and presentation of balance of payments and international investment position statistics in accordance with new upgraded international standards (for more information see ABS Information Paper 5365.0). For this reason the data and presentation of foreign investment flows and levels are not comparable with previous annual reports.

**Chart 3.1** highlights the annual fluctuations of foreign investment flowing into Australia, and Australian investment abroad over the past seven years, with recent flows of net investment being above those earlier in the decade.



An important trend affecting foreign investment flows has been the significant reduction in public sector debt, particularly as a proportion of net foreign debt. As at 30 June 1998, the public sector was responsible for 23 per cent of net foreign debt. This compares to 31 per cent at 30 June 1997 and 35 per cent at 30 June 1996.

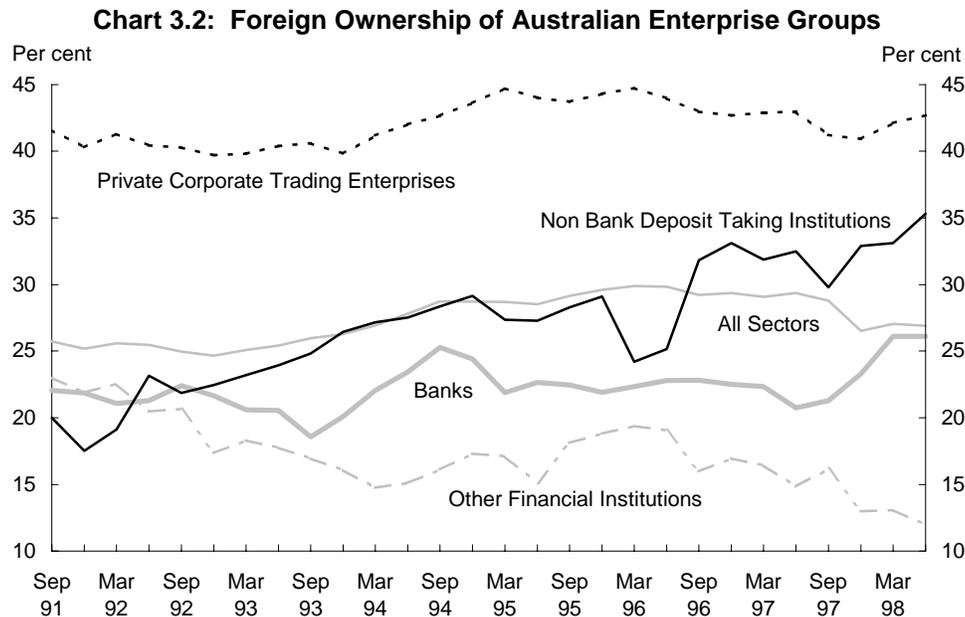
## Foreign Investment Levels

The ABS estimated level, or stock, of foreign investment in Australia as at 30 June 1998 was \$563 billion. This represented an increase of \$53 billion, or 10 per cent, over the level at 30 June 1997.

In comparison, the level of Australian investment abroad as at 30 June 1998 was \$237 billion. This represented an increase of \$39 billion or 19 per cent, over the level at 30 June 1997.

As can be seen in **Chart 3.2** foreign ownership of Australian enterprises in the equity market has declined in 1997-98 from 29 per cent to around 27 per cent as at 30 June 1998. This decline is principally a function of the significant increases in equity ownership caused by the full or partial privatisation of Commonwealth public trading enterprises; the demutualisation of life offices and superannuation funds; and by other institutions, which have been strongly supported by Australian investors and in some instances involved limitations on investment by non-resident shareholders.

Of the total equity issued in the market at 30 June 1998, non-residents held equity valued at \$241 billion while residents held equity valued at \$654 billion.



Source: ABS 5232.0 Financial Accounts, Australia, June Qtr 1998

## ***Summary of Australia's Foreign Investment Policy as at December 1998***

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### **General**

The Government's approach to foreign investment policy is to encourage foreign investment consistent with the interests of the community. Overall the general stance of policy is welcoming, in recognition of the contribution that foreign investment has made and continues to make to the development of Australia, providing scope for higher rates of economic activity and employment than could be achieved on the basis of domestic levels of savings. Foreign direct investment also provides access to new technology, management skills and overseas markets.

The Government recognises community concerns about foreign ownership of Australian assets. One of the objectives of the Government's foreign investment policy is to balance these concerns against the strong economic benefits to Australia from foreign investment.

The foreign investment policy provides for Government scrutiny of many proposed foreign purchases of Australian businesses and properties. The Government has the power under the *Foreign Acquisitions and Takeovers Act 1975* (the Act) to block proposals that are determined to be against the national interest. The Act also provides legislative backing for ensuring compliance with the policy.

In the majority of industry sectors, smaller proposals are exempt and larger proposals are approved unless judged contrary to the national interest. The screening process undertaken by the Foreign Investment Review Board enables comments to be obtained from relevant parties and other Government agencies in considering whether larger or more sensitive foreign investment proposals are contrary to the national interest.

The Government determines what is 'contrary to the national interest' by having regard to the widely held community concerns of Australians.

Reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and developed residential real estate. The screening process provides a clear and simple mechanism for reviewing the operations of foreign investors in Australia, whenever they seek to establish or acquire new business interests, or purchase additional properties. In this way the Government is able to put pressure on foreign investors to operate in Australia as good corporate citizens if they wish to extend their activities in Australia.

By far the largest number of foreign investment proposals involve the purchase of real estate. The Government seeks to ensure that foreign investment in residential real estate improves the supply of residences and should not be speculative in nature. The Government's foreign investment policy, therefore, seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (ie, new developments — house and land, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers.

The effect of the more restrictive policy measures on developed residential real estate is twofold. First, it helps reduce the possibility of excess demand building up in the existing housing market and secondly, it aims to encourage the supply of new dwellings, many of which would become available to Australian residents, either for purchase or rent. The cumulative effect should therefore be to maintain greater stability of house prices and the affordability of housing for the benefit of Australian residents.

## **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 defined as:

- ❖ a natural person not ordinarily resident in Australia;
- ❖ a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- ❖ a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- ❖ the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- ❖ the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

A **substantial foreign interest** occurs when a single foreigner (and any associates) has 15 per cent or more of the ownership or several foreigners (and any associates) have 40 per cent or more in aggregate of the ownership of any corporation, business or trust.

## **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<sup>1</sup>**

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 subject to a specific condition requiring continuous construction to commence within 12 months. Once construction is completed, parties are required to provide the completion date and actual development expenditure.

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. ‘Off-the-plan’ sales to foreigners are only permitted for new development projects or extensively refurbished commercial structures which have been converted to residential, on condition that no more than half of the dwellings 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. Strict conditions must be fully met in order to qualify for Integrated Tourist Resort status.

Certain categories of foreign nationals, temporarily resident in Australia for more than 12 months, may normally be given approval to purchase developed residential real estate for use as their principal place of residence while in Australia (and not for rental purposes). This category includes long-stay retirees. A condition of such purchases is that the residence must be sold when the foreign nationals’ temporary resident visas expire, they leave Australia, or the property is no longer used as their principal place of residence.

All other proposals by foreign interests to acquire **developed residential real estate** are examinable and are not normally approved, except in the

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<sup>1</sup> Detailed information on real estate policy is available in the document ‘Foreign Investment Policy – Urban Land’. This document is available on request or from the Treasury website.

## *Appendix A*

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.

Proposed acquisitions of **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 *Financial Sector (Shareholdings) Act 1998* 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 Australian Prudential Regulation Authority (APRA) is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with APRA's prudential supervision 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 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 *Shipping 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 direct (ie non-portfolio) proposals by foreign interests 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 are subject to 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 in an existing newspaper or to establish a new newspaper in Australia are subject to case-by-case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan newspapers is 30 per cent with any single foreign shareholder limited to a maximum interest of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further five 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.

### ***Approval Period***

Approval under the Government's foreign investment policy is normally only given for a specific transaction which is expected to be completed in a timely manner. If an approved transaction does not proceed at that time and/or the parties enter into new agreements at a later date, or if a transaction is not completed within 12 months, further approval must be sought for the transaction.

## *Appendix A*

Approvals for share acquisitions involving a full or partial bid under Corporations Law only apply to the shares acquired during the bid period. For example, if approval is given for a full bid and the bidder only acquires 60 per cent of the shares, but then subsequently wishes to proceed to acquire further shares on market using the creep provisions of Corporations Law or to acquire the balance of the shares through a subsequent bid, further prior approval must be sought.

Where a proposal involves option agreements for the purchase of shares, assets or property, prior approval is required to acquire the options. Normally approvals for options will also extend to the exercise of those options, provided the option is exercised within 12 months of approval. Subsequent approval for the exercise of the options may be sought on an annual basis.

The time period for an approval may be varied where it can be shown that an extended period is fundamental to the success of a proposal and that extending the timing of the proposal does not involve an activity (eg real estate speculation) that would be contrary to the national interest. In this situation the extended period will be stated in the approval.

## ***Legislation, Policy Statements and Publications***

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### ***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 1975 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, Senator the Hon Rod Kemp, - 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.
24. Statement by the Treasurer, the Hon P. Costello, MP - Foreign Investment Policy: Ownership structure for the Ten Group Ltd (TGL) — Canwest/TNQ Float Proposal — 6 March 1998.

***Publications***

- ❖ Foreign Investment Review Board Reports: 1977 to 1998.
- ❖ Australia's Foreign Investment Policy - A Guide for Investors, Revised September 1992.
- ❖ Summary of Australia's Foreign Investment Policy
  - General
  - Real Estate

(updated regularly)

Current information on Australia's foreign investment policy is available on the internet at: *<http://www.treasury.gov.au>*

## *Press Releases - 1997-98*

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- 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.
- No. 98/024 Statement by the Treasurer, the Hon P. Costello, MP - Foreign Investment Review Board: 1996-97 Annual Report - 5 March 1998.
- No. 98/025 Statement by the Treasurer, the Hon P. Costello, MP - Foreign Investment Policy: Ownership structure for the Ten Group Ltd (TGL) — Canwest/TNQ Float Proposal — 6 March 1998.
- No. 98/005 Statement by the Assistant Treasurer, Senator the Hon Rod Kemp - Labor Trips over its own feet on Investment Treaty — 10 March 1998.
- No. 98/031 Statement by the Treasurer, the Hon P. Costello, MP - Foreign Investment Review Board Retirement of Mr Ken Stone, AO — 30 March 1998.
- No. 98/012 Statement by the Assistant Treasurer, Senator the Hon Rod Kemp - Multilateral Agreement on Investment - 31 March 1998.

## ***Chronology of Policy Measures***

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### ***14 August 1997***

The Treasurer announced the removal of foreign ownership restrictions that were specific to Optus and Vodafone. From 14 August 1997, all proposals by foreign interests to invest in Optus and Vodafone are subject only to the generally applicable provisions of foreign investment policy. These general provisions also apply to new entrants to the telecommunications sector or investment in existing businesses in that sector. The announcement did not affect in any way the ownership restrictions in relation to Telstra.

### ***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.

**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 aggregate foreign interest direct investment (that is, non portfolio) involvement in national and metropolitan newspapers to 30 per cent with any single foreign shareholder limited to a maximum of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further 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 raise 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*

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Australia's Foreign Investment Policy and the *Foreign Acquisitions and Takeovers Act 1975* 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: Contact Names***

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### ***Applications***

Applications for foreign investment approval should be addressed to:

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

*Executive Member* — Ms Janine Murphy \*                      Tel: (02) 6263 3763

\* Ms Murphy replaced Mr Murray as Executive Member from 16 October 1998.

### ***General Enquiries***

- ❖ General Enquiries (02) 6263 3795
- ❖ Fax (02) 6263 2940
- ❖ E-mail Address: *firb@treasury.gov.au*

### ***Special Enquiries***

Primary Industries Unit is responsible for Mining & Agriculture and Real Estate Acquisitions in Vic, WA, SA & Tas.

*Mr Roy Nixon,                      Manager                      Tel: (02) 6263 3764*

Secondary Industries Unit is responsible for Manufacturing & Resource Processing and Real Estate Acquisitions in NSW & ACT.

*Mr Peter Biggs,                      Manager                      Tel: (02) 6263 3886*

Tertiary Industries Unit is responsible for Finance and Insurance, Tourism & Media; Real Estate Acquisitions in Qld, NT.

*Mr Vernon Joice,                      Manager                      Tel: (02) 6263 3834*

Compliance Issues

*Mr Bill Brosnan,                      Manager                      Tel: (02) 6263 3041*