

**Foreign Investment  
Review Board**

**Report  
2000-2001**

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# ***Main points***

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## **Changes to membership**

There were three changes to the membership of the Board during 2000-01:

- ❖ **Ms Janine Murphy** left the Board in August 2000 to take up a three year posting to the Australian Embassy in Washington.
- ❖ **Mr Peter Biggs** was Executive Member from August 2000 to 12 January 2001.
- ❖ **Dr Jim Hagan** succeeded Mr Biggs as Executive Member.

## **2000-01 proposals in summary**

- ❖ Of the 3,347 proposals decided:
  - 3,301 were approved (2,298 with conditions, mainly in the real estate sector) and 46 were rejected. There were 3,907 approvals (2,737 with conditions) and 96 rejections in 1999-2000.
- ❖ There were no divestiture orders.
- ❖ Approvals involved proposed investment (either alone or in partnership with Australians) of around \$106.3 billion. This represented a 36 per cent increase on the previous year's approvals of \$78 billion. Approvals do not necessarily mean investments proceed.
  - The value of approvals increased in the services sector (excluding tourism) from \$25 billion in 1999-2000 to \$31.1 billion in 2000-01. Approvals for minerals exploration and development increased from \$10.1 billion to \$23.7 billion and real estate increased from \$9.5 billion to \$12.7 billion. Resource processing had a sharp decline from \$5.5 billion in 1999-2000 to \$0.9 billion in 2000-01.
- ❖ The 137 largest proposals (each with proposed investment of more than \$100 million) accounted for about \$90 billion or about 85 per cent of total proposed investment.

- ❖ The United States remained the largest source of proposed foreign investment in Australia during 2000-01 accounting for around 45 per cent of the total. The other major source was the United Kingdom, its proposed investment in Australia increased to \$22.7 billion in 2000-01 or 21 per cent of the total. This represents a 97 per cent increase from \$11.5 billion in 1999-2000. The next largest contributors of proposed foreign investment were Germany, Canada and Hong Kong with proposed investments valued at \$4.7 billion, \$3.6 billion and \$3.1 billion, respectively.

# ***Foreign Investment Review Board***

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## **Functions of the Board**

The Foreign Investment Review Board (FIRB or the Board) is a non-statutory body established in April 1976 to advise the Commonwealth 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 three changes to the composition of the Board during 2000-01. As at 30 June 2001 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, QBE Insurance Group Limited.

**Ms Lynn Wood** has been a Board member since April 1995 and was re-appointed to the Board on 4 April 2000 for a term of five years. Ms Wood has considerable business experience in financial services, including having been a Director of Schroders Australia Ltd and Sedgwick (Holdings) Pty 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's other memberships include: a Director of the New South Wales Lotteries Corporation and the Multiple Sclerosis Society of New South Wales.

**The Hon. Chris Miles** was appointed to the Board on 8 June 1999 for a five year term. Between 1984 and 1998 Mr Miles represented the seat of Braddon, Tasmania, in the House of Representatives where from 1996 to 1998 he was the Parliamentary Secretary (Cabinet) to the Prime Minister. In that capacity he had special responsibility for tax legislation in the House of Representatives. Prior to his distinguished parliamentary career, Mr Miles taught in the education systems of Tasmania, the ACT and NSW. Mr Miles is currently Director of Corporate Development, Pacific Hills Education Ltd.

**Ms Janine Murphy** was the ex officio Executive Member of the Board until August 2000. She has been with the Commonwealth Treasury since 1976 and has experience across Treasury's various divisions, with a focus mainly on microeconomic reform, in particular the deregulation of the financial system and taxation policy. Ms Murphy began a three year posting to the Australian Embassy in Washington as Minister — Counsellor (Economic), on 1 September 2000.

**Mr Peter Biggs** was the ex officio Executive Member of the Board from August 2000 to 12 January 2001. He joined the Commonwealth Treasury in 1985 and his experience in Treasury has been mainly on microeconomic reform, environment economics and development finance. Immediately prior to joining the Executive of the Board in 1997 he was Minister — Counsellor (Financial) in the Australian Embassy in Bonn, Germany.

**Dr Jim Hagan** has been the ex officio Executive Member of the Board since 15 January 2001. He has been with the Commonwealth Treasury since 1998 after working in the New Zealand Treasury for five years, and prior to that in the Productivity Commission. He has experience across a range of portfolio issues including: taxation, labour markets, industry policy, agriculture, competition policy, education and the environment.

## **Relationship of the Executive to the Board**

Executive assistance to the Board is provided by the Foreign Investment Policy Division of the Treasury. The Executive was headed by Ms Murphy as General Manager of the Division until August 2000, Mr Biggs as Acting General Manager from August 2000 to January 2001 and Dr Hagan (the current Executive Member) as General Manager from January 2001. The Executive provides secretariat services for the Board, prepares 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 Foreign Investment Policy Division also advises the Government on general foreign investment policy matters, including Australia's participation in multilateral and bilateral international agreements on investment.

## **Administration of Foreign Investment Policy**

There were 3,665 cases received in 2000-01, down from 4,411 in 1999-2000. Of these, 3,347 were decided and 318 were withdrawn. Additionally, the Executive handled over 40,000 incoming telephone calls, answered 272 letters (314 in 1999-2000) and 722 electronic mail messages (419 in 1999-2000) in relation to specific potential proposals and the operation of foreign investment policy more generally.

The Executive welcomes direct contact from persons seeking advice on foreign investment policy questions through its telephone inquiry line (02) 6263 3795; electronic-mail address, [firb@treasury.gov.au](mailto:firb@treasury.gov.au); or alternatively from its website at [www.firb.gov.au](http://www.firb.gov.au). During 2000-01, the Executive received more than twice as many electronic inquiries as postal inquiries.

Under the *Foreign Acquisitions and Takeovers Act 1975* (FATA), the 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 2000-01, 102 interim orders and 42 final orders<sup>1</sup> were 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 or to provide parties with the opportunity to address issues arising from the proposal. Final orders are issued where a proposal is inconsistent with Australia's foreign investment policy and therefore not in the national interest.

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 available to meet with both potential foreign investors and Australian businesses to explain foreign investment policy and its application to particular proposals.

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

## **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. Total Board expenses in 2000-01 were \$99,560 (\$95,500 in 1999-2000). Remuneration of Board members was around 85 per cent of total Board expenses, the remainder was for local travel, car hire, legal advice 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.

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1 Final orders are only issued on proposals when a valid statutory notice has been received by the FIRB. Proposals that do not fall under the FATA (for example, retrospective and advanced 'off the plan' proposals) do not require a statutory notice. When rejected, such proposals are not issued with final orders.

Total expenses of the Executive were \$1.95 million in 2000-01 compared with \$2.0 million in 1999-2000. These expenses were mainly for employees (including superannuation and accruing leave entitlements), with other expenses being incurred for travel, printing and advertising. The total cost of foreign investment screening would also include the expenses of other Government authorities and agencies, at the Commonwealth and State levels, that are consulted on proposals.

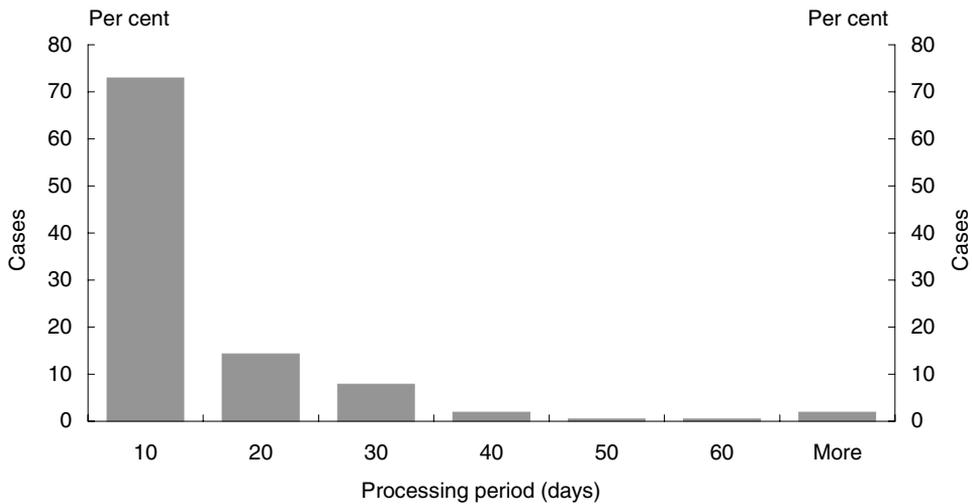
At 30 June 2001, there were 26 staff members in the Executive. This compares with 23 officers at the end of June 2000. The increase in staff numbers but decrease in total expenses can be attributed to the Executive having two full time contractors. Their wages are not included in the total expenses.

## **2000-01 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 minimise the time taken (and hence the cost involved) in obtaining foreign investment approval. In 2000-01, 72 per cent of applications (71 per cent in 1999-2000) were decided within 10 days of receipt of a 'completed' application (refer Chart 1.1), with 96 per cent of these cases decided within 30 days. A 'completed' application is one incorporating all the information needed for a decision to be taken. Cases taking more than 30 days to process usually involve significant complexity or sensitivity.

**Chart 1.1: Processing time for cases decided**



## Processing of proposals

After proposals have been submitted, the initial work is handled within the Executive. Business proposals are allocated to one of two specialist units depending on the industry sector involved, that is, the Primary and Secondary Industries Unit or the Tertiary Industries Unit. In the case of commercial and residential real estate, allocation is generally on the basis of the geographic location of the assets being acquired. A third unit, the International and Compliance Unit, takes on some of these commercial and residential cases.

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 usually meets with the Treasurer or the Assistant Treasurer to discuss the case. Should a proposal raise important considerations and/or impinge on other ministerial responsibilities, the Treasurer or Assistant 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 (their size, complexity or the policy issues raised), a full report is usually considered 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.

Arrangements also exist under which, authority for decision making of certain types of proposals that do not involve issues of significance, are delegated to senior staff of the Executive.

Proposals are examined to determine whether they conform to the general and particular requirements of foreign investment policy, including the proponent's fulfilment of conditions attached to past approvals. Proposals are blocked using foreign investment powers where the proposals are inconsistent with policy and in circumstances involving national interest concerns. Reasons for rejecting substantial commercial proposals are usually published in the Treasurer's press releases.

## **Consultation arrangements**

In examining large or otherwise significant proposals, State and Commonwealth Government departments and authorities with responsibilities relevant to the proposed activity, may be consulted. Consultation is undertaken on a strictly confidential basis to protect the information provided by the investor and usually takes about two weeks.

The Board acknowledges the assistance received during 2000-01 from the 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.

In the past, foreign investment proposals that were considered environmentally significant required environmental impact assessment under the *Environment Protection (Impact of Proposals) Act 1974*. It was the Board's practice not to provide advice on proposals with significant environmental aspects until the Minister for the Environment provided advice and

recommendations based on the environmental impact assessment. This approach was consistent with meeting the objectives of this legislation.

The *Environment Protection and Biodiversity Conservation Act 1999*, which came into effect on 16 July 2000, has altered these arrangements. The Treasurer's foreign investment decisions on cases received after 16 July 2000 no longer trigger environmental impact assessment under Commonwealth legislation. The *Environment Protection and Biodiversity Conservation Act 1999* allows the Minister for the Environment and Heritage to act independently of the foreign investment process when examining proposals for Commonwealth environmental approval. The FATA provides for the Board, as a Commonwealth agency aware of a proposal by a person to take an action, to refer the action to the Minister for the Environment and Heritage.

## **Handling of Commercial-in-Confidence and personal 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.

The Government is also obligated to respect the privacy of personal information that is provided by applicants to the Board, in accordance with the requirements of the *Privacy Act 1988*. In accordance with that Act, in situations where the applicant has breached, or is strongly suspected of having breached the FATA, the Board may seek the assistance of other government agencies in its efforts to ensure compliance. In seeking such assistance, the Board may pass relevant personal information to those agencies. Most commonly these agencies will be the Department of Immigration and Multicultural Affairs, the Australian Taxation Office and/or the Australian Federal Police.

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 2000-01, the Board's Executive directly dealt with six applications under the *Freedom of Information Act 1982* (FOI Act) seeking information concerning

foreign investment matters. Of these applications, four were received during the course of 2000-01 while two applications were being processed as at 30 June 2000.

The FOI Act provides for the denial of access to commercially confidential documents. This has relevance to documents provided to the Board (or prepared by the Board or Executive) in its examination of the proposals. It is the practice of the Executive to consult with the parties to a proposal about documents that are the subject of a FOI request to establish whether the parties are prepared to allow their release to an applicant or whether there are justifiable grounds to withhold documents.

## **Monitoring and compliance activity**

The FATA 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 FATA.

Monitoring of compliance with foreign investment decisions continues to be a significant activity. Close attention is given to the application of policy and/or the fulfilment of conditions attached to decisions.

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 being rejected.

The International and Compliance Unit has an ongoing annual compliance program involving the systematic checking of whether foreign persons are complying with the conditions of their approvals. During 2000-01, the International and Compliance Unit examined around 1,100 past proposals to determine compliance with the conditions attached to foreign investment decisions. In addition, further correspondence was generated from either:

- ❖ settling outstanding matters; or
- ❖ separate investigations of instances of possible non-compliance brought to the Board's attention by the members of the public.

During the year, the Unit also spent time reviewing existing compliance and monitoring procedures and documentation with a view to ensuring consistent treatment of cases of non-compliance. Processes for handling cases which are in serious breach of FATA and/or the approval conditions were also reviewed including how and when breaches are to be reported to the Department of Immigration and Multicultural Affairs. Some of these reports have resulted in delays in issuing new visas to offenders or in the refusal to issue a new visa.

Further information on real estate compliance is contained in Chapter 2.

## **National interest**

Under the FATA, the Treasurer may reject applications to control an Australian business or acquire an interest in urban land if he considers the matter is 'contrary to the national interest'. The presumption is that foreign investment proposals are generally in the national interest and should go ahead. This reflects the positive stance of successive Australian Governments to foreign investment.

The Board provides advice to the Treasurer on large or sensitive proposals; however, it is the Treasurer, as the authority under the FATA, who defines whether an investment is contrary to the national interest.

In preparing its advice to the Treasurer, the Board considers whether the proposal is inconsistent with:

- ❖ existing government policy and law — taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);
- ❖ national security interests; and
- ❖ economic development.

The information required to formulate advice is obtained from a range of sources including consultation with the applicant, relevant Commonwealth and State government agencies and the target entity. Affected third parties may also be asked for information, and indeed, the Board welcomes comments from all interested parties.

Where national interest concerns are identified, the Board will seek, where possible, to formulate conditions that address these concerns.

## **International aspects**

### **Asia Pacific Economic Cooperation (APEC)**

Australia continues to participate actively in the work of APEC, including in relation to foreign investment. Australia's main investment interest in APEC is to encourage APEC members to enhance the environment for investment in their economies. This is done through Individual Action Plans (IAPs), peer reviews and collective actions through the work of the Investment Experts Group (IEG).

During 2000-01, the Executive revised and updated the Investment Chapter of the annual IAP. The Chapter describes the investment environment and policies of APEC member economies, and is intended to give a clear view of progress in achieving the announced Bogor goal of free and open trade and investment between APEC member economies. Australia's IAP for 2000-01 included information on liberalisations of Australia's foreign investment policy and investment related measures which have occurred in the past twelve months, as well as those which have been implemented since the base year of 1996. Copies of APEC IAPs are available at [www.apecsec.org.sg](http://www.apecsec.org.sg) on the APEC website at.

The Executive sent a representative to the IEG meeting in May 2001.

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

Australia's bilateral IPPAs provide a clear set of obligations relating to the promotion and protection of investments with other countries. By promoting confidence in the regulatory environment relating to foreign investment, IPPAs have the potential to enhance investment flows between Australia and other countries.

A model IPPA text has been created, and was recently updated, to provide the basis on which these agreements can be negotiated. 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.

To date, Australia has signed IPPAs with Argentina, Chile, the Czech Republic, Hong Kong, Hungary, Indonesia, Laos, Lithuania, Pakistan, Papua New Guinea, the People's Republic of China, Peru, the Philippines, Poland, Romania, the United Arab Emirates and Vietnam. Australia is currently negotiating further IPPAs with a number of countries, including South Africa and Turkey.

### **Free Trade Agreement with Singapore**

Australia is involved in ongoing negotiations with Singapore for a Free Trade Agreement (FTA). A key objective of the FTA is the further liberalisation of trade in services and investment between the two countries. The Department of Foreign Affairs and Trade has primary responsibility for pursuing the FTA. The Executive contributes expert advice on international investment issues, and will ensure the FTA provides for the maintenance of Australia's existing foreign investment policy regime.

### **Review of the OECD Guidelines for Multinational Enterprises**

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from the 30 OECD member countries and non-member adhering countries (Argentina, Chile, and Brazil). They are a voluntary code of 'best practice' standards for responsible business conduct.

The Guidelines were reviewed in June 2000 and the text of the current Guidelines is at **Appendix E**.

The Executive Member of the FIRB is the Guidelines' National Contact Point (NCP) and is responsible for administration of the Guidelines in Australia.

Two main features characterise the beginning of the reporting year:

- ❖ a very low awareness of the Guidelines throughout all areas of government, business labour and civil society; and
- ❖ even where knowledge was greatest in the labour movement and civil society, the perception persisted that their views had not been adequately taken into account in the Guidelines Review process.

The NCP's main activity this year has been to address these issues, through a more pro-active role in regard to the implementation of the revised Guidelines. This has involved:

- ❖ consultations with business, labour and other non-government organisations (NGOs) representing a wide range of interests. Two rounds of workshops on the Guidelines with business, labour and other NGOs. The aim of these workshops was, among other things, to seek these organisations views on the most effective way for the Australian NCP to promote the Guidelines and to involve these organisations as much as possible in that process;
- ❖ A discussion paper on the implementation of the Guidelines, which covered, among other things, the structure of the Australian NCP and a possible service charter for the NCP, which was circulated widely and put onto the Internet;
- ❖ Information and promotional initiatives including the establishment of a dedicated website ([www.ausncp.gov.au](http://www.ausncp.gov.au)), which incorporates a comprehensive package of information on the Guidelines and the NCP's role with regard to the Guidelines. Moreover, all decisions on large individual foreign investment proposals provided to foreign investors now include information on the Guidelines; and
- ❖ In accordance with the Guidelines implementation procedures, in June this year the NCP presented the inaugural oral and written report on

Australia's NCP activities in 2000-01 to the OECD. The report was prepared in consultation with business, labour and other NGOs.

We are now satisfied that these promotional and other initiatives are raising awareness.

No specific instances involving Guideline breaches have been raised with the NCP in the past 12 months.

### **World Trade Organisation (WTO)**

Australia also pursues its interests in relation to international investment through involvement in the WTO Working Group on Trade and Investment. The Executive provides expert advice to the Department of Foreign Affairs and Trade on Australia's participation in this forum. The Working Group examines the economic relationship between trade and investment, and the implications of this relationship for development and economic growth, as well as stocktaking and analysis of existing international instruments and activities regarding trade and investment.

## ***Foreign Investment Proposals***

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This chapter provides statistical information on the proposals submitted in 2000-01 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 substantially 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 (including shares, real estate or other assets);
- ❖ the value of the Australian assets of merging companies;
- ❖ 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’ (that is, the tendency for a few large investments to skew any one year’s figures);
- ❖ they include proposals approved, which may not be implemented or could be implemented over a number of years; and
- ❖ major liberalisations of foreign investment policy that have occurred since the mid-1980s limit comparability over time.
  - For example, the increase in the notification exemption thresholds from \$5 million to \$50 million on 10 September 1999 has acted to reduce the number of proposals and proposed investment values for existing business assets as well as commercial real estate in 2000-01 compared to 1999-2000.

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 within the scope of the FATA and the Government’s foreign investment policy. 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 current 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 database that records all foreign investment proposals requires proposals to be categorised into sub-codes and does not allow for

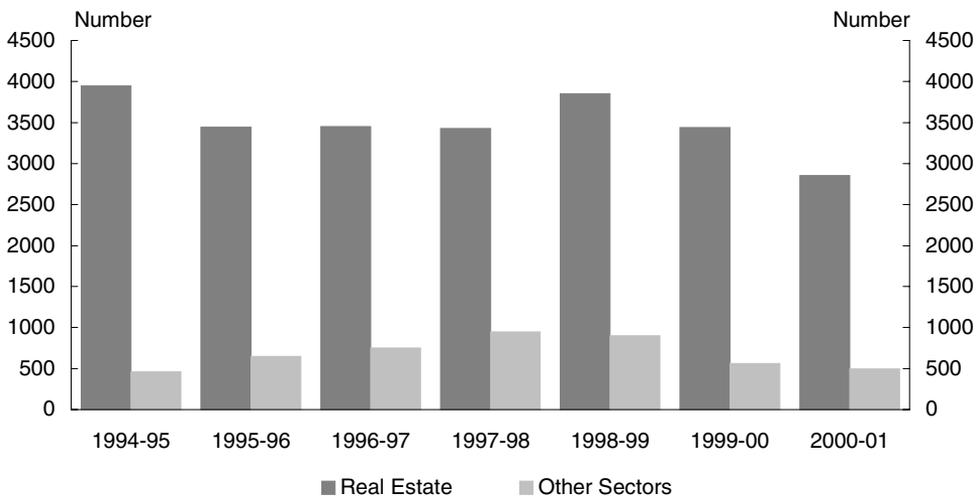
diversified companies. For example, the merger of BHP Limited and Billiton plc has been classified under oil and gas rather than coal or some other sub-code, resulting in an apparent substantial increase in investment in the oil and gas industry;

- ❖ 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'.

## Applications decided in 2000-01<sup>1</sup>

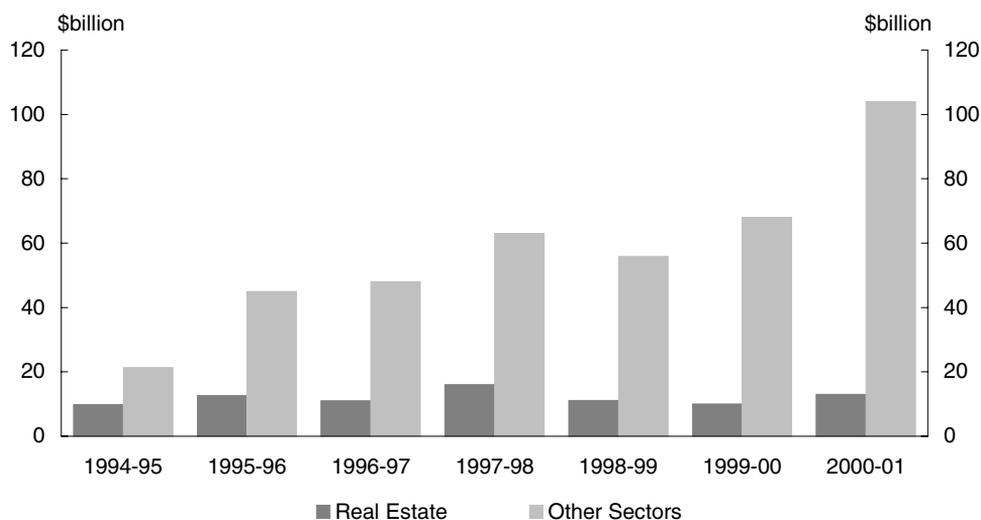
Chart 2.1 depicts the number of applications decided. Chart 2.2 shows the value of proposed investment associated with applications decided for real estate and other sectors over the past seven years.

**Chart 2.1: Applications decided — number**



<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.

**Chart 2.2: Applications decided — proposed investment**



The number of applications decided during 2000-01 was around 16 per cent lower than in 1999-2000. In contrast, the value of proposed foreign investment associated with those applications decided in 2000-01 was about 49 per cent higher than the level in 1999-2000. 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) 1997-98 to 2000-01**

Action	1997-98		1998-99		1999-2000		2000-01	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Approved unconditionally	1,694	54.3	1,724	56.4	1,170	56.3	1,003	80.0
Approved with conditions	2,567	25.2	2,918	10.7	2,737	21.7	2,298	26.3
Total approved	4,261	79.5	4,642	67.0	3,907	78.0	3,301	106.3
Rejected	114	0.1	112	0.2	96	0.1	46	9.7
Total decided	4,375	79.7	4,754	67.2	4,003	78.1	3,347	116.0
Withdrawn	390	-	337	-	408	-	318	-
<b>Total considered</b>	<b>4,765</b>		<b>5,091</b>		<b>4,411</b>		<b>3,665</b>	

Forty six proposals were rejected in 2000-01, or 1.4 per cent of all decided proposals. Of these, 44 were in the real estate sector.

A significant case that was rejected by the Treasurer was the proposed acquisition of further shares in Woodside Petroleum Limited by Shell Australia Investments Limited. The proposed \$9.7 billion consideration for this proposal

makes up the majority of the difference between the value of total cases approved (\$106.3 billion) and total cases decided (\$116 billion) for the period.

Foreign investors are encouraged to discuss potential or actual proposals with the Board to ensure the proposals are consistent with policy. As a result, proposals clearly inconsistent with policy may not proceed to a decision, that is, 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 to real estate proposals.

The great bulk of conditional approvals were in the real estate sector. Only 54 proposals outside the real estate sector were approved subject to conditions. The main kind of condition that was applied in the non-real estate sectors was to ensure headquarters and/or other key functions remain in Australia. For real estate, 2,244 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**

### **General summary**

Table 2.2 provides details for 2000-01 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. Additionally, the increase in the notification exemption threshold from \$5 million to \$50 million on 10 September 1999 would have acted to reduce the subsequent number of proposals for existing business assets as well as commercial and rural real estate. 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 services (excluding tourism) sector attracted the largest amount of proposed investment, with approvals totalling \$31.1 billion; and
- ❖ Other major sectors were minerals exploration and development (\$23.7 billion), manufacturing (\$21.9 billion), finance and insurance (\$14.8 billion) and real estate (\$12.7 billion).

**Table 2.2: Approvals by Industry Sector 2000-01 (\$billion)**

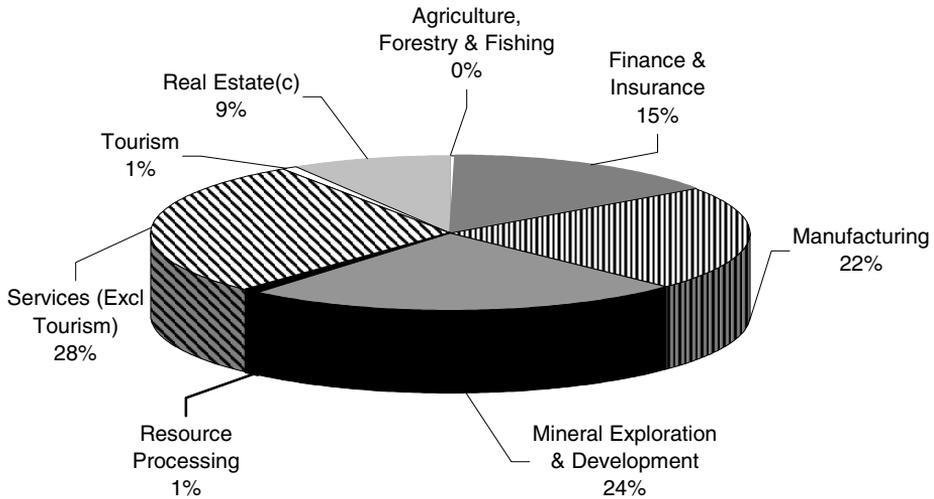
Industry Sector(a)	Number of Approvals(b)	Acquisition Cost	Proposed Investment on Development	Total Proposed Investment
<b>Agriculture, Forestry &amp; Fishing</b>				
Total	10	0.4	..	0.4
<b>Finance &amp; Insurance</b>				
Total	39	14.4	0.4	14.8
<b>Manufacturing</b>				
Total	84	21.5	0.4	21.9
<b>Mineral Exploration &amp; Development</b>				
Total	75	23.3	0.4	23.7
<b>Resource Processing</b>				
Total	7	0.9	..	0.9
<b>Services (Excl Tourism)</b>				
Total	167	28.0	3.1	31.1
<b>Tourism</b>				
Total	42	0.8	..	0.8
<b>Real Estate(c)</b>				
Total	2,810	8.3	4.4	12.7
<b>Total</b>	<b>3,234</b>	<b>97.6</b>	<b>8.7</b>	<b>106.3</b>

Note: Totals may not add due to rounding.

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

- (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 67 proposals involving financing arrangements and corporate restructures.
- (c) Total proposed 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 that is subsequently sold to Australian interests.

**Chart 2.3: Approvals by Industry Sector 2000-01  
(per cent of the value of proposed investment)**



### **Agriculture, forestry and fishing**

The number of proposals to invest in the agriculture, forestry and fishing sector decreased from 18 in 1999-2000 to 10 in 2000-01. Total proposed investment was \$378 million compared to \$800 million in 1999-2000 to \$378 million in 2000-01. The acquisition by the US and Australian owned company, Hancock Victorian Plantations Pty Limited, of Australian Paper Plantations Pty Limited for a consideration of \$150 million was the largest proposal by value in this sector.

### **Finance and insurance**

Total proposed investment in the finance and insurance sector increased from \$3 billion in 1999-2000 to \$14.8 billion in 2000-01. There were 39 proposals approved, of which 9 involved expected investment in excess of \$100 million.

The most significant proposal by value was the off-shore merger between Chase Manhattan Corporation and JP Morgan and Co Inc. In terms of Australian assets, the merger was valued at \$11.8 billion.

## **Manufacturing**

Total proposed investment associated with the manufacturing sector increased from \$21.7 billion in 1999-2000 to \$21.9 billion in 2000-01.

The outcome for particular industry sectors within manufacturing was mixed. Total proposed investment associated with transport equipment companies was higher at \$9.4 billion, up from \$172 million in 1999-2000. Proposed investment in the food, beverage and tobacco sector was \$4.3 billion in 2000-01 up from \$1.6 billion in 1999-2000. However, proposed investment was lower in the electricity and gas sector, \$5.2 billion compared with \$7.7 billion in 1999-2000. Foreign investment proposals associated with the manufacturing of textiles, clothing and footwear; wood and paper products remained at low levels.

As has been the case for a number of years, proposed investment included a number of large acquisitions in the electricity and gas generation sector. A significant proposal was by the Hong Kong companies, Cheung Kong Infrastructure Holdings Limited and Hong Kong Electric International Limited to acquire Powercor Australia Limited for a consideration of \$2.3 billion.

## **Mineral exploration and development**

The number of approved investment proposals in the minerals sector remained steady in 2000-01 (that is, 75 for 1999-2000 and 2000-01). However, total proposed investment increased from \$10.1 billion to \$23.7 billion. This increase was due mainly to the merger of Australia's largest resource company, BHP Limited with Billiton plc, and an increase in foreign investment expenditure in Australia's oil and gas and coal industries.

Some of the most significant acquisitions of Australian assets in the minerals sector during 2000-01 involved one of the world's largest resource groups, the Rio Tinto Group, comprising Rio Tinto Limited and Rio Tinto plc in a dual listed company structure. Approval was granted for Rio Tinto to acquire the minority interests in Comalco Limited (\$1.5 billion), Ashton Mining Limited (\$700 million) and North Limited (\$3.5 billion).

The level of total proposed investment in the oil and gas sector increased substantially from \$0.6 billion in 1999-2000 to around \$11.9 billion in 2000-01. This increase in proposed investment can be attributed to the merger of BHP

Limited and Billiton plc, which was categorised as an oil and gas investment, and to an increase in the number of approvals granted in this sector in 2000-01.

There was a substantial increase in proposed foreign investment in Australia's coal industry from \$1.9 billion in 1999-2000 to over \$5.2 billion in 2000-01. One of the significant coal cases was the acquisition of QCT Resources Limited by a joint venture company owned by Mitsubishi Development Pty Ltd of Japan and BHP Limited. The total proposed consideration was \$830 million.

**Table 2.3: Minerals Sector approvals by number and total proposed investment: 1999-2000 and 2000-01**

Industry	Acquisitions				New Businesses			
	No of approvals		\$million		No of approvals		\$million	
	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01
Gold	18	8	1,408	653	-	-	-	-
Oil and gas	9	11	564	11,881	2	1	363	205
Coal	16	27	1,888	4,108	2	1	998	75
Base metals	6	9	432	341	1	2	1,466	145
Other	19	14	1,926	4,672	2	2	1,083	10
<b>Total</b>	<b>68</b>	<b>69</b>	<b>6,219</b>	<b>21,655</b>	<b>7</b>	<b>6</b>	<b>3,910</b>	<b>435</b>

### Resource processing

There were 7 approvals in the resource-processing sector during 2000-01, with a total proposed investment of \$0.9 billion. In 1999-2000 there were 14 approvals with a value of \$5.5 billion. The largest of the approved proposals for 2000-01 was the acquisition by the French owned Pechiney SA of the AMP Group's 15.5 per cent interest in the Tomago Aluminium Smelter in NSW, for a consideration of approximately \$400 million.

### Service industries (excluding tourism)

During 2000-01, there were 167 proposals approved for investment in the service industries sector (excluding tourism), comprising 18 proposals to establish new businesses and 149 proposed acquisitions of interests in existing businesses. The total proposed investment for the establishment of new businesses and existing businesses was \$31.1 billion.

There were 41 proposals involving investment of over \$100 million, of these, 6 were for more than \$1 billion.

The largest proposal by value in the communications industry was the share acquisition, for a consideration of \$6 billion, by Liberty Media Corporation in

The News Corporation Limited, as part of The News Corporation's acquisition of Liberty Media Corporation's shares in the US Company Gemstar-TV Guide International Inc.

### **Tourism**

There was a decrease, from \$2.4 billion in 1999-2000 to \$800 million in 2000-01, in proposed investment in the tourism sector. Of the 42 proposals approved in this sector, two involved proposed investment in excess of \$100 million.

### **Urban real estate**

Urban land is broadly defined under the *Foreign Acquisitions and Takeovers Act 1975* 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).

A number of changes to foreign investment policy announced in September 1999 have acted to reduce the number of foreign investment applications associated with urban land. These changes involved an increase in the notification threshold applying to the acquisition of developed commercial real estate from \$5 million to \$50 million, a removal of the requirement for Australian citizens and foreign spouses to obtain foreign investment approval when purchasing residential real estate as joint tenants and a similar exemption for holders of special category visas and permanent resident visas when purchasing residential real estate through an Australian company or trust. Additionally, an exemption was provided (in certain instances) for the acquisition of interests in Australian urban land by foreign owned responsible entities of managed investment funds.

Table 2.4 gives a breakdown of approved investments in urban real estate. The number of approvals was less than those approved in 1999-2000, falling from 3,344 in 1999-2000 to 2,810 in 2000-01. Total proposed investment associated with these proposals rose from \$9.5 billion in 1999-2000 to \$12.7 billion in 2000-01, reflecting higher housing costs and investment in higher cost developments.

**Table 2.4: Investment in urban real estate by type and number of proposals approved in 2000-01 (\$ billion)**

	Number of Approvals	Consideration	Proposed Development Expenditure	Total Proposed Investment
<b>For development</b>				
Residential				
ordinary approvals	676	0.2	1.0	1.2
off-the-plan				
individual	509	0.2	-	0.2
developer	229	3.1	-	3.1
annual programs	2	0.2	-	0.2
Total Residential	1,416	3.7	1.0	4.7
Commercial				
ordinary Approvals	56	0.5	3.3	3.8
annual programs	5	0.1	0.1	0.2
<i>Total for development</i>	<i>1,477</i>	<i>4.3</i>	<i>4.4</i>	<i>8.7</i>
<b>Developed</b>				
Residential	1,283	0.6	-	0.6
Commercial	50	3.4	-	3.4
<i>Total developed</i>	<i>1333</i>	<i>4.0</i>	<i>0.0</i>	<i>4.0</i>
<b>Total</b>	<b>2,810</b>	<b>8.3</b>	<b>4.4</b>	<b>12.7</b>

Note: Totals may not add due to rounding.

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

'-' indicates an investment figure of zero.

### **Real estate for development**

During 2000-01, there were 1,477 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a decrease from the 1,731 proposals approved in 1999-2000. Proposed development expenditure was \$4.4 billion compared to \$1.6 billion in 1999-2000. As a consequence of changes in the Government's foreign investment policy applying from September 1999, the acquisition of house and land packages, where construction has not commenced, are treated as vacant land for development rather than under the 'off the plan' category.

**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 676 proposals (879 in 1999-2000) by foreign interests to acquire residential real estate for development were approved in 2000-01, with a total proposed investment of \$1.2 billion (\$1.3 billion 1999-2000). Such approvals have a condition that continuous development must commence on the land/site within 12 months of approval. 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 section on Residential Real Estate Compliance).

In 2000-01, 509 proposals from individuals were approved under the '**off the plan arrangements**', involving proposed investment of around \$200 million. In addition, there were 229 applications approved from real estate developers seeking 'advance approval' to sell property 'off the plan' to foreign persons (compared with 280 in the previous year). The value of such developments fell from \$3.5 billion to \$3.1 billion.

Certain points should be noted in relation to the Board's statistics dealing with 'off the plan' applications. First, the Board's figures overstate the likely extent of foreign purchases as few developers with 'off the plan' approvals will sell 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).

Secondly, the 'off the plan' category has 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.

The **annual program** arrangements are designed to avoid the need for established 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, or acquisitions of heritage listed properties would require an additional application, separately submitted to the Board for examination. In 2000-01, 7 annual programs were approved. These arrangements involved residential and commercial real estate for development totalling broadly \$300 million in proposed acquisition costs.

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 sold following development.

Approval was given to 56 proposals to purchase land for **commercial development** involving total proposed investment of \$3.8 billion. This was a decrease on the 87 proposals approved during 1999-2000.

There was a decrease from 31 rejections in 1999-2000 to 10 rejections in 2000-01 in relation to the proposed acquisition of residential real estate for development (including 'off the plan' dwellings). Of these, 3 involved vacant land for development and 7 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 an expectation that proposed development expenditure should be equivalent to at least 50 per cent of the acquisition price);
- ❖ 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;
- ❖ the proposal did not add to the housing stock;
- ❖ 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 (see Appendix A). In 2000-01, 1,283 proposals were approved for developed residential real estate compared to 1,540 in 1999-2000.

Reflecting the comparatively restrictive nature of the policy, there were 31 rejections in 2000-01 (57 in 1999-2000) of proposed acquisitions of developed residential property. The total potential acquisition cost involved in these rejected proposals was \$8.1 million. These proposals were rejected because the prospective buyers did not fall into an eligible category.

In 2000-01 there were 50 approvals to purchase interests in **developed commercial real estate** (for example, shopping centres, offices, warehouses, etc) involving total proposed investment of \$3.4 billion. This represents a decrease on the 73 approvals in 1999-2000 but an increase in value from \$2 billion in 1999-2000. The fall in the number of approvals can be attributed partly to the increase in the exemption threshold for commercial real estate from \$5 million to \$50 million that occurred in September 1999.

### **Real estate by state**

Table 2.5 provides details of approved investment in all categories of urban real estate (that is residential and commercial) for each State and Territory. Victoria and New South Wales were the main locations for proposed foreign investment in urban real estate by value, with 38 per cent and 34 per cent respectively of the total in 2000-01. Queensland also had significant foreign investment approvals accounting for 15 per cent of the total value (down from 18 per cent in 1999-2000).

**Table 2.5: Total proposed investment in urban real estate by category of real estate and location of investment, approved in 2000-01 (\$ million)**

Location	For Development		Developed		Total
	Residential	Commercial	Residential	Commercial	
Victoria	872	3,247	99	535	4,753
New South Wales	1,850	416	348	1,733	4,347
Queensland	1,545	52	74	198	1,869
Western Australia	294	43	84	7	428
Other(a)	105	158	26	957	1,246
<b>Total</b>	<b>4,666</b>	<b>3,916</b>	<b>631</b>	<b>3,430</b>	<b>12,643</b>
<b>Number of proposals</b>	<b>1,416</b>	<b>61</b>	<b>1,283</b>	<b>50</b>	<b>2,810</b>

Note: Totals may not add due to rounding.

(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. Therefore, the Government seeks to ensure that where foreign interests acquire residential real estate for development, any stated development is carried out within a reasonable time (this usually involves 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 (which may result in a significant capital loss for the purchaser) and/or penalties by way of a prosecution for an offence under Section 25 of the FATA. Section 25 provides for financial penalties or imprisonment on conviction.

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, public presentations and in response to inquiries. In addition, information is provided by other government departments, such as by the Department of Immigration and Multicultural Affairs 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 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 FATA to supply the information within a specified time.

## **Approvals by country of investor**

Data on proposed investment associated with approvals in 2000-01 are shown by country, disaggregated by State 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 2000-01. The other major sources of foreign investment were the United Kingdom, Germany and Canada.

- ❖ Approved proposed investment from the United States was \$47.5 billion. This represented around 45 per cent of all total approved foreign investment compared to 38 per cent in 1999-2000. This proposed investment was concentrated in the services, finance and insurance and manufacturing sectors.
- ❖ Approved proposed investment from the UK increased from \$11.5 billion in 1999-2000 to \$22.7 billion in 2000-01.
- ❖ Germany and Canada continued as major foreign investors contributing \$4.7 billion (\$4.1 billion in 1999-2000) and \$3.6 billion (\$3.1 billion in 1999-2000), respectively in 2000-01.
- ❖ Hong Kong and Japan continued as major foreign investors in 2000-01 with approved investment of \$3.1 billion (\$2.7 billion in 1999-2000) and \$2.7 billion (\$1.5 billion in 1999-2000) respectively.

**Table 2.6: Proposed investments by country by state 2000-01 (\$billion)**

	USA	UK	Germany	Canada	Hong Kong	Japan	Other/ Aust(a)	Total
NSW	1.7	1.4	0.8	0.1	0.3	0.1	4.7	9.1
Victoria	1.6	0.6	0.1	0.1	0.2	0.1	4.9	7.6
WA	1.6	0.7	-	0.7	-	0.2	1.5	4.7
Queensland	1.8	0.5	0.6	0.1	0.1	1.8	2.5	7.4
More than one (b)	19.9	18.7	3.0	0.3	2.5	0.3	5.3	50.0
Offshore takeovers	20.6	-	0.2	2.3	-	-	0.4	23.5
Other(c)	0.3	0.8	-	-	-	0.2	2.8	4.1
<b>Total</b>	<b>47.5</b>	<b>22.7</b>	<b>4.7</b>	<b>3.6</b>	<b>3.1</b>	<b>2.7</b>	<b>22.1</b>	<b>106.4</b>

Note: Totals may not add due to rounding.

(a) Includes proposed investment from Australian controlled companies.

(b) Includes proposals where the investment is proposed to be undertaken in more than one State or Territory.

(c) Includes investment in the ACT, NT, Tasmania and South Australia.

**Table 2.7: Total proposed investment associated with approved proposals, by country of investors and industry sector 2000-01 (\$million)**

	Number of Proposals(c)	Agriculture Forestry & Fishing	Finance & Insurance	Manufacturing	Mineral Exploration & Development	Real Estate	Resource Processing	Services (excluding Tourism)	Tourism	Total
USA	318	198	12,232	10,995	2,326	376	113	21,199	58	47,497
UK	990	-	812	2,732	15,973	734	1	2,330	118	22,700
Germany	133	-	797	880	195	1,342	-	1,454	-	4,668
Canada	76	51	18	38	731	143	-	2,653	-	3,634
Hong Kong	23	-	-	2,669	-	319	-	94	-	3,082
Japan	109	26	311	213	1,845	179	18	87	-	2,679
New Zealand	38	117	168	1,420	98	105	-	752	2	2,662
Singapore	207	-	-	950	-	460	-	300	339	2,049
Netherlands	58	58	3	-	113	990	224	448	3	1,839
France	74	-	10	492	-	116	-	234	163	1,365
South Africa	203	-	11	94	237	83	-	643	3	1,071
Switzerland	47	2	340	-	466	12	-	228	-	1,048
Sweden	20	-	-	667	-	3	-	17	-	687
Norway	4	-	-	-	-	2	-	-	-	2
Not Allocated(a)	231	-	-	-	19	3,181	-	-	-	3,200
World Other	919	1	65	353	1,078	2,330	159	305	93	4,384
Sub-total	3,450	453	14,767	21,503	23,081	10,375	865	30,744	779	102,567
Australia(b)	82	-	18	408	689	2,278	-	374	7	3,774
<b>Total</b>	<b>3,532</b>	<b>453</b>	<b>14,785</b>	<b>21,911</b>	<b>23,770</b>	<b>12,653</b>	<b>865</b>	<b>31,118</b>	<b>786</b>	<b>106,341</b>

Note: 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 on Australia's international investment, which are compiled in accordance with the relevant international statistical standards promulgated by the OECD and IMF, are based on different criteria from those used by the Board. ABS data are a measure of the actual cross-border transactions that have occurred and the level of foreign investment held at a particular time. The Board's figures are an aggregation of the proposals submitted for approval, regardless of the source of finance used, along with the proposed associated expenditures. The limitations of the Board's data are explained in Chapter 2.

### **Foreign investment flows**

Foreign investment transactions involve changes in the levels of Australian foreign assets and liabilities (including the creation or extinction of foreign assets and liabilities). 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 with the rest of the world, that is, the inflow of foreign investment into Australia, minus the outflow of Australian investment abroad.

International investment statistics are divided into 'direct', 'portfolio', 'financial derivatives', 'other investment' and 'reserve assets'. Under the international standards used to compile ABS 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, including financial derivatives. *Reserve assets* are those external financial assets available to and controlled by the Reserve Bank of Australia or the Commonwealth Treasury for use in financing payment imbalances or intervention in foreign exchange markets.

**Table 3.1: Foreign investment flows (\$billion)<sup>(a)</sup>**

	1996-97	1997-98	1998-99	1999-00	2000-01
<b>Foreign Investment in Australia</b>					
Direct Investment					
Equity & Reinvested Earnings	11.2	9.1	12.5	9.0	7.0
Other Capital	0.1	1.2	-1.1	2.7	3.6
Portfolio Investment					
Equity	3.6	17.2	16.0	-1.5	13.9
Debt	16.1	3.5	-1.5	21.8	23.9
Other Investment(c)	6.5	10.4	18.2	13.2	7.3
<i>Total Foreign Investment in Australia</i>	37.5	41.4	44.1	45.2	55.7
<b>Australian Investment Abroad</b>					
Direct Investment					
Equity & Reinvested Earnings	-6.0	-7.4	-3.7	-4.3	-14.0
Other Capital	-0.4	0.0	1.3	2.3	1.5
Portfolio Investment					
Equity	-3.8	0.7	-4.8	-6.5	-9.6
Debt	-0.6	-0.2	-3.2	0.0	-4.3
Other Investment(c)	-3.9	-10.2	-3.9	-0.6	-3.5
Reserve Assets	-5.2	0.5	-0.4	-2.6	-8.9
<i>Total Australian Investment Abroad</i>	-19.9	-16.6	-14.7	-11.7	-38.8
<b>Net Foreign Investment(b)</b>	<b>17.6</b>	<b>24.8</b>	<b>29.4</b>	<b>33.5</b>	<b>16.9</b>

Note: Figures may not add due to rounding.

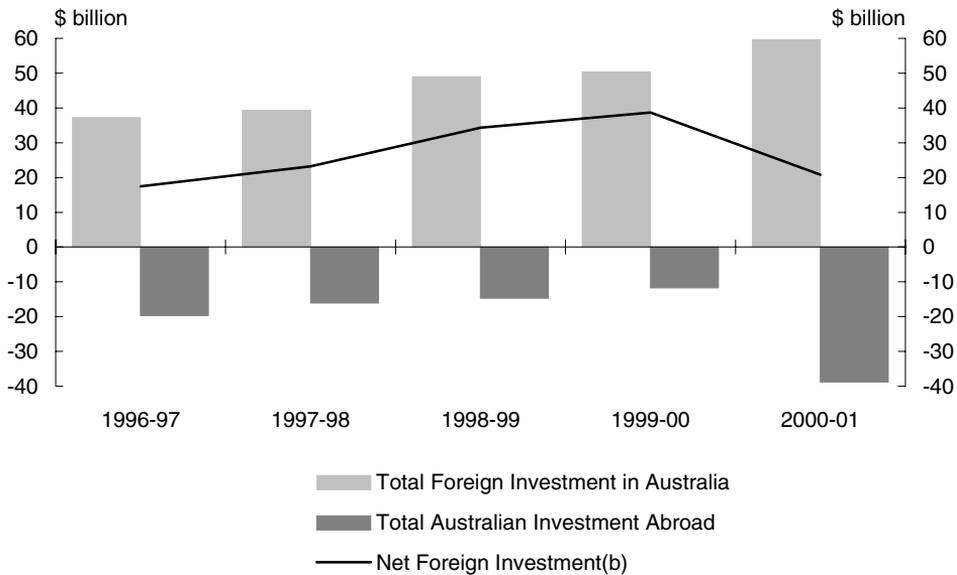
- (a) In keeping with balance of payment conventions, credit entries are shown without sign and debit items are shown as negative entries. Thus, investment flows going from Australia to offshore destinations are shown as a negative.
- (b) The net foreign investment figure has been derived from determining the difference between foreign investment in Australia and Australian investment abroad.
- (c) Other Investment includes financial derivatives.

Source: ABS 5302.0 Balance of Payments and International Investment Position, Australia, September Qtr 2001.

Table 3.1 provides a breakdown of the flow of foreign investment over the past five years measured by ABS statistics. Chart 3.1 provides a summary of the major trends in foreign investment flows from the same data.

Chart 3.1 highlights the annual fluctuations of foreign investment flows into and out of Australia over the past five financial years. There was an upward trend in net foreign investment flows from 1996-97 to 1999-2000. However, the trend was reversed in 2000-01 due to a substantial increase in Australian investment abroad.

**Chart 3.1: Foreign investment flows**



### Foreign investment levels

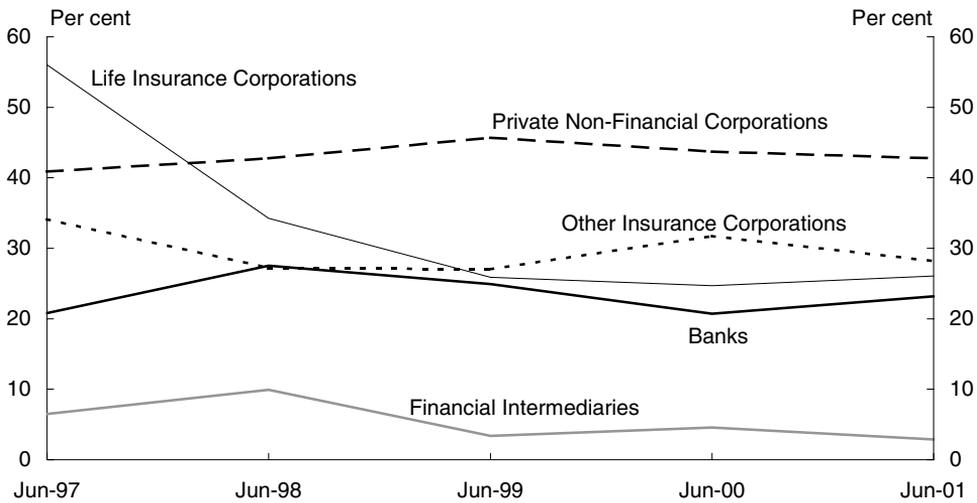
The ABS estimated level, or stock, of foreign investment in Australia as at 30 June 2001 was \$809 billion. This represented an increase of \$87 billion, or 12.1 per cent, over the level at 30 June 2000.

In comparison, the level of Australian investment abroad as at 30 June 2001 was \$417 billion. This represented an increase of \$37 billion or 9.7 per cent, over the level at 30 June 2000.

Chart 3.2 shows over the period 30 June 2000 to 30 June 2001, the percentage of foreign ownership of Australian equity increased for banks and life insurance corporations but decreased for all other sectors.

Foreign ownership of banks increased from 20.7 per cent to 23.2 per cent and life insurance corporations increased from 24.7 per cent to 26.1 per cent. Other insurance corporations, financial intermediaries and private non-financial corporations decreased by 3.6 percentage points, 1.7 percentage points and 0.9 percentage points respectively.

**Chart 3.2: Foreign ownership of Australian equity by sector<sup>(a)</sup>**



Source: ABS 5232.0 Financial Accounts, Australia, June Qtr 2001.

Of the total equity on issue at 30 June 2001, non-residents held equity valued at \$354 billion (28 per cent) while residents held equity valued at \$870 billion (72 per cent). Although the proportion of equity held by non-residents has decreased from 29 per cent to around 28 per cent over the period 30 June 2000 to 30 June 2001, the total value of equity on issue has increased by 7 per cent from \$1,141 billion to \$1,223 billion.

## ***Summary of Australia's Foreign Investment Policy as at 30 June 2001***

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### **General**

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

2. 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 that arise from foreign investment.

3. 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 contrary to the national interest. The Act also provides legislative backing for ensuring compliance with the policy.

4. In August and September 1999, the Government announced a number of changes to its foreign investment policy (and the Foreign Acquisitions and Takeovers Regulations), designed to reduce notification obligations on business and to streamline the administration of foreign investment policy, while continuing to ensure that foreign investment is consistent with the interests of the Australian community. These changes are outlined in the Treasurer's Press Release of 3 September 1999 which is available through the

Treasury website. The changes have been incorporated in this policy statement.

5. In the majority of industry sectors, smaller proposals are exempt from notification and larger proposals are approved unless judged contrary to the national interest. The screening process undertaken by the Foreign Investment Review Board (FIRB) 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.

6. 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.

7. By far the largest number of foreign investment proposals involves the purchase of real estate. The Government seeks to ensure that foreign investment in residential real estate increases the supply of residences and is not 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 (that is, new developments — house and land, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers.

8. 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**

9. 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 \$50 million or where the proposal values the business at over \$50 million;
- ❖ proposals 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;
- ❖ takeovers of offshore companies whose Australian subsidiaries or assets are valued at \$50 million or more, or account for more than 50 per cent of the target company's global assets;
- ❖ 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, where the property is subject to heritage listing, valued at \$5 million or more;
  - acquisition of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at \$50 million or more;
  - acquisition of accommodation facilities irrespective of value;
  - acquisition of vacant urban real estate irrespective of value;
  - acquisition of residential real estate irrespective of value; or
- ❖ 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.)

10. 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.

11. Below is an outline of the Government's foreign investment policy and the examination guidelines for the various industry sectors. The majority of proposals will fall within these guidelines. However, some may not. The latter proposals will be examined on a case-by-case basis.

## **Examination by sector**

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

*Rural Businesses and Rural Land, Agriculture, Forestry, Fishing, Resource Processing, Oil & Gas, Mining, Manufacturing, Non-Bank Financial Institutions, Insurance, Sharebroking, Tourism, Most Other Services.*

*(Rural Land is defined as land that is used wholly and exclusively for carrying on a substantial business of primary production. Acquisitions of vacant land that has a rural zoning, 'hobby farms' and 'rural residential' blocks by foreign interests are included within the urban land category.)*

13. 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 \$50 million for acquisitions of substantial interests in all existing businesses, \$10 million or more for the establishment of new businesses and \$50 million or more for offshore takeovers.

14. All tourism proposals, which incorporate an accommodation facility, irrespective of value, need to be notified.

15. The Government registers, but normally raises no objections to, proposals above the notification thresholds where the relevant total assets/total investment falls below \$100 million. However, proposals in sensitive sectors or those which raise specific national interest issues may be subject to more detailed examination.

16. The Government fully examines proposals to acquire existing businesses (with total assets of \$100 million or more) or establish new businesses (with a total investment of \$100 million or more) and raises no objections to those proposals unless they are contrary to the national interest.

17. 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.

## **Urban land<sup>1</sup>**

18. Proposed acquisitions of residential real estate are exempt from examination in the case of:

- ❖ Australian citizens living abroad purchasing either in their own name or through an Australian corporation or trust;
- ❖ foreign nationals purchasing (as joint tenants) with their Australian citizen spouse; and

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1 This is a brief summary of the urban land policy. Further details of the urban land policy are provided in the document *Foreign Investment Policy — Urban Land* (available at <http://www.firb.gov.au>).

- ❖ foreign nationals who are the holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' purchasing either in their own name or through an Australian corporation or trust.

19. Proposed acquisitions of real estate for development are normally approved subject to a specific condition requiring continuous substantial construction to commence within 12 months. Once construction is complete, the parties are required to provide the completion date and actual development expenditure.

20. Foreign interests are normally given approval to buy:

- ❖ vacant residential land, including house and land packages where construction has not commenced, (on condition that continuous construction of a dwelling is commenced within 12 months); and
- ❖ house and land packages where construction has commenced, home units, townhouses, etc 'off the plan', under construction or newly constructed but never occupied or previously sold. '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 the dwellings in any one development are sold to foreign interests.

21. Proposed acquisitions of residential property (both vacant land and existing dwellings) which are within the bounds of a resort that the Treasurer had designated as an 'Integrated Tourism Resort' (ITR) prior to September 1999 are exempt from examination. For resorts designated as ITRs from September 1999, the exemption only applies to developed residential property, which is subject to a long term (10 years or more) lease to the resort/hotel operator, making it available for tourist accommodation when not occupied by the owner. All other property, including vacant land for development, within the ITR would be subject to the normal foreign investment restrictions. Strict conditions must be fully met to qualify for Integrated Tourism Resort status.

22. Certain categories of foreign nationals, temporarily resident in Australia continuously for more than 12 months, may be given approval to purchase developed residential real estate for use as their principal place of residence (that is, not for rental purposes) while in Australia. 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.

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

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

25. 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. Proposed acquisitions of strata titled hotel accommodation may be approved in certain designated hotels. Full details of the requirements for designated hotels are contained in the Australian urban land policy summary. Other accommodation facilities such as guesthouses, holiday flats and undesignated strata titled hotels and motels are examined under policy applying to the residential real estate sector.

### ***Banking***

26. 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 a case-by-case basis and judged on its merits.

27. 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*

28. Foreign persons (including foreign airlines) can generally expect approval to acquire up to 100 per cent of the equity in an Australian domestic airline, unless this is contrary to the national interest.

### *International services*

29. Foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or 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**

30. 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**

31. The *Shipping Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (that is, 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**

32. All direct (that is, 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**

33. While proposals for a foreign person to acquire an interest in an existing broadcasting service or to 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.

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

### **Newspapers**

35. 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**

36. Telstra Corporation Ltd (Telstra) is predominantly owned by the Commonwealth of Australia. Since October 1997, the Government has partially privatised Telstra through the sale of 49.9 per cent of its equity to institutional and individual investors. Aggregate foreign ownership of Telstra is restricted to 35 per cent of that privatised equity and individual foreign investors are only allowed to acquire a holding of no more than 5 per cent of that privatised equity.

37. 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 normally be approved unless judged contrary to the national interest.

### **Approval period**

38. 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.

39. 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.

40. 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.

41. 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 (for example, real estate speculation) that would be contrary to the national interest. In this situation the extended period will be stated in the approval.

## **Applications**

42. The information normally required to enable foreign investment proposals to be processed is set out below. Copies of relevant annual reports for the most recent financial year should accompany the application. There is no statutory charge for processing applications.

43. All applications should be addressed in writing to:

The Executive Member  
Foreign Investment Review Board  
c/- The Treasury  
CANBERRA ACT 2600

44. The Government recognises the commercial-in-confidence sensitivity of much of the information provided to the Board. The Government respects this confidential status and ensures that appropriate security is given to it. Where third parties outside of Government seek to obtain access to confidential information held by the Government, it will not be made available without the permission of the applicant, except upon the order of a court of competent jurisdiction. In this respect, the Government will pursue the defence of this policy through the judicial system.

45. In addition, the Government is obligated to respect the privacy of personal information that is provided by applicants to the Foreign Investment Review Board in accordance with the requirements of the *Privacy Act 1988*. In accordance with that Act, the Government advises that in situations where the applicant has breached, or is strongly suspected of having breached the FATA, the Board may seek the assistance of other Government agencies in its

efforts to ensure applicants comply with the FATA. In seeking such assistance, the Board may pass relevant personal information to those government agencies. Most commonly these agencies will be the Department of Immigration and Multicultural Affairs, the Australian Tax Office or the Australian Federal Police.

46. The requirements set out below are supplementary to those of the notification provisions of sections 25, 26 and 26A of the FATA (for which there are prescribed forms).

### **Takeovers of enterprises with total assets of (or valued at) \$100 million and over**

#### *A. Parties to the proposal*

For both the purchaser and target business

- ❖ name
- ❖ location of major establishments
- ❖ major activities
- ❖ major subsidiaries and associated companies
- ❖ financial details for the most recent year, namely, total assets, net tangible assets and pre-tax profits (with the most recent financial statements)
- ❖ details of Australian/overseas ownership (including identity of ultimate or beneficial owners)
- ❖ country of ultimate control of purchaser

#### *B. Type of proposal*

- ❖ acquisition/issue of shares
  - the number, class and voting rights of shares, including the percentage of the total equity involved
- ❖ acquisition of assets
  - description of the assets involved
- ❖ agreements/arrangements entered into or terminated; alteration of a constituent document

- full details, supported by copies of appropriate documents or relevant extracts therefrom

*C. Consideration*

- ❖ amounts involved
- ❖ type of funds (equity/loan), source of funds (from overseas associate companies, from Australian capital market, etc)

*D. Reason(s) for the proposal*

- ❖ from viewpoints of the vendor, target and purchaser

*E. Brief description of the purchaser's future intentions for the business, including amount of development expenditure proposed*

**Takeovers of enterprises with total assets of (or valued at) less than \$100 million**

*A. Parties to the proposal*

For both the purchaser and target business

- ❖ name
- ❖ location of major establishments
- ❖ major activities
- ❖ details of total assets (with relevant balance sheets)
- ❖ country of ultimate control of purchaser

*B. Type of proposal*

- ❖ describe whether it involves shares or assets of an existing business
- ❖ if it is a reorganisation of shares/assets or other arrangements within a corporate group
- ❖ if it is a rural property, and, if so, the number of hectares, current and proposed use of the property

**C. Consideration and proposed expenditure**

- ❖ amounts involved including proposed development expenditure, if any

**New business or project involving total investment (including debt) during the establishment phase of \$100 million and above**

**A. Parties to the proposal**

- ❖ name, location, major activities and scale of each, major affiliates (Australian/overseas)
- ❖ financial details for the most recent year, namely, total assets, net tangible assets and pre-tax profits together with relevant balance sheets and profit and loss and trading accounts

**B. The proposal**

- ❖ description of proposal: total funds to be invested and the proportion of these to be provided as equity capital, the sources of the loan and equity capital (from overseas associates, Australian capital market, etc), the proposed location of the investment, the purpose of the investment

**C. Ownership of the proposed business**

- ❖ details of proposed beneficial ownership (identify shareholdings by associated interests) and the corresponding pattern of voting rights held, board representation rights, and other rights concerning management and control

**D. Industry information**

- ❖ a description of the industry in which the new venture will be engaged and its expected position in the industry, other significant members of the industry, their ownership and respective shares of the market

*E. Other considerations*

- ❖ information should also be provided on any patents, royalty and licensing arrangements and export franchises held by the applicant and which might be made available to the local firm and the basis on which these would be made available; what restrictions, if any, will be placed on the new venture together with any plans for local research and development
- ❖ describe the environmental impact, if any, of the proposal, and provide details of any environmental studies undertaken
- ❖ describe efforts, if any, made to obtain Australian participation in the proposal
- ❖ for mining proposals, describe plans, if any, for value adding activity in Australia or any value adding opportunities which may flow from the project

**New business or project involving total investment (including debt) during the establishment phase of less than \$100 million**

*A. Parties to the proposal*

- ❖ name, location, major activities and scale of each, major affiliates (Australian/overseas)
- ❖ financial details for the most recent year, that is, total assets, together with relevant balance sheets

*B. The proposal*

- ❖ description of proposal: total funds to be invested and a description of the industry in which the new venture will be engaged

*C. Ownership of the proposed business*

- ❖ details of proposed beneficial ownership (identify shareholdings by associated interests)

## **Urban real estate acquisitions**

Please refer to the separate summary of the policy applying to the acquisition of interests in Australian urban land (available at <http://www.firb.gov.au>).

## **Further enquiries**

Should you have any further enquiries contact please contact the Executive on:

General enquiries (02) 6263 3795

Fax (02) 6263 2940

From overseas

General enquiries 61 - 2 - 6263 3795

Fax 61 - 2 - 6263 2940

E-mail [firb@treasury.gov.au](mailto:firb@treasury.gov.au)

Further information on Australia's foreign investment policy may be found at: <http://www.firb.gov.au>

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

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### **Legislation**

1. Foreign Acquisitions and Takeovers Regulations (Amendment), No 199 — **10 September 1999**.
2. Foreign Acquisitions and Takeovers Regulations (Amendment), No 416 — **17 January 1996**.
3. Foreign Acquisitions and Takeovers Regulations (Amendment), No 295 — **31 August 1994**.
4. Foreign Acquisitions and Takeovers Regulations (Amendment), No 302 — **24 September 1991**.
5. *Foreign Takeovers Amendment Act 1989*, No 14 of 1989 — **August 1989**.
6. *Commonwealth Functions (Statutes Review) Act 1981*, No 74 of 1981 — **June 1981**.
7. Statutory Rules 1976, No 203 — **September 1976**.
8. *Foreign Takeovers Amendment Act 1976*, No 93 of 1976 — **September 1976**.
9. Statutory Rules 1975, No 226 — **December 1975**.
10. *Foreign Takeovers Act 1975*, No 92 of 1975 — **August 1975** (now known as the *Foreign Acquisitions and Takeovers Act 1975* as amended).
11. *Companies (Foreign Take-overs) Act 1973*, No 199 of 1973 — **December 1973**.
12. *Companies (Foreign Take-overs) Act 1972*, No 134 of 1972 — **November 1972**.

## **Policy statements**

1. Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Approval of BHP Limited-Billiton Plc Merger — **4 June 2001**.
2. Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Proposal — Shell Australia Investments Limited's Acquisition of Woodside Petroleum Limited — **23 April 2001**.
3. Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Case: Acquisition by Air New Zealand Limited of the News Corporation's 50 per cent interest in Ansett Holdings Limited — **13 June 2000**.
4. Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp — Virgin receives Foreign Investment Approval — **7 December 1999**.
5. Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Policy Changes — **3 September 1999**.
6. Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Case: Tyndall Australia Ltd's Portfolio Investment in John Fairfax Holdings Ltd — **4 August 1998**.
7. 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**.
8. 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**.
9. 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**.
10. Statement by the Treasurer, the Hon. P. Costello, MP — Uranium Sector — **19 November 1996**.

11. Statement by the Treasurer, the Hon. P. Costello, MP — Rationalisation of Notification Thresholds for Portfolio Investments in the Media Sector — **18 September 1996.**
12. 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.**
13. Statement by the Treasurer, the Hon. J. Dawkins, MP — Foreign Investment Policy: Mass Circulation Newspapers — **20 April 1993.**
14. 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.**
15. Statement by the Treasurer, the Hon. J. Dawkins, MP — Economic Statement: Foreign Investment Policy Changes — **26 February 1992.**
16. Statement by the Treasurer, the Hon. J. Kerin, MP — Foreign Investment in the Print Media — **10 October 1991.**
17. Statement by the Treasurer, the Hon. J. Kerin, MP — Foreign Investment Policy: Integrated Tourism Resorts — **25 July 1991.**
18. 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.**
19. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy: New Oil and Gas Developments — **20 January 1988.**
20. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy: Developed Residential Real Estate — **29 September 1987.**
21. Statement by the Treasurer, the Hon. Paul Keating, MP — Thin Capitalisation and Corporate Restructures in relation to Foreign Investment Policy — **30 April 1987.**

*Appendix B: Legislation, Policy Statement and Publications*

22. Statement by the Treasurer, the Hon. Paul Keating, MP — Further Liberalisation of Foreign Investment Policy — **30 April 1987**.
23. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy Relaxations — **28 July 1986**.
24. Statement by the Acting Treasurer, the Hon. Chris Hurford, MP — Economic and Rural Policy Statement — **15 April 1986**.
25. Statement by the Acting Treasurer, the Hon. Chris Hurford, MP — Review of Foreign Investment Policy — **29 October 1985**.
26. Statement by the Treasurer, the Hon. Paul Keating, MP — New Banking Authorities — **27 February 1985**.
27. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy and Stockbroking — **18 December 1984**.
28. Statement by the Treasurer, the Hon. Paul Keating, MP — Participation in Banking in Australia and Other Issues of Financial Deregulation — **10 September 1984**.
29. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy and Stockbroking — **18 April 1984**.
30. Statement by the Treasurer, the Hon. Paul Keating, MP — Review of Foreign Investment Policy — **20 December 1983**.

## **Publications**

- ❖ Foreign Investment Review Board Reports: 1977 to 2001.
- ❖ Australia's Foreign Investment Policy — A Guide for Investors, Revised September 1992.
- ❖ Foreign Investment Policy and Administration — Outline for Conference of Australian Institute of Company Directors held in Adelaide 13-14 May 1999.
- ❖ Guidelines relating to Australia's Foreign Investment Policy:
  - General Summary;
  - Urban Land; and
  - Primary Production Businesses and Rural Land

(updated regularly)

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



## ***Press Releases — 2000-2001***

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- No. 2001/040 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Approval of BHP Limited-Billiton Plc Merger — **4 June 2001.**
- No. 2001/025 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Proposal — Shell Australia Investments Limited's Acquisition of Woodside Petroleum Limited — **23 April 2001.**
- No. 2000/055 Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp — Foreign Investment Review Board Report: 1999-2000 — **21 December 2000.**
- No. 2000/076 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Proposal: Rio Tinto Limited/North Limited — **24 July 2000.**



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

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### **3 May 2000**

The Aviation Legislation Amendment Bill (No. 1) 2000 increased the maximum percentage of equity permitted by a foreign airline in an Australian international carrier (other than Qantas) to 49 per cent. Previously a foreign airline was permitted to own up to 25 per cent.

Note: 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.

### **29 October 1999**

The Government amended the policy concerning domestic civil aviation to allow foreign persons, including foreign airlines, to acquire up to 100 per cent of the equity of an Australian domestic airline, unless the acquisition is contrary to the national interest. Previously, foreign airlines flying to Australia were permitted to own up to 25 per cent of the equity in a domestic carrier individually or up to 40 per cent in aggregate.

### **10 September 1999**

Numerous changes were made to the *Foreign Acquisitions and Takeovers Regulations 1989*. These included changes to the notification thresholds, that is:

- ❖ increases in the notification threshold for foreign investment in existing businesses from \$5 million (\$3 million for rural businesses) to \$50 million;

#### *Appendix D: Chronology of Policy Measures*

- ❖ an increase in the notification threshold from \$20 million to \$50 million for the Australian assets of an offshore company where it is to be acquired by another offshore company;
- ❖ an increase in the notification threshold applying to the acquisition of developed non-residential commercial real estate (including certain lease arrangements) from \$5 million to \$50 million except where such properties are subject to heritage listing (in that case the threshold remains at \$5 million).

Other amendments to regulations specify:

- ❖ an exemption so that Australian citizens and their foreign spouses purchasing as joint tenants are no longer required to seek approval for purchases of residential real estate in Australia;
- ❖ an exemption to remove foreign investment approval requirements for individuals who hold, or are entitled to hold, a special category visa, or who hold a permanent visa and invest in Australian residential real estate through Australian companies and trusts;
- ❖ an exemption for the acquisition of interests in Australian urban land by foreign owned responsible entities of managed investment funds (under section 601EB of the Corporations Law) provided such investment is primarily for the benefit of scheme members ordinarily resident in Australia;
- ❖ rules to permit the acquisition by foreign interests of strata-titled hotel rooms in designated hotels where each room is subject to a long-term (10 years or more) hotel management agreement and where management retains ownership of the common property;
- ❖ rules to limit the exemption provided by newly designated Integrated Tourist Resorts so that the exemption from the normal foreign investment restrictions only applies to foreign purchasers of developed property which is subject to a long term lease to the resort/hotel operator making it available for tourist accommodation when not occupied by the owner; and
- ❖ rules to clarify the scope of a certificate of exemption issued by the Treasurer for foreign interests acquiring real estate off-the-plan, as provided in the existing regulation 3(e).

### **1 April 1999**

The policy relating to applications by developers seeking advanced approval to sell up to 50 per cent of a development to foreign investors was altered so that only developers with ten or more (previously four or more) dwellings could apply for advanced approval (in special circumstances, advance approval may be given for developments consisting of between four and ten dwellings). The other change affecting this category was that the reporting requirements were relaxed so that developers are required to report all sales (that is, Australian and foreign) to the Board every twelve months (previously every six months) until all the dwellings in the development have been sold or occupied.

### **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 on 9 October 1996. 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 5 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), that is, 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' (that is, 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.

# ***OECD Guidelines for Multinational Enterprises***

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Revised in 2000

## **Preface**

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) were revised in 2000. The Guidelines are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries, service and technology enterprises have entered the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct

investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate standards and principles of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have called upon consulting, auditing and certification services, contributing to the

accumulation of expertise in these areas. These efforts have also promoted social dialogue on what constitutes good business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of this framework, starting with the adoption in 1948 of the Universal Declaration of Human Rights. Recent instruments include the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21 and the Copenhagen Declaration for Social Development.

9. The OECD has also been contributing to the international policy framework. Recent developments include the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the OECD Principles of Corporate Governance, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, and ongoing work on the OECD Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administrations.

10. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of firms, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continual improvement of both

domestic and international policies with a view to improving the welfare and living standards of all people.

## I. Concepts and principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable.

2. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

3. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

4. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

5. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines* recommendations to the fullest extent possible.

6. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

7. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries, the governments concerned will co-operate in good faith with a view to resolving problems that may arise.

8. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

9. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

10. Governments adhering to the *Guidelines* will promote them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

## **II. General policies**

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*.
11. Abstain from any improper involvement in local political activities.

### **III. Disclosure**

1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. This information should be disclosed for the enterprise as a whole and, where appropriate, along business lines or geographic areas.

Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported.

3. Enterprises should disclose basic information showing their name, location, and structure, the name, address and telephone number of the parent enterprise and its main affiliates, its percentage ownership, direct and indirect in these affiliates, including shareholdings between them.

4. Enterprises should also disclose material information on:

- (a) The financial and operating results of the company;
- (b) Company objectives;
- (c) Major share ownership and voting rights;
- (d) Members of the board and key executives, and their remuneration;
- (e) Material foreseeable risk factors;
- (f) Material issues regarding employees and other stakeholders; and
- (g) Governance structures and policies.

5. Enterprises are encouraged to communicate additional information that could include:

- (a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. In addition, the date of adoption, the countries and entities to which such statements

apply and its performance in relation to these statements may be communicated;

- (b) Information on systems for managing risks and complying with laws, and on statements or codes of business conduct; and
- (c) Information on relationships with employees and other stakeholders.

#### **IV. Employment and industrial relations**

1. Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

- (a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
- (b) Contribute to the effective abolition of child labour;
- (c) Contribute to the elimination of all forms of forced or compulsory labour; and
- (d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

- 2. (a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
- (b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; and
- (c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
4.
  - (a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country; and
  - (b) Take adequate steps to ensure occupational health and safety in their operations.
5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.
6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.
8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

## **V. Environment**

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

- (a) Collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
- (b) Establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
- (c) Regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- (a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
- (b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and

services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

- (a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
- (b) Development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
- (c) Promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and
- (d) Research on ways of improving the environmental performance of the enterprise over the longer term.

7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

## **VI. Combating bribery**

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channelling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.
3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programmes and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of 'off the books' or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

6. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.

## **VII. Consumer Interests**

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

## **VIII. Science and technology**

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.

2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

## **IX. Competition**

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:
  - (a) To fix prices;
  - (b) To make rigged bids (collusive tenders);
  - (c) To establish output restrictions or quotas; or
  - (d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce;
2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.

3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.
4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

## **X. Taxation**

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.



## ***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/- The Treasury  
CANBERRA ACT 2600

*Executive Member* — Dr Jim Hagan

Tel: (02) 6263 3763

### **General enquiries**

- ❖ General Enquiries: (02) 6263 3795
- ❖ Overseas: (61-2) 6263 3795
- ❖ Fax: (02) 6263 2940
- ❖ E-mail Address: [firb@treasury.gov.au](mailto:firb@treasury.gov.au)
- ❖ Internet address: <http://www.firb.gov.au>

### **Special enquiries**

International & Compliance Unit is responsible for international & compliance issues and real estate acquisitions in Vic, WA, SA & Tas.

*Mr Roy Nixon*

*Manager*

*Tel: (02) 6263 3764*

Primary Industries and Secondary Industries Unit is responsible for Mining, Agriculture, Manufacturing & Resource Processing and real estate acquisitions in NSW & ACT.

*Ms Jo Laduzko*

*Manager*

*Tel: (02) 6263 3864*

Tertiary Industries Unit is responsible for Finance and Insurance, Tourism & Media, Other Services and real estate acquisitions in Qld & NT.

*Mr Grahame Crough*

*Manager*

*Tel: (02) 6263 3834*