

**Foreign Investment
Review Board**

**Annual Report
2007-08**

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20 July 2009

The Hon Wayne Swan MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with the Foreign Investment Review Board's responsibility to advise the Government on foreign investment matters, I submit the Board's Annual Report for the financial year 2007-08.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'M.J. Phillips'.

M.J. Phillips AO
Chairman

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Acronyms and abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
AFP	Australian Federal Police
ANCP	Australian National Contact Point
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
ANZSIC 1993	<i>Australian and New Zealand Standard Industrial Classification (version published in 1993)</i>
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
ASEAN	Association of South-East Asian Nations
ATO	Australian Taxation Office
AUSFTA	Australia-United States Free Trade Agreement
AUSTRAC	Australian Transaction Reports and Analysis Centre
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
EU	European Union
FDI	foreign direct investment
FIMS	Foreign Investment Management System
FIRB (/the Board)	Foreign Investment Review Board
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
FSSA	<i>Financial Sector (Shareholdings) Act 1998</i>
FTA	free trade agreement
IEG	Investment Experts Group
IPPA	investment protection and promotion agreement
ITR	Integrated Tourism Resort
MNE	multinational enterprise

Acronyms and abbreviations (continued)

NCP	National Contact Point
NGO	non-government organisation
OECD	Organisation for Economic Co-operation and Development
Privacy Act	<i>Privacy Act 1988</i>
secretariat (/the Division)	the Treasury's Foreign Investment and Trade Policy Division
SOE	state-owned enterprise
SWF	sovereign wealth fund
the Banks Taskforce	Report of the Taskforce on Reducing the Regulatory Burden on Business
the Board (/FIRB)	Foreign Investment Review Board
the Committee	OECD Investment Committee
the Declaration	<i>OECD Declaration on International Investment and Multinational Enterprises</i>
the Division (/secretariat)	the Treasury's Foreign Investment and Trade Policy Division
the FATA	<i>Foreign Acquisitions and Takeovers Act 1975</i>
the OECD Guidelines	<i>OECD Guidelines for Multinational Enterprises</i>
the PFI	<i>Policy Framework for Investment</i>
the policy	the Government's foreign investment policy
the Regulations	<i>Foreign Acquisitions and Takeovers Regulations 1989</i>
the report	<i>Foreign Investment Review Board Annual Report 2007-08</i>
the Unit	the Division's Investment Review Unit
UK	United Kingdom
US	United States of America
WTO	World Trade Organization

Glossary

Aggregate substantial interest in a corporation	Where two or more persons together with any associate(s), are in a position to control not less than 40 per cent of the voting power or hold interests in not less than 40 per cent of the issued shares, of a corporation (section 9 of the FATA).
Applications approved (/approvals)	Comprises all foreign investment proposals approved either with or without conditions (unless otherwise stated).
Applications considered	Comprises all foreign investment proposals finalised between 1 July 2007 and 30 June 2008 (that is, approved, rejected, withdrawn or exempt).
Applications decided	Comprises all foreign investment proposals approved or rejected between 1 July 2007 and 30 June 2008 (that is, excluding proposals withdrawn or determined exempt).
Applications rejected	Comprises all foreign investment proposals that are either rejected under the policy or subject to a Final Order or a Divestiture Order under the FATA.
Approvals (/applications approved)	Comprises all foreign investment proposals approved either with or without conditions (unless otherwise stated).
Australian urban land corporations and trust estates	A corporation (excluding holding companies) or trust estate where more than half of its assets are in the form of Australian urban land (sections 13D and 13E of the FATA).
Corporate reorganisations	Corporate reorganisations encompass a wide range of transactions including corporate restructures and transfers of assets or shares within a corporate group.
Divestiture Order	An Order that requires an interest already acquired to be disposed of.
FIMS	The Foreign Investment Management System is the Division's electronic case management system.
Final Order	An Order that prohibits a proposed acquisition.
Foreign Investment Review Board (FIRB or the Board)	A non-statutory body established in 1976 to advise the Treasurer on foreign investment policy and its administration.

Glossary (continued)

Foreign person	<p>(a) A natural person not ordinarily resident in Australia;</p> <p>(b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;</p> <p>(c) a corporation in which two 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;</p> <p>(d) 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</p> <p>(e) the trustee of a trust estate in which two 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.</p> <p>(Section 5 of the FATA)</p>
Interim Order	An Order that extends the available statutory examination period and prohibits a proposed acquisition for up to 90 days.
Manufacturing	Comprises manufacturing industries as per ANZSIC 1993, except: - excludes newspaper, printing and publishing (included within services industry sector).
Offshore takeover	Where an offshore company (/foreign person) that holds Australian assets or conducts a business in Australia is acquired by another foreign person, and the Australian assets or businesses of the target company are valued at less than 50 per cent of its global assets.
Off-the-plan	An acquisition of a dwelling under construction or completed that has not been lived in or previously sold.
Order	An order issued under the FATA (that is, an Interim Order, Final Order, Divestiture Order, or Revocation Order).
Portfolio investment	Passive or non-direct investment.

Glossary (continued)

Proposed investment	Proposed investment associated with foreign investment proposals comprises the aggregate of acquisition costs and development expenditure in the case of existing businesses, and the aggregate of establishment costs and development expenditure in the case of new businesses.
Services	Comprises services-related industries as per ANZSIC 1993, except: <ul style="list-style-type: none">- includes newspaper, printing and publishing; and- excludes tourism (recorded as a separate industry sector).
Specific instance	The formal mechanism that provides for an examination of a multinational enterprise's conduct where that conduct is claimed to be contrary to the <i>OECD Guidelines for Multinational Enterprises</i> .
Substantial interest in a corporation	Where a person, alone or together with any associate(s), is in a position to control not less than 15 per cent of the voting power or holds interests in not less than 15 per cent of the issued shares, of a corporation (section 9 of the FATA).
Threshold	Monetary figure under either the policy or the FATA at which foreign persons are expected or required to notify an investment proposal to the Treasurer.

Main points

- In 2007-08, the Foreign Investment Review Board provided advice on proposals received under, and on the administration and reform of, Australia's foreign investment policy and the *Foreign Acquisitions and Takeovers Act 1975*.
- In 2007-08, 7,841 proposals received foreign investment approval. This compares with 6,157 the previous year, representing an increase of 27 per cent. The real estate sector recorded 7,357 approvals (31 per cent higher than the 5,614 approvals in 2006-07). There were 484 proposals approved in other sectors in 2007-08 compared with 543 in 2006-07, a decrease of 11 per cent.
- In 2007-08, one proposal was rejected by way of a Final Order, compared with 27 in 2006-07. There were no Divestiture Orders made in 2007-08, (also none in 2006-07). The Final Order related to a real estate proposal. There were 13 Interim Orders made (90 in 2006-07), extending the 30-day statutory decision-making period by up to 90 days.
- Approvals in 2007-08 involved proposed investment of \$191.9 billion. This represented a 23 per cent increase on the previous year's approvals of \$156.4 billion.
- The mineral exploration and development sector was the largest industry sector by value, with investment approvals in 2007-08 of \$64.3 billion (\$32.3 billion in 2006-07). The other major sectors were: real estate, with approved investment proposals valued at \$45.5 billion (\$21.4 billion in 2006-07); services, with investment approvals of \$35.7 billion (\$28.9 billion in 2006-07); and manufacturing, with investment approvals of \$31.3 billion (compared with \$62.8 billion in 2006-07).
- The United States of America was the largest source country for foreign investment in 2007-08, involving proposed investment of \$49.5 billion representing 26 per cent of total investment approved. The United Kingdom, Germany, Singapore and Switzerland were the other major source countries of investment approved in 2007-08, with 17 per cent, 7 per cent, 6 per cent and 5 per cent, respectively.
- On 23 April 2008, foreign investment policy was changed to extend the timeframe for the development of vacant commercial land from 12 months to five years. On 17 February 2008, to enhance the transparency of Australia's foreign investment screening regime as it applies to investments by foreign governments and their agencies, the Treasurer released the principles used to evaluate such investments. On 18 December 2008, the Assistant Treasurer announced substantial administrative changes to the operation of real estate foreign investment policy.
- Australia has continued to progress the international liberalisation of trade and investment through its engagement in bilateral, regional and multilateral forums.

Australia concluded a free trade agreement (FTA) with Chile and also concluded the Australia- New Zealand- ASEAN FTA. Australia is currently negotiating separate FTAs with China, Malaysia, Japan, the Gulf Cooperation Council, and the Republic of Korea. Australia has announced that it will participate in the Trans Pacific Partnership and the Australian and Indonesian governments are considering the findings of the completed joint feasibility study, with a view to possible commencement of negotiations towards an FTA. Australia is also undertaking a joint FTA feasibility study with India.

- During 2007-08, the Australian National Contact Point for the *OECD Guidelines for Multinational Enterprises* continued to promote these guidelines to Australian business and reviewed a submission regarding an Australian company's involvement in a mining operation in South America.

Chapter 1

**Foreign Investment
Review Board**

Foreign Investment Review Board

This is a non-statutorily mandated report providing information on the operation of Australia's foreign investment review arrangements during 2007-08. It covers the role of the Foreign Investment Review Board (the Board or FIRB) and day-to-day administration of these arrangements by the Treasury.

Functions of the Board

The FIRB is a non-statutory body established in 1976 to advise the Treasurer on the Government's foreign investment policy (the policy) and its administration. As such, the Board's functions are advisory only. Responsibility for making decisions on foreign investment proposals and for the policy rests with the Treasurer. The Treasury's Foreign Investment and Trade Policy Division (the Division) advises Treasury ministers on foreign investment matters and provides secretariat services to the Board.

The role of the Board, including through its secretariat, is to:

- examine proposed investments in Australia that are subject to the policy and supporting legislation, and to make recommendations to the Treasurer on these proposals;
- advise the Treasurer and other Treasury portfolio ministers on the operation of the policy and the *Foreign Acquisitions and Takeovers Act 1975* (the FATA), and on proposed investments that are subject to each;
- foster an awareness and understanding, both in Australia and abroad, of the policy and the FATA;
- provide guidance to foreign persons and their representatives/agents on the policy and the FATA; and
- monitor and ensure compliance with the policy and the FATA.

Information on the operation of the FATA is provided in Chapter 3 and in *Australia's Foreign Investment Policy* provided at Appendix A to this report. A copy of the FATA and the regulations made under it are provided at Appendices D and E respectively.

Board membership

During 2007-08, the Board comprised three part-time members and a full-time Executive Member.

Mr John Phillips AO was first appointed Chairman of the Board on 16 April 1997 and was reappointed for a further term of five years on 18 April 2007. He has extensive high-level experience in the public, finance and business sectors, including as Deputy Governor of the Reserve Bank of Australia. He has been director of a number of leading Australian companies and is Chancellor of the University of Western Sydney.

Ms Lynn Wood has been a Board member since April 1995 and was reappointed on 3 April 2005 for a further term of five years. She has extensive experience as a director and is currently chairman of Noni B Ltd and a non-executive director of GPT Funds Management Limited, MS Australia Limited, and the Committee for Economic Development of Australia (CEDA). She is a Fellow of the Australian Institute of Company Directors and was awarded a Centenary Medal in 2003.

The Hon Chris Miles was appointed to the Board on 8 June 1999 and was reappointed for a further term of five years on 8 June 2004. His membership of the Board expired in June 2009. Between 1984 and 1998 Mr Miles was a member of the House of Representatives representing the seat of Braddon, Tasmania. From 1996 to 1998 he was Parliamentary Secretary (Cabinet) to the Prime Minister, with 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. He is currently a director of two private companies.

Mr Patrick Colmer commenced as the Executive Member of the Board on 20 November 2006. Mr Colmer has an extensive background as a public policy adviser in a variety of government agencies. He was the General Manager of Treasury's Indirect Tax Division from 2002 to 2006 and was an Assistant Commissioner in the Australian Taxation Office from 1999 to 2002. Earlier, he was a manager in the Commonwealth Health Department responsible for general practice standards and health workforce policy.

Relationship of the Division to the Board

As the Executive Member of the Board, the General Manager of the Division, Mr Colmer, provides the link between the Board and the Treasury. The Division is responsible for the initial examination of proposals received under the policy or the FATA, and for preparing recommendations to Treasury ministers or Divisional officers the Treasurer has authorised to make decisions under the FATA and the policy. It also provides a contact point for foreign investors and their representatives/agents.

The Board provides advice on the application of the policy and the FATA across the range of proposals received by the Division and on foreign investment policy issues. It provides specific advice on the more significant applications received and also reviews the general handling of other applications. The Board performs this role with the benefit of weekly reports prepared by the Division on proposals received and through regular meetings and telephone discussions with the Executive Member. Formal Board

meetings are generally held monthly, with telephone discussions taking place in the intervening weeks. The Board members draw on their considerable collective and individual professional and commercial experience in discharging their advisory role.

The Division performs other roles beyond providing secretariat services to the Board and examining foreign investment proposals. It also advises the Treasurer on broader investment and trade-related policy matters. This includes providing advice on and being a party in the investment-related work of multilateral forums, such as the Organisation for Economic Co-operation and Development (OECD), the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC), and bilaterally through the negotiation and ongoing operation of free trade agreements (FTAs) and investment protection and promotion agreements (IPPAs). Chapter 4 covers these activities.

The Executive Member of the Board is also the Australian National Contact Point (the ANCP) for the *OECD Guidelines for Multinational Enterprises* (the OECD Guidelines, a copy of which is at Appendix F). The ANCP is responsible for implementing the OECD Guidelines, handling inquiries, conducting formal reviews when the adherence of a multinational enterprise to the OECD Guidelines is questioned, facilitating discussions with interested stakeholders, and reporting on its activities to the OECD Investment Committee.

Administration of foreign investment policy

Information, advice and education

In keeping with the Board's role of fostering awareness and understanding of Australia's foreign investment review arrangements and the policy, the Division regularly engages with potential foreign investors, their representatives/agents and Australian businesses to provide information on the operation of the policy and the FATA and their application, including to specific proposals.

The Division also provides a telephone inquiry line, +61 2 6263 3795, an email address, firbenquiries@treasury.gov.au, and a website, www.firb.gov.au, for people seeking information or advice on the policy and legislation.

Consideration timeframe

The FATA provides a 30-day statutory period for a decision to be made on proposals lodged under the FATA, with up to a further 10 days to advise the applicant parties. The statutory period commences upon receipt of a completed section 25, 26 or 26A notice. The FATA also provides for the issue of an Interim Order, which extends the available examination period and prohibits the proposal for up to 90 days. Interim Orders are usually issued to allow the applicant additional time to provide adequate information for assessing the proposal. Proposals subject to the policy but not the

FATA are decided (where possible) within the 30-day statutory deadline set by the FATA.

The Treasurer has provided an authorisation (effectively a delegation) to the Executive Member and other senior division staff to make decisions on foreign investment proposals that are consistent with the policy or do not involve issues of special sensitivity. Around 95 per cent of proposals are decided under this authorisation, predominantly in the real estate sector. The Board maintains a continuing oversight of decisions made under this arrangement.

These arrangements, along with the use of application forms for residential real estate purchases, streamline the application and approval process. These forms, once completed, signed and submitted together with additional supporting information (if required), facilitate a timely decision on applications.

Examination and approval process

Proposals are initially examined by the Division's Investment Review Unit (the Unit) with the Board's input on significant applications. The Unit also undertakes associated compliance work. Proposals are examined as to whether they conform with the requirements of the policy and the FATA, including the proponent's fulfilment of conditions attached to past approvals. While the overwhelming majority of proposals are not objected to, the Treasurer has powers under the FATA to prohibit proposals that are contrary to the national interest or to raise no objections to them subject to conditions that are considered necessary to ameliorate national interest concerns (see *Australia's Foreign Investment Policy* at Appendix A). Decisions are advised in writing to the applicants or their representatives/agents. Where the Treasurer makes a decision on a significant proposal, he may also issue a media release.

The involvement of the Board in individual foreign investment proposals is normally determined by the nature and significance of the particular proposal. In the case of more significant proposals (for example, in terms of their size, complexity or policy issues raised), the Board becomes involved early in the examination process and contributes to advice provided to the Treasurer or other relevant Treasury ministers.

Consultation arrangements

In examining large or otherwise significant proposals, consultations are undertaken by the Board's secretariat with Australian, state and territory government departments and authorities with responsibilities relevant to the proposal. Advice and comments provided by such agencies are important in assessing the implications of proposals and, in particular, determining whether they raise any national interest issues. Such consultation is undertaken on a strictly confidential basis to protect the information provided by the applicant. The Board regards this liaison with key stakeholders as an integral part of the administration of the policy.

Where major proposals are in the public domain, the Board may also receive submissions from third parties. Consideration of such submissions can be an important part of the examination process and the development of advice on the proposal to the Treasurer.

National interest

The FATA empowers the Treasurer to prohibit an acquisition if he is satisfied it would be 'contrary to the national interest'. However, the general presumption is that foreign investment proposals will generally serve the national interest. This reflects the positive stance of successive Australian governments towards foreign investment, given the important role it plays in the operation of our economy and Australia's national development.

The national interest, and hence what would be contrary to it, is not defined in the FATA. Instead, the FATA confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest.

In preparing the Board's advice, consideration is also given to whether an investment is consistent with Australia's foreign investment policy available on the Board's website at www.firb.gov.au, and at Appendix A. This contains information on Australia's foreign investment screening arrangements and on national interest matters, especially relating to real estate and other sectors with specific requirements.

A proposal that does not meet the requirements set out in the policy would ordinarily be regarded as being contrary to the national interest. Additional guidance on aspects of the national interest include, for example:

- existing government policy and legislation (for example, applying to telecommunications, broadcasting, the media, aviation, environmental regulation and competition policy);
- national security interests; or
- economic development.

The policy document includes the principles announced by the Treasurer on 17 February 2008. Investments by foreign governments and their agencies are assessed on the same basis as private sector proposals with national interest implications determined on a case-by-case basis. The evaluation also considers these matters:

- an investor's operations are independent from the relevant foreign government;
- an investor is subject to and adheres to the law and observes common standards of business behaviour;

- an investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned;
- an investment may impact on Australian Government revenue or other policies;
- an investment may impact on Australia's national security; and
- an investment may impact on the operations and directions of an Australian business, as well as its contribution to the Australian economy and broader community.

Handling of commercial-in-confidence and personal information

The Board recognises that much of the information required to assess a proposal will be commercially sensitive or be private to the applicant. Consequently, appropriate procedures are in place to ensure that confidentiality is protected.

Moreover, the Government is required to respect the privacy and sensitivity of personal and commercial information that is provided by applicants to the Board, in accordance with the requirements of the relevant legislation, including the *Privacy Act 1988* (Privacy Act) and the *Freedom of Information Act 1982* (FOI Act). However, in accordance with the Privacy Act, to provide whole-of-government advice to the Treasurer on applications or where the applicant may have breached the FATA or the policy, other government agencies may be consulted and relevant information may be provided to those agencies. Most commonly, those agencies will be the Department of Immigration and Citizenship (DIAC), the Australian Taxation Office (ATO) and the Australian Federal Police (AFP).

In the event that third parties outside government seek access to confidential information, it would not be made available without the permission of the person(s) who provided it, except upon order by a court of a competent jurisdiction or through the operation of the FOI Act.

In 2007-08, the Division received two applications under the FOI Act (also two in 2006-07) seeking information concerning foreign investment matters. The FOI Act provides criteria to determine whether particular documents or parts of documents are available or exempt from release. These include for example, that the document contains commercially sensitive information where its release would cause harm to its provider. In line with the provisions of the FOI Act, the Division may consult with the parties to a proposal about documents they provided which are the subject of an FOI request, to seek their views on their possible release to an applicant.

2007-08 outcomes

Cost of the Board's operations

Total Board expenses in 2007-08 were \$127,443 (\$122,057 in 2006-07). Remuneration of Board members was around 91 per cent of total Board expenses, with the remainder expended on local travel, car hire and incidentals. Board members' fees are determined by the Remuneration Tribunal.

Total expenses of the Division for 2007-08 were \$3.3 million (\$3.2 million in 2006-07). These expenses mainly comprised employee salary (including superannuation and accruing leave entitlements) and administrative costs. Over the course of 2007-08, the Division employed an average of 32 staff, the same as for 2006-07.

Consideration of proposals and enquiries

In 2007-08, a total of 8,548 applications for foreign investment approval were considered, with 7,841 approved, 14 rejected or not approved, 521 withdrawn and 172 exempt or not subject to the policy or the FATA. Of the 7,855 applications decided in 2007-08 (that is, those approved or not approved but not those withdrawn or exempt), 7,488 were decided within the Division under the Treasurer's authorisation and 367 were decided by a Treasury minister, in most cases by the Treasurer's then Parliamentary Secretary or the Assistant Treasurer.

Additionally, in 2007-08 the Division handled approximately 36,400 telephone enquiries and 5,300 items of correspondence¹ in relation to potential proposals, compliance with conditional approvals and the policy and the FATA. This represented a decrease in the number of phone enquiries (approximately 37,600 in 2006-07) and an increase in correspondence received (around 5,000 items received in 2006-07).

In 2007-08, one Final Order and 13 Interim Orders were made and published in the Commonwealth of Australia *Gazette*.² No Divestiture Orders were made. Final Orders are issued where a proposal, assessed in terms of the policy, is considered to be contrary to the national interest. Divestiture Orders are issued where an acquisition has already occurred and is subsequently assessed, in terms of the policy, as being contrary to the national interest.

The Board and the Division endeavour to ensure that all foreign investment proposals are dealt with in a timely and efficient manner and every effort is made to avoid any unnecessary delays to business decision-making.

1 This figure excludes all correspondence in relation to proposals that were yet to be finalised when the correspondence was received.

2 The FATA provides the Treasurer with the power to make orders prohibiting an acquisition (an Interim Order or Final Order) or having the effect of requiring an interest to be disposed (a Divestiture Order). While the prohibition under a Final Order is not subject to any time limitations, an Interim Order prohibits the acquisition proceeding during the period from gazettal until the earlier of an additional 90 days, or until a decision has been made.

In 2007-08, 95 per cent of proposals were decided within 30 days, compared with 90 per cent of proposals in 2006-07. Of the real estate cases (which represent the majority of proposals received) decided in 2007-08, 73 per cent were finalised within two weeks, compared with 34 per cent in 2006-07. The proposals that took more than 30 days to decide were generally delayed by a lack of sufficient information from the parties or because the application involved significant complexity or sensitivity.

Changes to foreign investment policy — residential real estate

On 18 December 2008, the Assistant Treasurer released details of administrative changes to the Government's foreign investment screening arrangements for acquisitions of residential real estate by foreign persons. These changes generally maintain the restrictions imposed under the policy in place in 2007-08 but provide for streamlined notification and administrative arrangements. The changes were implemented progressively – those that only required changes to the policy came into effect immediately, while those requiring changes to the Regulations came into effect on 31 March 2009. There were no changes to the FATA.

Prior to this announcement, foreign investment screening arrangements for residential real estate had not been updated since 1989 and thus no longer gave appropriate effect to the intent of the Government's foreign investment policy. The changes are designed to streamline and update foreign investment screening for residential real estate acquisitions, enhancing flexibility in the market and reducing compliance costs for temporary residents and the construction industry. The changes are now fully implemented. The Government will monitor the changes to ensure these continue to be in the national interest. Further information relating to these changes can be found on the Foreign Investment Review Board website at www.firb.gov.au. The policy and related documents have been updated to reflect the changes.

Monitoring and compliance activity

The FATA provides the Treasurer with wide-ranging legal powers to enforce the decisions made, including the ability to:

- unwind or divest (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 a foreign person (including a natural person or a company) that fails to obtain prior approval;
- prosecute a foreign person that fails to comply with an order to sell shares, assets or property; and

- prosecute a foreign person that fails to comply with conditions attached to any approval granted under the FATA.

Provisions of the *Crimes Act 1914* and the *Criminal Code Act 1995* 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.

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. It is general policy to report potential breaches of the FATA to DIAC, the AFP and other government agencies as appropriate.

In order to ensure compliance with foreign investment policy, the Division systematically monitors whether foreign persons are complying with the conditions of their approvals. This involves cooperation with relevant members of the business community, local government authorities, the legal profession, and on occasion, the general public.

In addition, compliance activities focus on:

- settling outstanding compliance matters;
- investigating separately, instances of possible non-compliance reported by members of the public; and
- improving awareness of the policy in the local government arena and within appropriate Australian, state and territory government agencies.

The Division's compliance and monitoring procedures and documentation processes are subject to ongoing review with a view to ensuring consistent treatment of cases of non-compliance. The application of these processes has in some cases resulted in further investigations by DIAC prior to issuing visas or in a refusal to issue a visa to those who have breached approvals with conditions.

Links with the AFP, DIAC, the ATO and the Australian Transaction Reports and Analysis Centre (AUSTRAC) were strengthened with the exchange of information and advice within the limits allowed by the Privacy Act.

Chapter 2

Foreign investment proposals

Foreign investment proposals

This chapter provides an overview and statistical information on applications considered in 2007-08.

Features of these statistics

While this chapter provides a useful source of data on foreign direct investment in Australia, the Board urges particular caution in the use of these statistics, including when making comparisons with earlier years as policy, data capture and reporting methodologies change over time. As set out in Chapter 4 of this report, there are also substantial differences between the Board's statistics and actual investment flows. The latter is more reliably captured by Australian Bureau of Statistics (ABS) data, which seeks to reflect more comprehensively investment transactions between residents of Australia and non-residents.

The statistics contained in this report do not measure total foreign investment made in any year, nor do they measure changes in net foreign ownership levels in Australia. Rather, they provide information on those investments that fall within the scope of the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) and the Government's foreign investment policy (the policy). The monetary value attributed to approved proposals is the amount advised by the applicants. It represents an estimate of the expected investment in that and subsequent years that would result if the proposal is in fact implemented. The statistics therefore provide partial coverage of all foreign investments made and include some transactions that did not actually proceed. Several points should be noted:

- The data does not cover foreign investments below the various monetary and percentage thresholds that apply under the FATA and the policy, including for new businesses and acquisitions by foreign governments. Nor does the data cover follow-on investments to expand the capital stock of existing foreign-owned businesses (both in existing areas and into related areas). See Appendix A for the current thresholds.
- The figures are based on the assumption that investment funds will be sourced from overseas. The extent to which approved investment proposals will actually be funded externally and therefore result in foreign capital inflows depends not only upon whether they are implemented, but also upon the proportion that is financed from foreign sources. Some (and in some cases all) of the proposed funds to be invested may be contributed by Australians, for example, where they are in partnership with foreign interests or where the investment is financed from existing Australian operations.

- The source of funds identified in the Board's statistics does not necessarily imply the country of control. For example, if a company has a single substantial shareholder, the country of that shareholder is recorded, or if a company's shares are widely held, the country of domicile/incorporation is recorded.
- The data does not necessarily reflect a change in foreign ownership as, in some cases, both the target and purchaser are defined as a foreign person under the FATA.
- Acquisitions of diversified company groups are classified into a single industry sector according to the major activity of the group, for example, in a diversified mining company with interests in various minerals. Acquisitions of real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.¹

The Board's statistics are also not a reliable indicator of trends in foreign investment inflows because:

- they include proposals that are approved in a given year but which are not actually implemented, or could be implemented in a later year, or over a number of years;
- they include approvals for multiple potential acquirers of the same target company or asset;
- they are inherently irregular and can be skewed due to very large investment proposals;
- major liberalisations of the policy that have occurred since the mid-1980s have acted to reduce the number of proposals and thus limit comparability over time, such as:
 - the increase in the general asset threshold in 1999 from \$5 million to \$50 million, and again in December 2006 from \$50 million to \$100 million;
 - the increase in the offshore takeovers threshold in December 2006 from the general asset threshold (then at \$50 million) to \$200 million; and

¹ Data has been compiled by reference to the *Australian and New Zealand Standard Industrial Classification* (ANZSIC 1993), except: newspaper printing and publishing are allocated to the services industry sector (ANZSIC 1993 classifies these under manufacturing); and tourism is recorded as a separate industry sector rather than being included with the other service industries.

- the introduction of thresholds for the calendar year 2005 of \$800 million and \$50 million (indexed annually) for United States (US) investors from 1 January 2005;
- changes to other government policies and legislation may have an effect on proposed foreign investment, such as:
 - the removal of foreign ownership restrictions in the media sector in April 2007; and
 - changes in immigration policies that control the number of temporary resident visa holders and which largely determines the level of foreign investment in developed residential real estate;
- the implementation of a new case management system (known as FIMS) in December 2005 has significantly improved data collection accuracy. FIMS allows a more detailed analysis of proposed foreign investment, as reflected in improvements to the statistics presented from the 2005-06 Annual Report onwards. As part of a post-implementation review of FIMS, a detailed data validation process was undertaken for the purpose of preparing the 2005-06 Annual Report. While the data in that and subsequent reports is consequently more accurate, this process was not able to be applied to previous years' data and hence caution is necessary in making inter-year comparisons;
- reporting procedures for proposals involving financing arrangements were amended in 2005-06. Although they continue to be included in the statistics (in the number of approvals), the proposed acquisition cost and development expenditure are not recorded in FIMS for proposals such as lending arrangements where there is not expected to be an equity investment flow into Australia.² This has affected the value attributed to proposed investment in the finance and insurance industry; and
- prior to 2005-06, proposals involving share acquisitions were recorded as conditionally approved on the basis that the proposed acquisition was to proceed within 12 months. In FIMS, such proposals are no longer recorded as conditionally approved.³ This has not significantly affected the proportion of approvals that are subject to conditions (79 per cent of total approvals under FIMS in 2007-08 compared with 74 per cent under the previous system in 2004-05). However, the value of proposed investment reported as being associated with the conditional

² This is similar to the existing practice for corporate reorganisations.

³ Applicants are required to re-apply if the transaction has not taken place and they wish to proceed after 12 months has passed.

approval category has significantly decreased due to the very large investment amounts involved with such proposals.

The term 'proposed investment' is used widely throughout this report. Proposed investment is the aggregation of the following estimated:

- acquisition costs (including shares, real estate or other assets);
- development costs following the acquisition; and
- costs of both establishment and development in the case of new businesses.

Applications considered in 2007-08

This section analyses **all** investment proposals that were finalised (approved, rejected, withdrawn or exempt) during 2007-08, irrespective of the date they were submitted.⁴ Corporate reorganisations are included here (66 in 2007-08), whereas they are excluded from the analysis of approved investment provided later in this chapter.⁵

The number of applications considered during 2007-08 was 8,548, which is 22 per cent higher than the 7,025 in 2006-07. Table 2.1 provides a breakdown of the number of applications considered over the last six years, according to the outcome of proposals.

Of the 7,841, applications **approved** in 2007-08 (a 27 per cent increase on the 6,157 approvals in 2006-07), 6,185 were approved subject to conditions and 1,656 without conditions being imposed. All but five of the conditional approvals were in the real estate sector, where 84 per cent of all approvals were subject to the standard conditions imposed under the policy during the report period. Real estate conditions ordinarily imposed at that time include those relating to the period during which development must commence (usually 12 months), requiring temporary residents to reside in and then sell established dwellings when they cease to reside in them, and reporting requirements.

A total of 14 proposals were **rejected or not approved** in 2007-08 (39 in 2006-07), representing less than one per cent of all proposals considered. All of these rejected proposals related to real estate acquisitions. This figure includes one proposal that was subject to the FATA, and thus required the making of a Final Order. A Final Order

4 Since proposals determined exempt were not included prior to 2005-06, the figures shown for prior years have been amended from those previously published to include these proposals.

5 The proposed acquisition costs and development expenditure are not recorded for corporate reorganisations.

prohibits the implementation of the proposed acquisition. Where the acquisition has already taken place, a Divestiture Order may be made. No Divestiture Orders were made during 2007-08. However, two rejected proposals involved the applicants voluntarily divesting their interests in these properties without the need for Divestiture Orders to be issued. The remaining 11 rejections involved proposals that were not subject to the FATA, being applications for approval to sell up to 50 per cent of newly constructed dwellings in a multi-unit development off-the-plan, so relieving the buyer from the requirement to seek separate individual approval. They did not receive approval because the development was to be of too few units to meet the administrative requirement set by the policy at that time for providing such an approval. Such approvals were only made available for developments involving construction of at least 10 dwellings, and those applications were for developments of less than 10.

In 2007-08, 521 proposals were **withdrawn** by the applicants, representing a 17 per cent decrease on the 629 withdrawals in 2006-07 having returned to its average over recent years of around 6 per cent of the total applications received. In 2007-08, 86 per cent of withdrawals involved real estate proposals. Many of these withdrawals result from applicants submitting several concurrent or a series of applications (often for properties that are to be auctioned and for which they intend to bid), and once one property has been purchased, subsequently withdrawing the remaining applications. In other cases, proposals are withdrawn because the investment is deferred or the applicant decides not to proceed for commercial reasons. Foreign investors are encouraged to discuss all types of proposals with the Board's secretariat to ensure they are consistent with the policy. Applicants may decide to withdraw and later resubmit complex proposals that require more than the standard 30-day examination period set by the FATA in preference to the issuing of an Interim Order, publicly revealing its existence as such Orders are published in the Commonwealth of Australia *Gazette*.

During 2007-08, 172 proposals were determined to be **exempt** compared with 200 in 2006-07. Some applications received are determined to be outside the scope of the FATA, including because they are exempted by the *Foreign Acquisitions and Takeovers Regulations 1989* (the Regulations, see Appendices A and E) or outside the scope of the policy. The existence of these particular applications reflects the requirement under the policy that foreign investors submit proposals where any doubt exists as to whether they are notifiable.

Table 2.1: Applications considered 2002-03 to 2007-08 — number of proposals

Outcome	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
	No.	No.	No.	No.	No.	No.
Approved unconditionally	1,105	995	1,127	1,386	1,520	1,656
Approved with conditions	3,562	3,452	3,233	3,800	4,637	6,185
Total approved	4,667	4,447	4,360	5,186	6,157	7,841
Rejected	80	64	55	37	39	14
Total decided	4,747	4,511	4,415	5,223	6,196	7,855
Withdrawn	365	319	287	373	629	521
Exempt	203	206	182	185	200	172
Total considered	5,315	5,036	4,884	5,781	7,025	8,548

Note: Includes corporate reorganisations (66 in 2007-08).

Applications decided in 2007-08

This section analyses all proposals that were approved (either with or without conditions), or rejected during 2007-08, irrespective of the date they were submitted. Corporate reorganisations are also included here, whereas they are excluded from the analysis of approved investment provided later in this chapter.

The number of applications decided during 2007-08 was 7,855, around 27 per cent higher than in 2006-07 and 50 per cent higher than in 2005-06 (see Table 2.1). The value of decided applications was \$192.0 billion, approximately 23 per cent higher than in 2006-07 and more than double the 2005-06 total. Table 2.2 provides a breakdown of proposed investment according to the outcome of decided applications, for the corresponding period provided in Table 2.1.

Table 2.2: Applications decided 2002-03 to 2007-08 — proposed investment

Outcome	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
	\$b	\$b	\$b	\$b	\$b	\$b
Approved unconditionally	53.5	58.9	60.4	72.5	140.3	162.6
Approved with conditions	32.2	40.1	59.1	13.3	16.1	29.3
Total approved	85.7	99.0	119.5	85.8	156.4	191.9
Rejected	0.0	0.1	0.0	0.0	0.0	0.2
Total decided	85.8	99.1	119.5	85.8	156.4	192.0

Note: Totals may not add due to rounding.
 '0.0' indicates a figure of less than \$50 million.
 Includes corporate reorganisations (66 in 2007-08).

Charts 2.1 and 2.2 display the figures from Tables 2.1 and 2.2 to show the difference between applications decided within the real estate and non-real estate sectors⁶ by number of proposals and value of proposed investment.

As can be seen in Chart 2.1, by number, most of the applications decided were within the real estate sector. Chart 2.2 shows that, by value, most of the proposed investment occurred in non-real estate sectors.

Charts 2.1 and 2.2 also show that during 2007-08, all of the increase in the number of applications decided was in the real estate sector. The number of applications decided in the non-real estate sectors decreased slightly. Additionally, Chart 2.2 shows that the real estate sector also recorded the largest percentage increase in estimated proposed investment. Further discussion and breakdown of these increases in the real estate sector are provided from page 30.

⁶ Analysis of approvals by industry sector is provided from page 26.

Chart 2.1: Applications decided 2002-03 to 2007-08 — number of proposals

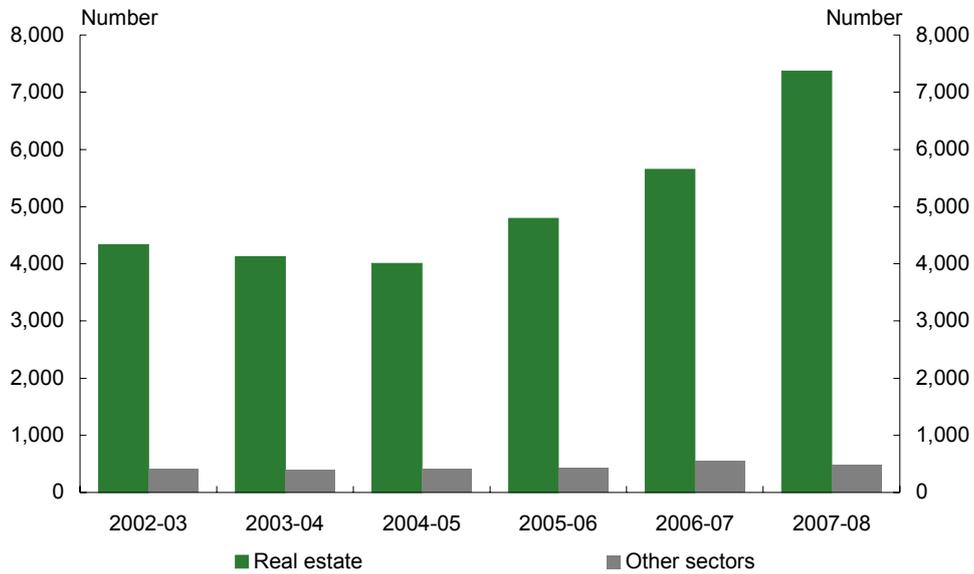
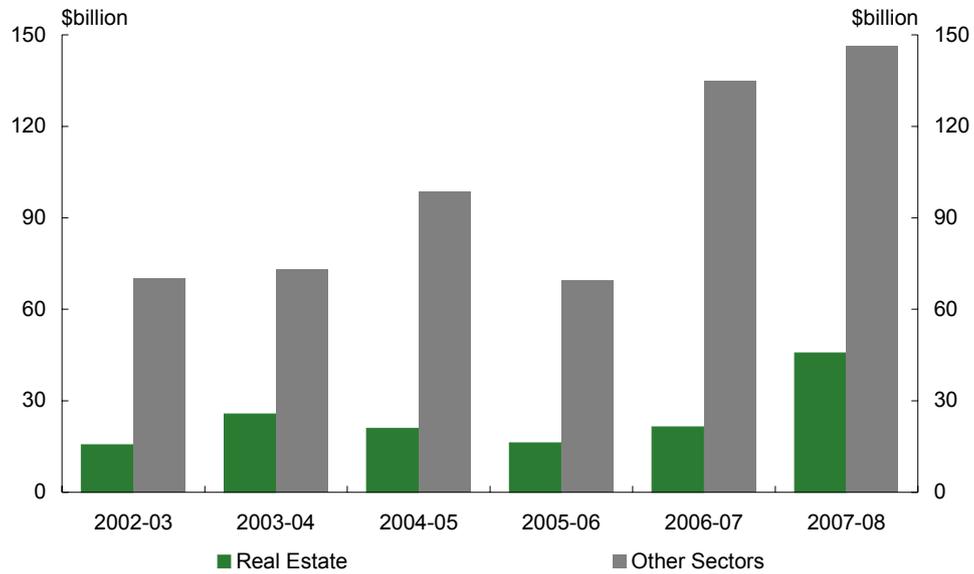


Chart 2.2: Applications decided 2002-03 to 2007-08 — proposed investment



Approvals by value

The remainder of this chapter analyses applications approved during 2007-08 (excluding corporate reorganisations). Table 2.3 displays the number of approvals sorted by the value of proposed investment for the last four years. There was an increase across all categories during 2007-08. Overall, there were 28 per cent more approvals and a 23 per cent increase in proposed investment than in 2006-07.

There was a 75 per cent increase in the number of proposals valued at \$1 billion or more (35 compared to 20 the previous year), but only a 17 per cent increase in the amount of proposed investment. This indicates that, while there were more proposals, they involved smaller investment volumes and the majority of these were not much more than \$1 billion in value.

The largest increases in both number of approvals and proposed investments were in the \$2 billion to less than \$5 billion category, with two and a half times the number of approvals and almost two and a half times the total amount of proposed investment. The next largest increases occurred in the \$1 billion to less than \$2 billion category, with 82 per cent more approvals and 55 per cent higher proposed investment. The number of proposals in the \$5 billion or more category remained the same. However, proposed investment was 28 per cent less in 2007-08.

In the less than \$1 million category, there was a 28 per cent increase in the number of proposals and a 33 per cent increase in proposed investments. These increases mainly reflect the increase in real estate proposals during 2007-08.

The smallest increase in number of approvals, with a 14 per cent increase, was in the \$50 million to less than \$100 million category. This is attributable to the increase in the number of approvals for 'annual programmes' of real estate acquisitions in 2007-08. These annual programmes reduced the number of the larger, individual real estate proposals (which would usually make up the majority of proposals within this category).

Table 2.3: Total approvals by value 2004-05 to 2007-08

Value of proposal	2004-05		2005-06		2006-07		2007-08	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
< \$1 million	3,269	1.4	3,955	1.8	4,598	2.24	5,906	2.99
≥ \$1 million & < \$50 million	776	7.9	892	7.4	1,142	8.6	1,463	10.8
≥ \$50 million & < \$100 million	92	6.3	105	7.3	108	7.5	123	8.9
≥ \$100 million & < \$500 million	97	21.2	112	25.5	158	32.2	195	41.8
≥ \$500 million & < \$1 billion	26	17.8	23	16.4	43	28.4	53	36.7
≥ \$1 billion & < \$2 billion	12	15.3	11	15.2	11	16.3	20	25.3
≥ \$2 billion & < \$5 billion	6	14.8	2	6.2	4	12.2	10	30.2
≥ \$5 billion	5	34.8	1	5.8	5	49.0	5	35.2
Total	4,283	119.5	5,101	85.8	6,069	156.4	7,775	191.9

Note: Totals may not add due to rounding.
Excludes corporate reorganisations (66 in 2007-08).

Charts 2.3 and 2.4 depict total approvals by value using the data provided in Table 2.3. The increase in the number of approvals involving proposed investment of less than \$1 million can be seen in Chart 2.3, correlating with the increase in real estate proposals shown in Chart 2.1. The increases in proposed investment in the higher categories can be seen in Chart 2.4.

Chart 2.3: Total approvals by value 2004-05 to 2007-08 — number of proposals

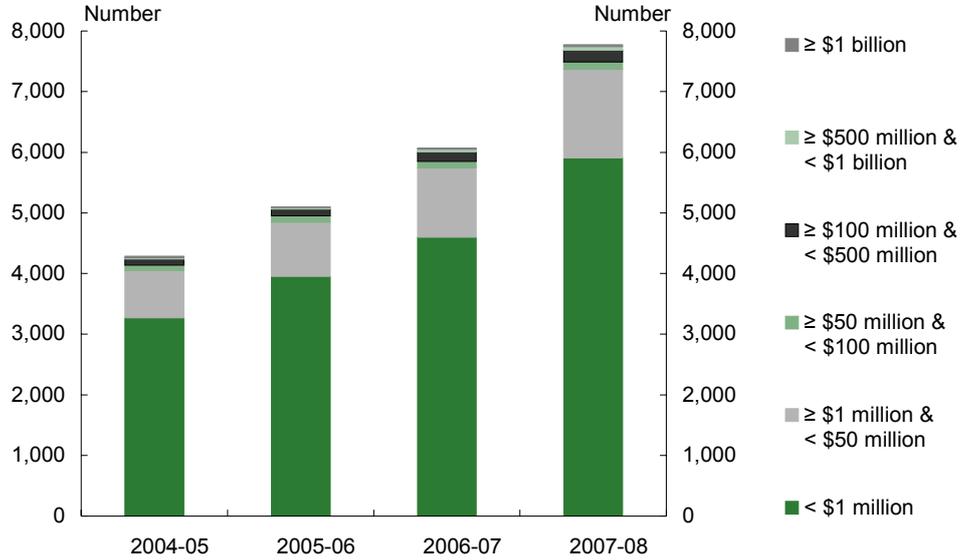
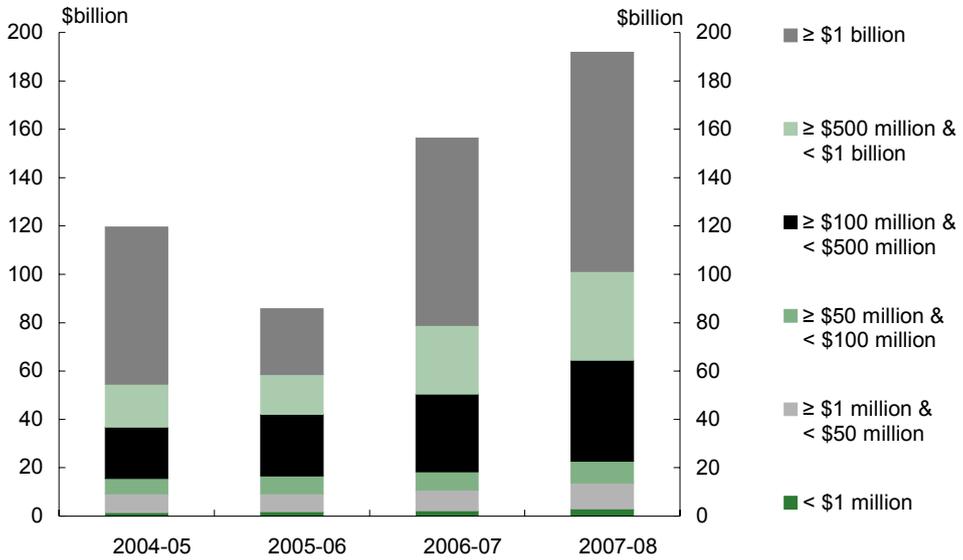


Chart 2.4: Total approvals by value 2004-05 to 2007-08 — proposed investment



Approvals by sector

Table 2.4 lists applications approved during 2007-08 by industry sector. Chart 2.5 depicts approved investment in each sector on a proportional basis by value. The majority of the proposed investment is attributable to the proposed acquisition cost. The skewing of the foreign investment data towards the acquisition costs reflects the fact that the FATA applies to acquisitions of interests in, and not to the expansion of, existing businesses. The real estate sector's development figures predominantly reflect the estimated expenditure on construction on vacant land. The vast majority of the non-real estate figures are attributed to the estimated investment involved in establishing new businesses. Under the policy, proposals to establish new businesses involving a total investment of \$10 million or more are subject to notification and approval. Bearing in mind the limitations of the Board's data, during 2007-08:

- mineral exploration and development was the largest industry sector by value, with approvals totalling \$64.3 billion (\$32.3 billion in 2006-07); and
- other significant sectors by value of proposed investment were, real estate with \$45.5 billion (\$21.4 billion in 2006-07), services with \$35.7 billion (\$28.9 billion in 2006-07), and manufacturing with \$31.3 billion (\$62.8 billion in 2005-06 – the largest industry sector by value for that year).

Table 2.4: Total approvals by industry sector in 2007-08

Industry sector	Number of approvals	Acquisition cost \$b	Development expenditure \$b	Proposed investment \$b
Agriculture, forestry & fishing	11	2.49	-	2.49
Finance & insurance	39	9.06	0.14	9.20
Manufacturing	48	28.98	2.29	31.27
Mineral exploration & development	173	63.09	1.19	64.28
Resource processing	3	0.22	-	0.22
Services	109	29.12	6.60	35.72
Tourism	38	3.16	0.05	3.20
Real estate(a)	7,354	36.00	9.51	45.50
Total	7,775	172.11	19.77	191.88

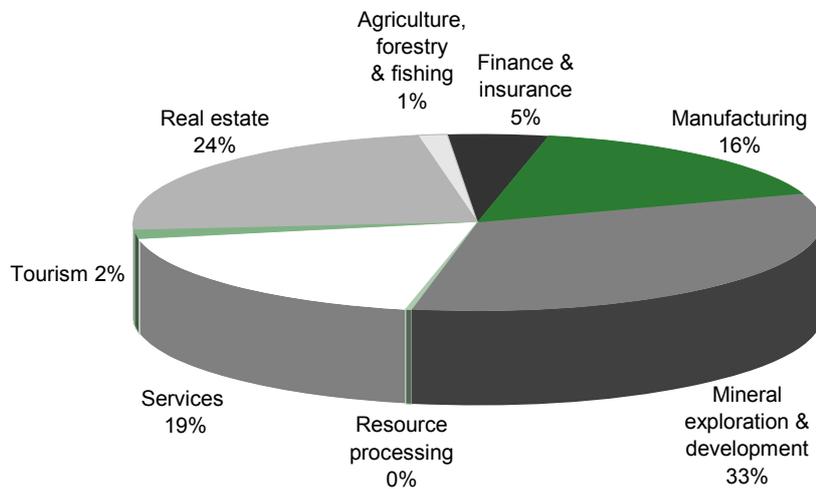
(a) Proposed investment in the real estate sector may be overstated as it includes off-the-plan approvals provided to real estate developers and approvals for annual programmes. Further details provided in section on real estate from page 30.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero.

Excludes corporate reorganisations (66 in 2007-08).

Chart 2.5: Total approvals by industry sector in 2007-08 — proposed investment value



Note: Totals may not add due to rounding.
'0%' indicates a figure of less than 0.5%.

Agriculture, forestry and fishing

Proposed investment in the agriculture, forestry and fishing sector increased significantly in 2007-08. Eleven proposals were approved with a total value of \$2.5 billion, compared with only four approvals in 2006-07 with a total value of \$104.0 million. Of these approvals, six involved total investment in excess of \$100 million, including one involving estimated investment in excess of \$1 billion.

Finance and insurance

During 2007-08, 39 proposals were approved in the finance and insurance sector with proposed investment of \$9.2 billion, compared with 38 proposals and \$5.6 billion in 2006-07. There were 13 proposals approved which involved investment of \$100 million or more (16 in 2006-07), with two involving proposed investment of \$1 billion or more, accounting for \$5.8 billion (63 per cent) of the overall total.

As discussed at the beginning of this chapter, the proposed acquisition costs and development expenditure are not recorded in FIMS for proposals such as financing arrangements where there is not expected to be an investment flow into Australia.

Manufacturing

The manufacturing sector, which was the leading industry sector by value in the previous year, saw a significant decrease in both number of proposals approved and proposed investment in 2007-08. There were 48 proposals (41 per cent less than the 82 proposals in 2006-07) and proposed investment of \$31.3 billion (50 per cent less than the \$62.8 billion in 2006-07). Thirty-one involved total investment of \$100 million or more in 2007-08. Four involved total investment of \$1 billion or more, compared with seven proposals (including one of nearly \$17 billion) with an estimated investment value in excess of \$1 billion during the previous year. Proposed investment in manufacturing was primarily in electricity and gas, accounting for 41 per cent (\$12.7 billion) of the proposed investment in this sector.

Table 2.5: Manufacturing sector approvals in 2007-08

Industry code	Number of approvals	Acquisition cost \$b	Development expenditure \$b	Proposed investment \$b
Chemical, petroleum & coal products	4	1.90	0.08	1.97
Electricity & gas	20	10.51	2.22	12.73
Food, beverages & tobacco	10	7.21	-	7.21
Machinery & equipment	5	1.62	-	1.62
Wood, wood products & furniture	3	1.50	-	1.50
Other(a)	6	6.24	-	6.24
Total	48	28.98	2.29	31.27

(a) Comprises: non-metallic mineral products; miscellaneous manufacturing; and textiles.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero.

Mineral exploration and development

Proposed investment in the mineral exploration and development sector increased by 99 per cent, from \$32.3 billion in 2006-07 to \$64.3 billion in 2007-08, making it the largest industry sector by value. A total of 173 proposals were approved (compared with 141 in 2006-07), comprising five to establish new businesses and 168 to acquire an interest in existing businesses. There were 83 proposals involving total investment of \$100 million or more, including 12 for \$1 billion or more (compared with six for \$1 billion or more in 2006-07). These 12 proposals, one of which was valued at \$10.5 billion, accounted for a combined proposed investment in excess of \$34 billion (53 per cent of the proposed investment in this sector).

Table 2.6: Mineral exploration and development sector approvals 2006-07 to 2007-08

Industry code	Acquisitions				New businesses			
	2006-07		2007-08		2006-07		2007-08	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Metallic minerals								
- Bauxite	-	-	3	12.38	-	-	-	-
- Copper-gold(a)	37	2.84	24	11.26	-	-	-	-
- Iron ore	13	1.17	24	8.88	-	-	1	0.02
- Nickel	5	5.27	10	3.05	-	-	-	-
- Uranium	12	1.75	7	1.25	-	-	1	0.01
- Zinc	2	0.17	5	5.54	-	-	-	-
- Other	9	0.83	12	3.41	1	0.38	1	0.06
Coal	30	4.19	37	10.36	5	1.48	2	1.11
Oil & gas	13	2.24	31	4.52	2	11.00	-	-
Other(b)	11	0.95	15	2.45	1	0.01	-	-
Total	132	19.41	168	63.09	9	12.87	5	1.19

(a) From 2005-06 onwards, copper and gold are reported jointly since they are often mined together.

(b) Comprises: services to mining and exploration; and non-metallic minerals.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero.

Resource processing

There was a decrease in proposed foreign investment in the resource processing sector, with three approvals in 2007-08, compared to eight in 2006-07 (and none in the previous two years). Total proposed investment was \$221 million (\$3.7 billion in 2006-07), including one proposal involving investment of approximately \$137 million (or 62 per cent of proposed investment in this sector).

Services

During 2007-08, proposed investment in the services industry sector increased by 24 per cent, from \$28.9 billion in 2006-07 to \$35.7 billion in 2007-08. However, the number of proposals decreased slightly, with 109 proposals (116 in 2006-07). Proposals in the construction industry accounted for around 35 per cent (\$12.5 billion) of total approved investment. There were 62 proposals involving proposed investment of

\$100 million or more, including eight of \$1 billion or more. Of these eight proposals, two in the construction industry accounted for a total of \$9.9 billion (or 28 per cent of total proposed investment in the sector).

Table 2.7: Services sector approvals in 2007-08

Industry code	Number of approvals	Acquisition cost \$b	Development expenditure \$b	Proposed investment \$b
Construction	13	8.83	3.70	12.53
Communications	24	4.51	0.92	5.43
Health	14	4.39	1.75	6.14
Other community services	2	0.06	0.00	0.06
Property & business services	13	2.92	-	2.92
Trade				
- Retail	8	0.49	-	0.49
- Wholesale	8	1.85	-	1.85
Transport				
- Air	7	3.16	-	3.16
- Road	3	1.04	-	1.04
- Water	1	0.10	-	0.10
- Services to transport	4	0.61	0.23	0.84
Defence	5	0.03	-	0.03
Other(a)	7	1.12	-	1.12
Total	109	29.12	6.60	35.72

(a) Comprises: education, museum and library services; entertainment and recreational services; and personal services.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero and '0.00' indicates a figure of less than \$5 million.

Tourism

Total approved foreign investment in the tourism sector more than doubled in 2007-08, with \$3.2 billion (\$1.5 billion in 2006-07), while the number of proposals decreased by 44 per cent, from 68 to 38. Three proposals involved proposed investment of \$100 million or more (four in 2006-07). Of these, one involved proposed investment in excess of \$1.8 billion. This is in contrast to the previous year, where there were no proposals involving investment of more than \$1 billion.

Real estate

Changes to foreign investment policy — residential real estate

On 18 December 2008, the Assistant Treasurer released details of administrative changes to the Government's foreign investment screening arrangements for acquisitions of residential real estate by foreign persons. These changes generally maintain the restrictions imposed under the policy in place in 2007-08 but provide for streamlined notification and administrative arrangements. The changes were implemented progressively – those that only required changes to the policy came into

effect immediately, while those requiring changes to the Regulations came into effect on 31 March 2009. There were no changes to the FATA.

Prior to this announcement, foreign investment screening arrangements for residential real estate had not been updated since 1989 and thus no longer gave appropriate effect to the intent of the Government's foreign investment policy. The changes are designed to streamline and update foreign investment screening for residential real estate acquisitions, enhancing flexibility in the market and reducing compliance costs for temporary residents and the construction industry. The changes are now fully implemented. The Government will monitor the changes to ensure these continue to be in the national interest. Further information relating to these changes can be found on the Foreign Investment Review Board website at www.firb.gov.au. The policy and related documents have been updated to reflect the changes.

Real estate under the 2007-08 policy

The remainder of this section discusses the policy as it was prior to the amendments. The policy in place in 2007-08 required all proposed acquisitions of Australian urban land⁷ to be notified for examination, unless subject to an exemption under the Regulations.

The number of approvals in the real estate sector increased significantly from 5,612 in 2006-07 to 7,354 in 2007-08, or by 31 per cent, and followed an 18 per cent increase in the previous year. Of the additional 1,657 approvals, the majority were for existing residential dwellings which increased by 1,029 from 2,986 in 2006-07 to 4,015 in 2007-08. There were an additional 289 approvals involving acquisitions of vacant land, with a total of 1,667 approvals in this category (1,378 in 2006-07). The number of commercial real estate approvals increased from 98 to 183 in 2007-08.

Proposed investment more than doubled, increasing by \$24.1 billion from \$21.4 billion in 2006-07 to \$45.5 billion in 2007-08. Most of the increase was in commercial property acquisitions which increased by \$17.2 billion from \$7.9 billion to \$25.1 billion. Residential property approvals increased by \$6.9 billion from \$13.5 billion to \$20.4 billion.

Of the increase in residential real estate approvals, \$1.1 billion was for existing dwellings which increased from \$2.3 billion in 2006-07 to \$3.4 billion in 2007-08. Of the remaining \$5.8 billion increase, \$3.9 billion was for newly constructed dwellings, comprising increased individual approvals of \$0.2 billion and developers' approvals of \$3.7 billion. The former are single dwelling sales to foreigners while the latter represent approvals provided to developers to sell up to 50 per cent of the dwellings in a

⁷ Australian urban land is defined under the FATA to be all Australian land that is not used wholly and exclusively for carrying on a substantial business of primary production.

multi-unit development. The value attributed to this category substantially overstates actual acquisition expenditure because it represents the value of all dwellings constructed in the development, not the generally small proportion (generally less than 10 per cent) later bought by foreign persons.

Of the increase in acquisitions of commercial real estate, \$14.5 billion was for existing property (an increase of \$10.4 billion) and vacant land (an increase of \$4.1 billion). The former included several large acquisitions of beneficial interests in managed investment funds with real estate property as assets. The remaining \$2.6 billion of the increase was approvals for annual programme acquisitions which increased from \$2.0 billion to \$4.6 billion.

Table 2.8 on page 37 gives a breakdown of approved real estate investment for 2007-08.

Residential real estate

Developed

During 2007-08, 4,028 proposals were approved for the acquisition of **developed residential** real estate, a 35 per cent increase from the 2,991 that were approved in 2006-07. This category consists primarily of temporary residents in Australia acquiring an established dwelling as their principal place of residence.⁸ Proposed investment approved totalled \$3.4 billion, an increase of 46 per cent on the \$2.3 billion in 2006-07. Developed residential property accounts for 87 per cent of the total with \$3.0 billion, with the remainder being approvals for acquisitions under an 'annual programme'.

There were two rejections of proposed acquisitions of developed residential property by foreign persons (24 in 2006-07). One involved the issue of a Final Order prohibiting the acquisition, while for the other the applicant had already acquired the property in breach of the FATA prior notification requirements. As the acquisition did not comply with the requirements of the policy, the applicant sold the property and a Divestiture Order was not made.

Rejections would arise where the acquisition was inconsistent with the policy, for example, where the prospective foreign purchaser:

- did not hold a temporary resident visa permitting continuous residence in Australia which during 2007-08 was required to be for a period of at least 12 months;
- did not intend to use the property as their principal place of residence; and/or

⁸ Includes a small number of approvals relating to foreign companies acquiring existing residential property for company employees to reside in.

- held a student visa and the value of the property they proposed to purchase exceeds the \$300,000 general limit applicable in 2007-08 to student visa holders.

For development

In 2007-08, 3,156 proposals were approved for acquisitions of **residential real estate for development** (including eligible redevelopment), a 25 per cent increase on the 2,523 in 2006-07.⁹ Proposed investment increased by 52 per cent to \$17.0 billion (\$11.2 billion in 2006-07). Proposed development expenditure increased from \$2.0 billion in 2006-07 to \$3.7 billion in 2007-08.

The *vacant land* category consists primarily of individual blocks of land purchased for single dwelling construction. It also includes broadacre land for residential subdivision and multiple-dwelling residential developments (such as townhouses and units). In 2007-08, 1,667 vacant land proposals were approved (a 21 per cent increase on the 1,378 in 2006-07), with proposed investment of \$3.9 billion (\$2.9 billion in 2006-07). Approvals during 2007-08 were subject to a condition that continuous development commenced within 12 months, involving expenditure of at least 50 per cent of the acquisition cost of the land. The applicant is required to report on the completion of development to demonstrate compliance with the development conditions.

The *new dwellings*¹⁰ category consists of applications by individuals to acquire newly constructed dwellings directly from developers and applications by developers to sell up to 50 per cent of new residences to foreign interests. If a developer is given approval, individuals need not apply for approval. The developer must report on sales to ensure the 50 per cent limit is not exceeded.

In 2007-08, 1,043 proposals from individuals were approved, involving acquisition costs of \$661.9 million (compared with 838 and \$476.2 million in 2006-07). There were 324 advance off-the-plan approvals to developers covering sales in new multi-unit residential developments (compared with 238 in 2006-07). This involved an increased approval value of 64 per cent, up from \$5.8 billion in 2006-07 to \$9.5 billion in 2007-08.

Certain points should be noted in relation to the figures for advance off-the-plan approvals. Firstly, the Board's figures overstate the likely level and hence value of actual foreign purchases. In practice, developers with advance off-the-plan approvals sell substantially less than the approved 50 per cent of new dwellings, and in most cases, the proportion sold is under 10 per cent. Secondly, the figures reflect the value of the dwellings in the year of approval (approvals usually occur in the construction phase rather than during the sale of the dwellings). Further, the approved value is

9 The acquisition of house and land packages, where construction has not commenced, are treated as vacant land for development rather than falling within the off-the-plan category.

10 The new dwelling category was previously referred to as 'off-the-plan'.

attributed entirely to acquisition cost and not to proposed development expenditure, reflecting the fact that approvals relate to ultimate purchases of completed dwellings by foreign persons (and not to the developer for the development of the dwellings).

Developed property for *redevelopment* involves the acquisition of existing property for the purpose of demolition and construction of new residential dwellings. The number of redevelopment proposals increased by 75 per cent with 103 approvals in 2007-08 (compared with 59 the previous year). The proposed investment associated with these approvals was \$1.6 billion, more than four times the \$365.1 million for 2006-07. Applications for redevelopment primarily involve construction of multiple-dwelling residential developments (such as dual occupancy, townhouses and units), since the policy requires redevelopment approvals to result in an increase in the housing stock, except where the existing dwelling is at the end of its economic life (meaning it is derelict and uninhabitable). Consequently, the development value will vary from year to year depending on the scale of the individual developments approved in each year.

In the land for development category, 12 applications seeking approval in 2007-08 were rejected, compared with 14 in 2006-07. The majority of these comprised applications for advance off-the-plan approvals for developments with less than the 10 dwellings required by the policy for an approval. Apart from this, rejections are generally for one or more of the following reasons:

- The planned development expenditure is not sufficient in relation to the acquisition cost of the property (the policy in place during 2007-08 required development expenditure of at least 50 per cent of the acquisition cost).
- The proposed development timetable is unsatisfactory given the then applicable requirement that it commence within 12 months.
- The property to be acquired for redevelopment purposes would not result in an increase in the housing stock (that is, the existing dwelling is not uninhabitable or at the end of its economic life, and the prospective foreign purchaser does not intend to construct multiple dwellings).
- The prospective foreign purchaser has not established that they have the capacity, for example, the technical and financial means or the necessary planning approvals, to undertake the proposed development within the timeframe set in the policy.
- The vendor of a new dwelling has not concurrently constructed a similar dwelling as was required under the policy during 2007-08.
- The applicant has breached conditions imposed on a previous approval.

Commercial real estate

Developed

In 2007-08, there were 90 approvals to purchase **developed commercial** real estate (for example, shopping centres, office buildings and warehouses), an 80 per cent increase from the 50 in 2006-07. The associated proposed investment was \$16.5 billion, more than three and a half times the \$4.6 billion in 2006-07. Of this, 70 per cent was attributed to the acquisition of beneficial interests in managed investment funds holding land assets that exceeded 50 per cent of its total assets, rather than direct acquisitions of legal title to the land. Two proposals involving proposed investment of more than \$1 billion accounted for \$5.7 billion, 35 per cent of the total. This data reports only part of the total foreign investment that would have occurred in commercial real estate as the Regulations exempt from the Act some acquisitions, including of non-vacant, non-heritage listed commercial property valued below \$50 million.

For development

During 2007-08, there were 93 approvals to purchase **commercial land for development**, compared with 48 in 2006-07. These approvals involved proposed investment of \$8.6 billion, including \$5.8 billion in development expenditure. This represented a substantial increase on the \$3.3 billion total reported for 2006-07.

There were no rejections of proposed acquisitions of developed commercial property or commercial real estate for development by foreign persons (one in 2006-07).

Annual programmes

The '**annual programme**' arrangements allow foreign persons to apply for an annual approval for real estate acquisitions up to a specified monetary limit. Such an approval relieves them of the requirement to seek separate approval for individual real estate acquisitions within the approved value and the approval year. Approvals are subject to the condition that applicants subsequently report on the actual acquisitions completed and any associated development.

In 2007-08, a total of 31 annual programmes were approved with proposed investment of \$6.4 billion, compared with 28 approvals and proposed investment of \$3.7 billion in 2006-07. The majority of the \$2.6 billion increase on the 2006-07 approvals was for acquisitions of commercial property: an increase of \$1.5 billion for developed commercial property and \$1.1 billion for commercial land for development. One approval covered proposed land acquisitions of up to \$1.2 billion during the approval year.

During 2007-08, 13 annual programme approvals involved acquisitions of developed residential real estate with proposed investment of \$0.4 billion (five approvals and \$0.1 billion in 2006-07). Such approvals generally involve foreign mining companies acquiring housing for employees in rural areas. Six approvals were made for the

purchase of vacant residential real estate for development (10 in 2006-07) involving proposed total investment of \$1.3 billion, 17 per cent below the \$1.6 billion in 2006-07.

The development expenditure associated with annual programmes in the 'for development' categories did not always reflect the policy requirement applying during 2007-08 that at least 50 per cent of the acquisition cost is spent on development. This is because a number of approvals were for acquisitions of property which were not intended for development for various reasons, such as the land was to be acquired for use as:

- a 'buffer zone', for example, surrounding an existing mine or quarry; or
- a tree plantation, including as part of a 'carbon sinks' programme.

As with advance off-the-plan approvals for developers, the Board's figures for annual programme approvals overstate the likely extent of actual foreign purchases. The value of investment reported against annual programme approvals represents the maximum amount the foreign person may acquire under the programme.

Table 2.8: Real estate sector approvals in 2007-08

	Number of approvals	Acquisition cost \$b	Development expenditure \$b	Proposed investment \$b
Residential				
Developed(a)				
- existing residential property	4,015	2.97	-	2.97
- annual programmes	13	0.44	-	0.44
<i>Sub-total 'Developed'</i>	<i>4,028</i>	<i>3.41</i>	<i>-</i>	<i>3.41</i>
For development				
- vacant land	1,667	1.63	2.30	3.93
- new dwellings(b)				
- individual purchases	1,043	0.66	-	0.66
- developer 'off-the-plan'	324	9.49	-	9.49
<i>Sub-total 'new dwellings'</i>	<i>1,367</i>	<i>10.15</i>	<i>-</i>	<i>10.15</i>
- redevelopment	103	0.42	1.18	1.61
- annual programmes	6	1.16	0.19	1.34
<i>Sub-total 'For development'</i>	<i>3,143</i>	<i>13.36</i>	<i>3.67</i>	<i>17.02</i>
Total residential	7,171	16.77	3.67	20.43
Commercial				
Developed				
- existing commercial property	85	13.78	-	13.78
- annual programmes	5	2.73	-	2.73
<i>Sub-total 'Developed'</i>	<i>90</i>	<i>16.51</i>	<i>-</i>	<i>16.51</i>
For development				
- vacant commercial property	86	1.58	5.14	6.71
- annual programmes	7	1.15	0.70	1.85
<i>Sub-total 'For development'</i>	<i>93</i>	<i>2.72</i>	<i>5.84</i>	<i>8.56</i>
Total commercial	183	19.23	5.84	25.07
Total residential & commercial	7,354	36.00	9.51	45.50

(a) Developed property for redevelopment is included as residential real estate for development.

(b) The 'new dwelling' category was previously referred to as 'off-the-plan'.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero and '0.00' indicates a figure of less than \$5 million.

Real estate by location of investment

Table 2.9 provides details of proposed investment in the real estate sector, according to the state and territory location of the investment. During the 2007-08 year, Victoria was the main location of proposed real estate investment with 21 per cent of the total amount approved (compared with 11 per cent in 2006-07), followed by Queensland and New South Wales which accounted for approximately 18 per cent and 16 per cent respectively (compared with 21 per cent and 24 per cent in 2006-07).

Victoria accounted for the largest number of approvals with 2,238 in 2007-08 (up from 1,253 in 2006-07) and the largest increase of 79 per cent on 2006-07. Queensland had the second largest number with 1,726 (1,435 in 2006-07), followed by New South Wales with 1,223 (908 in 2006-07) and Western Australia with 1,043 (1,134 in 2006-07).

As in 2006-07, there was an increase in the value of approvals for land acquisitions in more than one state or territory. In 2007-08, these accounted for 35 per cent of total

proposed investment, up from 27 per cent in 2006-07. This in part reflected an increase in annual programme approvals, which generally cover acquisitions in multiple states. In the absence of approval under an annual programme, such acquisitions would previously have been recorded individually against the relevant state. The 'various states' category recorded the bulk of proposed investment in commercial real estate, with approvals encompassing multiple states or territories accounting for 46 per cent of total approved investment in commercial real estate. This in large part reflected approvals for acquisitions of beneficial interests in managed investment funds with real estate assets in a number of states and territories.

During 2007-08, less than 1 per cent of approvals in the real estate sector involved the acquisition of real estate located offshore¹¹ (also less than 1 per cent of approvals in 2006-07). This sector reflects proposed foreign investment in Australian listed property trusts or funds, whose principal activities are to invest in foreign real estate.

Table 2.9: Real estate sector approvals in 2007-08 — location of investment

Location	Number of approvals	Residential		Commercial		Total
		Developed	For development	Developed	For development	
		\$b	\$b	\$b	\$b	
NSW	1,223	0.80	3.43	1.06	2.09	7.39
VIC	2,238	0.88	3.66	2.49	2.34	9.36
QLD	1,726	0.60	6.23	0.48	0.68	7.99
WA	1,043	0.61	1.82	0.09	1.08	3.62
SA	911	0.31	0.31	0.06	0.28	0.96
TAS	70	0.02	0.02	-	0.01	0.05
ACT	68	0.02	0.10	-	-	0.12
NT	18	0.00	0.01	0.00	0.02	0.04
Various(a)	53	0.17	1.44	12.16	2.06	15.82
Offshore	4	-	-	0.16	-	0.16
Total	7,354	3.41	17.02	16.51	8.56	45.50

(a) Comprises approved proposals where the investment is to be undertaken in more than one state or territory.

Note: Totals may not add due to rounding.

'-' indicates a figure of zero and '0.00' indicates a figure of less than \$5 million.

Approvals by country of investor

Data on proposed investment associated with approvals in 2007-08 is shown by selected country, aggregated by location of investment in Table 2.10 and by industry sector in Table 2.11. The US was once again the largest source of proposed foreign investment in Australia. The other major sources of foreign investment were the

11 Not to be confused with offshore takeover (see section on foreign-to-foreign transactions in Chapter 3).

United Kingdom (UK), Germany, Singapore and Switzerland. Chapter 4 provides information on foreign investment stocks and flows by country.

Approved proposed investment from the US saw a 9 per cent increase from \$45.3 billion in 2006-07 to \$49.5 billion in 2007-08. Proposed investment was primarily in the services sector, accounting for 30 per cent of total US investment and making the US the leading country of nationality of foreign investors in this sector, accounting for 41 per cent. A single proposal in excess of \$6 billion accounted for 42 per cent of US investment in the services sector. The US was also the leading nationality for foreign investment in the tourism and real estate sectors, accounting for 80 per cent and 26 per cent respectively. A single proposal accounted for 71 per cent of US investment in the tourism sector, while two proposals accounted for 45 per cent of US investment in the real estate sector. Refer to Chapter 4 for further discussion on the Australia/US investment relationship.

The UK recorded the second largest amount of proposed investment in 2007-08, with \$33.3 billion (almost two and a half times the \$13.8 billion in 2006-07). Of this proposed investment, \$14.1 billion or 42 per cent was in the mineral exploration and development sector, making the UK the leading source of foreign investment in this sector. In excess of \$10 billion of this was attributable to a single proposal. The UK was also the leading source of foreign investment in the finance and insurance sector, accounting for 71 per cent of total proposed investment in this sector and 21 per cent of the UK's total proposed investment. Two proposals accounted for 88 per cent of the UK's investment in the finance and insurance sector.

In 2007-08, Germany's total proposed investment increased by 86 per cent to \$12.8 billion (\$6.9 in 2006-07). This proposed investment was primarily in the manufacturing sector, accounting for 46 per cent of total German investment, followed by investment in the services sector which accounted for 32 per cent of total German investment. A single proposal, in excess of \$5 billion, accounted for 88 per cent of German investment in the manufacturing sector, and a single proposal accounted for 90 per cent of German investment in the services sector.

Singapore, which recorded the second largest amount of proposed investment in 2006-07, saw a 39 per cent decrease in 2007-08 with total proposed investment of \$10.9 billion (\$18.0 billion in 2006-07). This proposed investment was primarily in the manufacturing sector, accounting for 76 per cent of total Singaporean investment and making Singapore the leading source of foreign investment in this sector. A single proposal accounted for 76 per cent of Singaporean investment in the services sector.

Switzerland recorded the fifth largest amount of proposed investment in 2007-08, with \$10.6 billion, more than two and a half times larger than the \$4.1 billion in 2006-07. The majority of its investment was in the mineral exploration and development sector, accounting for 84 per cent of total proposed investment from Switzerland. Two proposals accounted for 66 per cent of proposed investment in this sector.

Table 2.10: Approvals by country of investor in 2007-08 — location of investment

Country(a)	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Various(f)	Offshore	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
US	2,805	1,347	1,562	4,082	3	277	112	76	38,308	910	49,480
UK	2,070	1,537	2,861	1,441	473	13	29	1	24,711	201	33,336
Germany	311	725	3,891	352	3	1	-	0	7,441	33	12,757
Singapore	413	375	364	240	7	-	0	-	9,537	-	10,936
Switzerland	2,722	93	3,710	2,963	-	-	-	-	522	636	10,646
China(b)	774	765	1,053	2,691	341	71	21	602	340	821	7,479
Canada	2,245	91	51	893	2	1	-	3	3,665	20	6,971
Japan	210	365	80	392	1	326	-	-	4,306	200	5,880
United Arab Emirates	524	1,855	450	75	0	-	-	-	2,377	-	5,281
Netherlands	118	84	175	500	4	22	-	0	2,725	-	3,629
Russia	5	3	78	3,133	1	-	-	-	-	225	3,445
NZ	212	1,310	267	25	1	63	-	78	1,281	-	3,237
Hong Kong	503	292	392	97	5	-	-	150	1,480	-	2,920
France	13	5	84	163	2	-	-	1	1,978	-	2,246
South Korea	147	28	1,069	498	10	11	1	-	-	-	1,763
South Africa	772	23	251	108	18	1	0	0	403	-	1,577
Ukraine	-	1	-	1	-	-	-	-	1,200	-	1,202
Malaysia	17	127	24	303	269	0	1	22	95	292	1,149
Sweden	104	1	0	2	2	-	0	-	921	-	1,030
India	336	45	33	14	40	3	3	-	164	156	793
Other EU	39	62	723	81	112	1	-	0	640	-	1,659
Other ASEAN	17	28	13	41	6	1	2	32	666	-	806
Not allocated(c)	2,415	2,338	3,426	1,168	133	-	80	9	-	-	9,570
Other(d)	342	51	525	60	15	164	3	2	290	255	1,707
<i>Sub-total</i>	<i>17,114</i>	<i>11,551</i>	<i>21,081</i>	<i>19,324</i>	<i>1,449</i>	<i>954</i>	<i>252</i>	<i>977</i>	<i>103,049</i>	<i>3,749</i>	<i>179,501</i>
Australia(e)	1,914	517	205	27	4	-	0	0	9,035	676	12,378
Total	19,028	12,068	21,286	19,352	1,453	954	252	977	112,084	4,424	191,879

Note: Totals may not add due to rounding.

'-' indicates a figure of zero and '0' indicates a figure of less than \$0.5 million.

See Notes on page 41.

Table 2.11: Approvals by country of investor in 2007-08 — industry sector

Country(a)	Number of approvals(g)	Agriculture forestry & fishing \$m	Finance & insurance \$m	Manufacturing \$m	Mineral exploration & development \$m	Real estate \$m	Resource processing \$m	Services \$m	Tourism \$m	Total \$m
US	316	189	1,283	5,403	13,427	11,998	-	14,607	2,574	49,480
UK	2,547	1,252	6,534	1,989	14,091	4,430	19	4,630	391	33,336
Germany	135	-	72	5,874	1,415	1,289	-	4,107	-	12,757
Singapore	246	-	74	8,284	138	1,779	-	549	112	10,936
Switzerland	61	-	347	625	8,931	407	-	329	7	10,646
China(b)	1,761	-	420	-	5,311	1,491	137	101	20	7,479
Canada	130	-	-	975	2,284	590	-	3,097	26	6,971
Japan	77	6	-	4,463	933	275	66	124	13	5,880
United Arab Emirates	22	441	-	75	-	4,712	-	53	-	5,281
Netherlands	123	-	-	1,209	467	1,452	-	480	22	3,629
Russia	57	-	-	-	3,357	88	-	-	-	3,445
NZ	81	440	208	1,200	326	274	-	788	1	3,237
Hong Kong	35	-	-	40	1,683	463	-	734	-	2,920
France	73	-	259	-	470	51	-	1,466	-	2,246
South Korea	163	-	-	-	607	1,153	-	-	4	1,763
South Africa	459	-	-	-	802	433	-	342	-	1,577
Ukraine	4	-	-	-	1,200	2	-	-	-	1,202
Malaysia	356	-	-	294	524	268	-	60	4	1,149
Sweden	24	-	-	-	19	1,011	-	-	-	1,030
India	287	-	-	-	486	144	-	164	-	793
Other EU	288	-	-	400	61	304	-	894	1	1,659
Other ASEAN	147	-	-	-	698	85	-	-	-	783
Not allocated(c)	327	-	-	-	-	9,570	-	-	-	9,570
Other(d)	449	160	-	266	812	493	-	-	-	1,730
<i>Sub-total</i>	<i>8,168</i>	<i>2,488</i>	<i>9,198</i>	<i>31,097</i>	<i>58,040</i>	<i>42,760</i>	<i>221</i>	<i>32,524</i>	<i>3,174</i>	<i>179,501</i>
Australia(e)	186	-	-	177	6,235	2,742	-	3,196	28	12,378
Total	8,354	2,488	9,198	31,273	64,275	45,502	221	35,719	3,202	191,879

Note: Totals may not add due to rounding.

'-' indicates a figure of zero.

See Notes on page 41.

Notes applying to Tables 2.10 and 2.11:

- (a) Includes overseas Territories.
- (b) China excludes Special Administrative Regions and Taiwan.
- (c) Off-the-plan approvals to real estate developers have been recorded as not allocated to a country because the country of buyers of the dwellings is not known in advance.
- (d) Comprises all other countries excluding Australia.
- (e) The investment identified as originating from Australia is the contribution by Australian-controlled companies and Australian residents to the total investment for investment proposals made in partnership with foreign interests. It does not generally include the contribution attributable to Australian shareholders in companies where the majority or controlling shareholders are foreign.
- (f) Comprises proposals where the investment is to be undertaken in more than one state or territory.
- (g) These figures indicate the total number of proposals in which investors from the particular country have an interest. Those involving investment originating from more than one country count as one proposal for each of the countries concerned. Therefore, the number reported is greater than the number reported in Table 2.1.

Chapter 3

Overview of the *Foreign Acquisitions and Takeovers Act 1975*

Overview of the Foreign Acquisitions and Takeovers Act 1975

Introduction

This chapter provides an overview of the main provisions of the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) as at June 2009. The FATA and the *Foreign Acquisitions and Takeovers Regulations 1989* (the Regulations) provide legislative support for the Government's foreign investment policy (the policy). A copy of the FATA is at Appendix D, the Regulations at Appendix E and the policy at Appendix A.

The FATA empowers the Treasurer to examine proposals by foreign persons to:

- acquire, or to increase, a substantial shareholding¹ in, or acquire a controlling interest in the assets of, a prescribed Australian corporation valued above the relevant thresholds;² or
- acquire an interest in Australian urban land.³

The FATA does not provide the Treasurer with a power to 'approve' investment proposals. Rather, it empowers the Treasurer to prohibit a proposal that he decides would be contrary to the national interest (sections 18, 19, 20, 21 and 21A), or to raise no objections subject to conditions considered necessary to remove national interest concerns (section 25). It also permits the Treasurer to make orders for foreign persons

1 A substantial interest is defined by the FATA as where a person, alone or together with any associate(s), is in a position to control not less than 15 per centum of the voting power or holds interests in not less than 15 per centum of the issued shares, of a corporation.

An aggregate substantial interest is where two or more persons together with any associate(s), are in a position to control not less than 40 per centum of the voting power or hold interests in not less than 40 per centum of the issued shares, of a corporation.

2 The thresholds were increased in late 2006 following a review arising from the Australia-United States Free Trade Agreement. US investors are subject to different thresholds which are indexed annually. For current thresholds see Appendix A.

3 Australian urban land is defined as any land within Australia on which a primary production business is not being conducted. Consequently, this definition encompasses all land in Australia that is not being used for primary production, regardless of whether it is in an urban area.

to divest shares, assets or interests in urban land where the acquisition is decided to be contrary to the national interest.

The national interest, and hence what might be contrary to it, is not defined in the FATA. Instead it confers upon the Treasurer the power to decide in each case whether a particular proposal would be contrary to the national interest. The Government's foreign investment policy sets out guidelines on national interest matters in relation to real estate and other industry sectors regarded as sensitive. Ordinarily a proposal that does not meet the requirements set out in the policy would be regarded as being *prima facie*, contrary to the national interest and hence subject to rejection.

The FATA also requires the prior notification of certain proposals, namely where a foreign person proposes to acquire a substantial shareholding in a prescribed Australian corporation (section 26) or an interest in Australian urban land (section 26A).

Notification

Section 26 makes it compulsory for a foreign person to notify the Treasurer of a proposal to acquire or increase a substantial shareholding in a prescribed Australian corporation where the total assets exceed, or the transaction values it above, the thresholds set under the Regulations.

Section 26A makes it compulsory for a foreign person to notify the Treasurer of a proposal to acquire or increase an interest in Australian urban land, unless the acquisition is exempt under the Regulations.

Substantial penalties apply for non-compliance with the notification provisions of sections 26 and 26A. On conviction, a natural person may be subject to a fine not exceeding 500 penalty units (currently \$110 per unit) or imprisonment for a period not exceeding two years, or both. A corporation may be subject to a fine not exceeding 500 penalty units.

Section 25 applies where the Treasurer has received a notice from a person, including those notices that are required under sections 26 and 26A. It also provides an avenue for the notification of proposals falling within the scope of the FATA, but which are not subject to compulsory notification under the FATA. These include offshore takeovers, acquisitions of business assets, and arrangements relating to control of corporations or businesses.

Formal notification of a proposal under sections 25, 26 or 26A, must be made in accordance with the forms prescribed in the *Foreign Acquisitions and Takeovers (Notices) Regulations 1975* (forms available at www.firb.gov.au). Receipt of a valid notice activates the commencement of the 30-day statutory examination period. If the Treasurer does not take action (under sections 18, 19, 20, 21, 21A, 22 or 25) within this period, the power to prohibit the proposal or to impose conditions expires. A further

period of 10 days is available to publish any order in the Commonwealth of Australia *Gazette* and to notify the parties. The 30-day examination period may be extended by up to a further 90 days by the issue of an Interim Order (section 22 and subsection 25(3)) which prohibits the proposal for that period.

Proposals notified under the policy that are not subject to the FATA, such as proposals to establish new businesses or direct investments by foreign governments or their agencies, do not require a statutory notice. The relevant notification requirements for such proposals are available at www.firb.gov.au.

The Treasurer's powers

The powers available to the Treasurer under the FATA in relation to foreign investment proposals are primarily contained in sections 18, 19, 20, 21, 21A and 25.

Section 18 deals with proposals involving the acquisition of shares in prescribed corporations which carry on an Australian business (unless the transaction values it, or its total assets are, below the thresholds). Where an acquisition would result in a foreign person acquiring a controlling interest, and the Treasurer concludes that this would be contrary to the national interest, it may be prohibited by the issue of an order (known as a Final Order). The Treasurer's powers under the section apply irrespective of whether the controlling interest is being acquired by a foreign person, or by an additional or different, foreign person(s).

Sections 19, 20 and 21 confer upon the Treasurer powers similar to section 18 but in respect of other types of acquisitions and arrangements. Section 19 deals with acquisitions of business assets, section 20 with arrangements relating to the corporation's governance and operation such as board representation or alterations to constituent documents such as the articles of association, and section 21 with the leasing or hiring of assets, management agreements or profit sharing arrangements.

Section 21A deals with proposals to acquire interests in Australian urban land. It empowers the Treasurer to examine proposed acquisitions of interests in Australian urban land and make an order prohibiting those that he considers would be contrary to the national interest.

The FATA applies to acquisitions, or proposed acquisitions, of interests in 'Australian urban land' (see section 12A). Consequently, section 21A applies not only to direct purchases of Australian urban land, but also interests in such land, for example mortgage, or certain leasehold interests. It also applies to participation in profit sharing agreements in relation to land, and the purchase of shares in companies and units in trusts (Australian urban land corporations and trust estates), where more than half of its assets are in the form of Australian urban land.

The Treasurer's powers in section 21A to take action against acquisitions of interests in Australian urban land are not limited to acquisitions of what the Treasurer considers

to be a controlling interest as is the case in sections 18 to 21. Failure to notify an acquisition of an interest in Australian urban land is an offence under section 26A of the FATA, unless exempt under the Regulations.

Sections 18, 19, 20, 21 and 21A give the Treasurer the power to order the divestment or unwinding of an investment where the acquisition is subsequently found to have been contrary to the national interest.

Section 25 allows conditions to be applied which are considered necessary to remove national interest concerns that would otherwise arise. This power is available where the Treasurer can make an order under sections 18, 19, 20, 21 and 21A.

Foreign-to-foreign transactions

Transactions involving acquisitions by foreign persons of Australian businesses or assets that are already foreign-owned or controlled (referred to as 'foreign-to-foreign' transactions), are subject to the FATA. Such transactions are of two broad types: indirect acquisitions where a foreign company acquires another and in so doing also acquires its Australian business or assets (referred to as an 'offshore takeover') and direct acquisitions by a foreign person of an already foreign owned or controlled Australian business or assets.

For the FATA to apply to a foreign-to-foreign transaction, the Australian business or assets of the target company must be valued above the applicable thresholds set under the Regulations. These transactions are assessed against the policy applicable to the relevant sector of the economy. Such proposals normally do not raise issues that might make the transaction contrary to the national interest.

Under the FATA, certain foreign-to-foreign transactions, that is 'offshore takeovers', are subject to a higher monetary threshold of \$200 million. This threshold only applies where an offshore company that has Australian subsidiaries, conducts a business or holds assets in Australia is acquired by another foreign person **and** where the target's Australian subsidiaries, business or assets represent less than 50 per cent of its total assets. If the Australian subsidiaries, business or assets are valued at or above 50 per cent of total assets then the general \$100 million threshold applies. The general \$100 million monetary threshold also applies to foreign-to-foreign transactions where the Australian business or assets are to be acquired directly by the foreign person.

Prior approval for contractual arrangements

The FATA makes it an offence to acquire, or increase, a substantial shareholding or an interest in Australian urban land without providing prior notification to the Treasurer (sections 26 and 26A). Consequently, parties proposing to enter into such transactions should ensure that the relevant agreements are conditional on foreign investment approval, or alternatively ensure they seek prior approval. This applies to situations where the acquirer intends to make an offer, tender or bid for shares or real estate. Entering an agreement that is not conditional may result in the acquisition of an

interest that is in breach of the notification provisions of the FATA and also may expose the acquirer to possible prosecution and divestment action.

Foreign control

Under the FATA, a substantial interest in an Australian corporation is deemed to be a controlling interest unless the Treasurer is satisfied that the acquirer is not in a position to determine the policy of the corporation (see section 9). However, a variety of factors and considerations other than simply a person's share ownership may be relevant to the Treasurer's consideration of where ultimate control of a corporation lies. These factors are also relevant to sections 19, 20 and 21 which relate to control of business assets and arrangements relating to the directorate and governance of corporations. These factors and considerations include:

- voting rights attached to the various shareholdings and the rights of shareholders, including in relation to representation on the Board or controlling body;
- the distribution and composition of share holdings; and
- arrangements or agreements between shareholders and a corporation or controlling body that would enable a shareholder to exercise a measure of control, including through the provision of finance, technology, materials, markets and marketing or management expertise.

The extent to which each of these or other factors is relevant would depend on the particular circumstances of each case. The determination of control is undertaken on a case-by-case basis as contemplated by the relevant provisions of the FATA.

Enforcement provisions

If the Treasurer raises no objections to a proposal subject to conditions and the parties do not comply with the conditions, they may commit an offence under subsection 25(1C) of the FATA. Failure to comply with an order made by the Treasurer constitutes an offence under section 30. The FATA empowers the Treasurer to make orders to prohibit schemes entered into for the purpose of avoiding its provisions (section 38A). In addition, the provision of false or misleading information can constitute an offence under the *Crimes Act 1914* and Chapter 7 of the *Criminal Code Act 1995*.

Other aspects of foreign investment policy

Foreign portfolio shareholdings

Under the FATA, a substantial interest in a corporation is deemed to be a controlling interest unless the Treasurer is satisfied to the contrary having regard to all the circumstances.

An interest less than a substantial shareholding could be regarded as being a controlling shareholding under foreign investment policy. This is because it may still permit control of, or allow the holder to exert material influence over, the company. This is considered on a case by case basis. The considerations would include:

- A person with less than a substantial interest is able to exert a measure of control through representation on the board of the company and/or is able to influence its policy or operations through other means, for example, the provision of technology, finance or marketing links. Such shareholdings may be taken into account in calculating the level of foreign ownership of the company. Other arrangements affecting control of the company may also come within the scope of the FATA.
- Foreign shareholdings (including portfolio shareholdings) aggregate to 40 per cent or more in a company or venture, which the FATA defines to be a controlling interest unless the Treasurer is satisfied to the contrary.
- More than half the assets of a company or trust are in the form of Australian urban land (that is, it is an Australian urban land corporation or trust estate), any proposed acquisition by foreign persons is subject to the FATA.

Foreign government investment in Australia

Special considerations can arise in respect of proposals by foreign governments or their agencies to invest in Australia. Where such investments are not subject to the FATA, the parties are still required under the policy to notify and seek approval of direct investments, irrespective of the size of the proposed investment.

Reflecting these additional issues, such investments are considered on a case by case basis and also having regard to principles publicly released by the Treasurer on 18 February 2008, namely:

- an investor's operations are independent from the relevant foreign government;
- an investor is subject to and adheres to the law and observes common standards of business behaviour;
- an investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned;
- an investment may impact on Australian Government revenue or other policies;
- an investment may impact on Australia's national security; and
- an investment may impact on the operations and directions of an Australian business, as well as its contribution to the Australian economy and broader community.

Taxation

Consistent with its general welcoming view on foreign investment, Australia's tax laws are designed to ensure they do not provide an unjustifiable disincentive to investing in Australia. The Government requires that commercial investments by foreign governments or government-related agencies be structured in a manner that enables all normal taxes and charges to be levied, and avoids questions of sovereign immunity arising. The Government also applies tax measures to prevent cross-border tax avoidance and evasion and to ensure that financing arrangements associated with foreign investment reflect normal commercial practice.

Further information regarding the application of Australia's tax laws is available on the Australian Taxation Office website, which can be accessed at www.ato.gov.au.

Chapter 4

International investment issues and Australia's international investment position

International investment issues and Australia's international investment position

Introduction

One of the Government's principal policy objectives is to generate and capture benefits for the Australian community through international trade and investment liberalisation. This is pursued through a multifaceted policy involving complementary multilateral, regional and bilateral engagement.

The Treasury's Foreign Investment and Trade Policy Division (the Division) is responsible for ensuring effective representation of Australia's foreign investment policy (the policy) and negotiating position on international investment issues. This includes: multilateral forums, such as the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO); regional forums, such as Asia-Pacific Economic Cooperation (APEC); and bilateral mechanisms, such as free trade agreements (FTAs) and investment protection and promotion agreements (IPPAs).

The Division also supports the Executive Member of the Board in his role as the Australian National Contact Point (the ANCP) for the *OECD Guidelines for Multinational Enterprises* (the OECD Guidelines) and related corporate social responsibility issues. The role of the ANCP is to ensure the effective promotion and implementation of the OECD Guidelines in Australia.

Over the past two decades, growth in worldwide flows of foreign direct investment (FDI) has been particularly strong. This growth in FDI largely reflects the worldwide relaxation of trade and investment controls, together with advancements in information technologies, communications and transport, and the emergence of global production chains. The current global financial crisis is likely to impact on global capital flows. The OECD estimates that member country outflows of FDI fell 6 per cent while inflows dropped 13 per cent in 2008.

Australia has traditionally relied on inward FDI to meet the shortfall between domestic saving and the level of domestic investment. Foreign investment supplements local savings, thereby supporting higher rates of economic growth and employment levels which in turn improves the wellbeing of the Australian people. Inward FDI also continues to play a significant role in making Australian industry internationally competitive, and thereby contributing to export growth, facilitating access to new

technologies, financing new and often risky innovations, and providing opportunities for global integration and networking.

Outward FDI enables Australian firms to expand their business beyond the potential constraints imposed by the limited size of the domestic market. By extending their market presence and access to resources, expertise and technology in other markets, Australian firms are able to become more efficient and competitive in global markets. Outward FDI also has a multiplier effect through stimulating the demand for goods and services provided by component and other input suppliers.

Multilateral investment issues

While at the multilateral level there is no comprehensive instrument covering foreign investment, an international legal framework for foreign investment has begun to emerge. The Division's role in negotiating international investment agreements and the investment chapters in Australia's FTAs allows it to contribute to the further development of an international rules-based system that takes appropriate account of both the interests of foreign investors and the wellbeing of Australians. The Division's involvement in the OECD Investment Committee (the Committee) and promotional work on the OECD Guidelines domestically supports Australia's other contributions to the international policy framework for investment. By promoting the OECD Guidelines, the Division seeks to encourage good corporate behaviour and the positive contribution of multinational enterprises (MNEs) to sustainable development.

While the Division has primary responsibility for the OECD Guidelines and the Government's engagement on international investment issues in the OECD, the Department of Foreign Affairs and Trade (DFAT) has direct responsibility for Australia's involvement in trade-related forums such as the WTO. The Division provides advice and briefings on foreign investment issues to the Treasurer and DFAT.

OECD Investment Committee

The Division represents Australia on international investment issues in the Committee. The Committee's mission is to provide a forum for international cooperation, policy analysis and advice to governments on how best to enhance the positive contribution of investment worldwide.

The Committee facilitates discussion on the policy challenges facing OECD and non-OECD countries as they seek to attract investment and maximise its benefits to host societies. It represents the community of policy makers, including treaty negotiators and National Contact Point (NCP) representatives for the OECD Guidelines, from OECD and other participant countries. It is responsible for the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations.

The Committee also has primary responsibility for the *OECD Declaration on International Investment and Multinational Enterprises* (the Declaration). The Declaration was adopted by OECD Governments in 1976 to facilitate direct investment among OECD members. It represents a broad political commitment to open and transparent investment policies and encourages the positive contribution of MNEs. Since adoption, the Declaration has been the basis for extensive intergovernmental cooperation on developing best policy practices and peer review-based approaches to outreach activities. The text of the Declaration is included in the OECD Guidelines provided at Appendix F.

The Committee's work program falls into five main categories: promoting transparent and non-discriminatory investment policies; encouraging the positive contribution of MNEs to sustainable development; cooperating with non-Members to mobilise investment for development; monitoring developments in international investment agreements; and monitoring FDI trends.

During 2007-08, the Committee continued its work on Freedom of Investment, National Security and 'Strategic' Industries. The aim of the project is to help policy makers to find ways to safeguard legitimate national security and essential public interests while at the same time keeping their investment regimes transparent and non-discriminatory and thus continuing to reap the demonstrated benefits of free international investment flows. Ten roundtables have now been held to solicit input from relevant stakeholders including policy makers and business representatives.

As an integral part of the Freedom of Investment Project, the Investment Committee considered the issue of recipient country policies toward Sovereign Wealth Funds (SWFs) and other government-controlled investment entities. The *OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies* was made by Finance Ministers meeting at the OECD in June 2008. This was followed by the release of *OECD Guidelines for Recipient Country Investment Policies Relating to National Security* in 2008.

The OECD's Policy Framework for Investment (PFI), which was developed in 2006, was used in a preliminary evaluation of policy priorities for investment climate reform in Vietnam. Australia jointly funded this OECD project with Japan and is involved in an investment climate reform assessment of Vietnam's investment policy, competition policy, tax policy, investment promotion and facilitation, financial sector development and trade policy.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable domestic laws (see Appendix F).

The OECD Guidelines are recommendations by governments to MNEs operating in or from the 30 OECD member countries and 11 non-member adhering countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, Romania and

Slovenia). They are the only comprehensive and multilaterally endorsed code of conduct for MNEs that governments are committed to promoting.

The OECD Guidelines apply to the activities of MNEs in OECD and non-OECD countries alike. They establish principles covering a broad range of issues including information disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, human rights and taxation.

The Australian Government has established a National Contact Point (known as the ANCP) to implement and promote the OECD Guidelines to Australian businesses and other interested parties. The ANCP is the Executive Member of the Foreign Investment Review Board.

An important aspect of the OECD Guidelines is its formal review mechanism, which provides for an examination of an MNE's conduct where that conduct is claimed to be contrary to the OECD Guidelines. Such an examination is termed a specific instance and it is conducted by the relevant NCP. In accordance with the OECD's *Procedural Guidance* for NCPs, the ANCP has committed to contribute to the resolution of issues relating to the implementation of the OECD Guidelines in any such specific instances.

In 2007-08, the ANCP reviewed a submission regarding an Australian company's involvement in a mining operation in South America. The ANCP commenced an initial assessment as to whether the issues raised warranted further consideration as a specific instance. The matter is ongoing.

The ANCP's main method of informing the public about the Guidelines and other OECD Investment Committee work is through the ANCP's website at www.ausncp.gov.au. This website provides a range of information including: core documents such as the text of the Guidelines and the Risk Awareness Tool; basic procedural information such as the NCP's service charter, procedures for lodging specific instances and the NCP's procedures for handling them; and official OECD Investment Committee and Guidelines-related documents (in a secure section for registered social partners). It also hosts other useful documents including conference papers and submissions by NGOs.

The promotional activities of the ANCP during 2007-08 have included:

- attending regular interdepartmental committee meetings chaired by the Attorney-General's Department on the *OECD Convention against Bribery of Foreign Public Officials in International Business Transactions*;
- continuing efforts to promote the OECD Guidelines through embassy and consular networks. This has included the ANCP personally briefing senior DFAT officials prior to them taking up postings; and

- attending corporate social responsibility conferences hosted by other organisations (for example, the Australian Centre for Corporate Social Responsibility and the United Nations Environment Programme).

World Trade Organization

In July 2004, negotiations on multilateral rules on investment were discontinued as part of the current Doha Round of WTO trade negotiations. As a consequence, the WTO-related work of the Division was largely confined to advising DFAT on investment issues relating to negotiations covering trade in services.

Asia-Pacific Economic Cooperation

Australia continues to participate actively in the work of APEC (2007 was Australia's host year), 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 and to improve transparency.

The Division, which holds the chair of the Investment Experts Group (IEG), has developed a range of work programs focused on investment liberalisation and improving the transparency of investment regimes in the APEC region. The IEG work program in the last year included:

- continuing analysis of behind-the-border barriers to investment climate reform;
- exploring the usefulness of the PFI for investment climate reform by APEC's developing member economies including a pilot project involving an Ausaid-funded PFI assessment of Vietnam;
- a joint APEC-United Nations Conference on Trade and Development (UNCTAD) project examining the best practices in the use of foreign direct investment in the provision of electricity and roads infrastructure; and
- the development and endorsement by APEC Ministers and Leaders of a three-year *APEC Investment Facilitation Action Plan*.

Business is an active contributor to IEG in sharing its ideas on how to improve the regional investment environment, with particular focus on behind-the-border impediments to investment and the need for improved investment policy coherence.

Officials from the Division also participated actively in two investment climate reform capacity building projects targeting APEC economies undertaken by the Australian APEC Study Centre and Melbourne APEC Finance Centre.

Bilateral investment negotiations

With the slow rate of progress in multilateral trade negotiations and the decision not to negotiate multilateral rules on investment in the current Doha Round, Australia has significantly increased its participation in bilateral trade and investment agreements.

Bilateral agreements can provide greater security, certainty and opportunities for outward FDI from Australia. At the same time, they can ensure that Australia is a desirable destination for overseas investors, by reducing existing compliance costs faced by investors and the cost of capital for Australian businesses.

In contrast to multilateral forums, bilateral agreements are less cumbersome to initiate and maintain, and they may be tailored to meet the needs of unique relationships between nations. They can secure practical results for Australian businesses. However, they can also introduce complexity and hence new compliance costs where each agreement contains slightly different provisions and thresholds or triggers.

Free trade agreements

The coverage of modern FTAs has extended beyond trade in goods to include non-trade provisions such as investment, services, government procurement and competition policy. Research has suggested that the effects of these non-trade provisions in FTAs can be more positive than the trade provisions.¹ The Division, through its policy responsibility for foreign investment, is involved in the negotiation of the investment and services chapters of Australia's FTAs.

Existing agreements

Australia concluded its first FTA with New Zealand in 1983 (the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)). Since 2003, it has concluded FTAs with Singapore, Thailand, the United States (US), Chile and (together with New Zealand) the Association of South-East Asian Nations (ASEAN). The Australia-United States Free Trade Agreement (AUSFTA) involved significant liberalisation of Australia's foreign investment framework. Further information on the rules that now apply to US investors is at Appendix A. Detailed information on Australia's existing bilateral FTAs is available at www.dfat.gov.au/trade/ftas.html.

Current negotiations

Investment is a component of Australia's current FTA negotiations with the Gulf Cooperation Council (GCC), Japan, China, the Republic of Korea and Malaysia. Australia has also resumed negotiations for an Investment Protocol to the CER

1 Adams, R, Dee, P, Gali, J and McGuire G, (2003), 'The Trade and Investment Effects of Preferential Trading Arrangements – Old and New Evidence', *Productivity Commission Staff Working Paper*, Canberra, May 2003.

Agreement with New Zealand and announced that it will participate in the Trans-Pacific Partnership.

Australia-Chile Free Trade Agreement

On 27 May 2008, Australia concluded FTA negotiations with Chile. The agreement entered into force on 6 March 2009.

Australia-Gulf Cooperation Council (GCC) Free Trade Agreement negotiations

On 13 December 2006, Australia announced it would be seeking FTA negotiations with the GCC. The third round of negotiations was held in February 2009. The GCC consists of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

Australia-Japan Free Trade Agreement negotiations

Australia and Japan agreed to commence negotiations on an FTA on 12 December 2006. The eighth round of negotiations was held in March 2009.

Australia-China Free Trade Agreement negotiations

Australia and China announced their intention to commence FTA negotiations on 18 April 2005. The thirteenth round of negotiations was held in December 2008.

Australia-Malaysia Free Trade Agreement negotiations

The commencement of FTA negotiations was announced on 7 April 2005. The agreement was signed on 27 February 2009.

Australia-New Zealand-ASEAN Free Trade Agreement negotiations

Australian, New Zealand and ASEAN leaders announced the commencement of FTA negotiations on 30 November 2004. Negotiations concluded on 28 August 2008.

Australia-New Zealand Closer Economic Relations

In February 2006, Australia and New Zealand agreed to commence negotiations on an Investment Protocol to form part of the ANZCERTA. In March 2009, the Australian and New Zealand Prime Ministers agreed to finalise an investment protocol in 2009.

The Trans-Pacific Partnership Agreement

On 20 November 2008 at the APEC Ministerial Meeting in Lima, Peru, the Minister for Trade announced that Australia would participate in negotiations on a comprehensive Trans-Pacific Partnership Agreement alongside the United States, Brunei Darussalam, Chile, New Zealand, Singapore and Peru. Vietnam is also considering possible participation.

Australia-Republic of Korea Free Trade Agreement negotiations

Australia and the Republic of Korea agreed to enter into FTA negotiations in March 2009. The first round of negotiations was held in May 2009.

FTA feasibility studies

Australia is currently undertaking a joint FTA feasibility study with India. In addition, the Australian and Indonesian governments are considering the findings of the completed joint feasibility study, with a view to possible commencement of negotiations towards an FTA.

Investment protection and promotion agreements

IPPAs are bilateral investment agreements between governments, which aim to stimulate the flow of investment by providing investors with guarantees relating to non-commercial risk.

To date, Australia has IPPAs in force with Argentina, Chile, the Czech Republic, Egypt, Hong Kong, Hungary, India, Indonesia, Laos, Lithuania, Mexico, Pakistan, Papua New Guinea, China, Peru, the Philippines, Poland, Romania, Sri Lanka, Uruguay and Vietnam. An agreement with Turkey has also been signed, but is not yet in force.

Australia's international investment position

This section summarises trends in foreign investment in Australia and Australian investment abroad using Australian Bureau of Statistics (ABS) data.² 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 position is compiled in accordance with the relevant international statistical standards promulgated by the OECD and the International Monetary Fund. This data is a measure of the actual cross-border transactions that have occurred and the level of foreign investment held at a particular time. By contrast, FIRB statistics relate to proposals submitted for approval, regardless of the source of finance or whether proposals were actually implemented. These differences are explained in Chapter 2.

2 As ABS data is subject to periodic revision, data included in the current report may differ from that published for the same period in previous reports.

Foreign investment levels³

According to ABS statistics,⁴ the stock of foreign investment in Australia at the end of June 2008 was \$1,682.1 billion. This represents an increase of \$85.3 billion over the level at 30 June 2007. FDI accounted for \$391.6 billion of total investment, a \$40.4 billion (11 per cent) increase over the level at 30 June 2007.

At the same time, the stock of Australian investment abroad was \$1,002.7 billion. This represents an increase of \$34.1 billion over the stock at 30 June 2007. FDI accounted for \$318.2 billion of the total stock of investment abroad.

Foreign direct investment levels by country

Chart 4.1 depicts recent trends in FDI levels between Australia and its five most important FDI partners: the US, the United Kingdom (UK), Japan, New Zealand and the European Union (EU) (other than the UK).

The US is Australia's single largest source of inward FDI and the most important destination for Australian FDI abroad. Almost a quarter of all FDI in Australia comes from the US and approximately 43 per cent of all Australian direct investment abroad flows to the US.

The UK has traditionally been Australia's other major source of FDI. At the end of 2008, \$60 billion, or approximately 15 per cent, of the level of FDI in Australia originated from the UK. The level of Australian direct investment in the UK was \$23 billion at the end of 2008.

The level of Japanese FDI in Australia at the end of 2008 was \$36 billion. However, Australian FDI in Japan remains at a very low level.

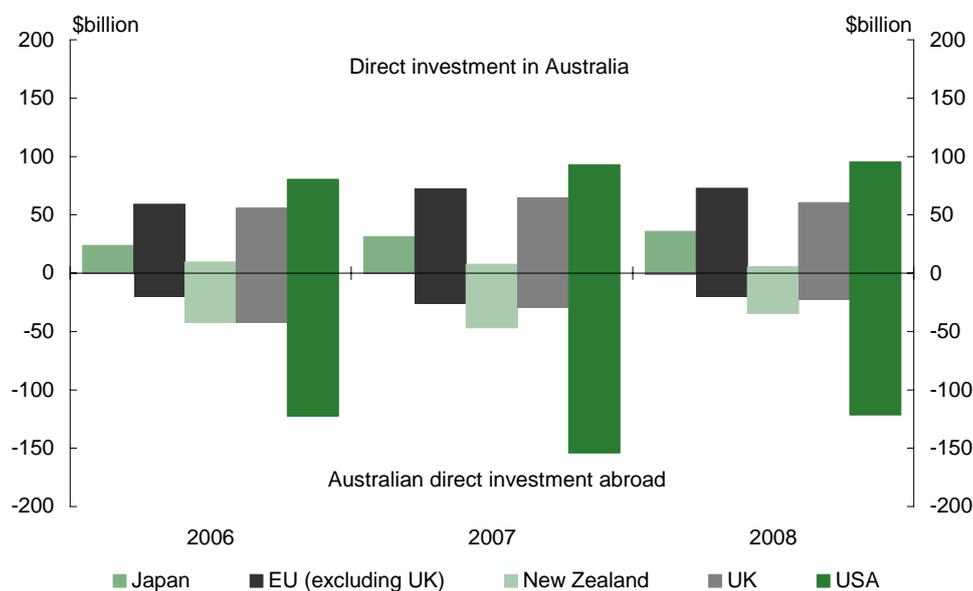
The level of Australian direct investment in New Zealand at the end of 2008 was \$34 billion. New Zealand direct investment in Australia was \$5 billion at the end of 2008.

The level of EU (excluding the UK) direct investment in the Australian economy grew to \$73 billion by the end of 2008. Australian direct investment in the EU (excluding the UK) was \$20 billion at the end of 2008.

3 Prior to 2005-06, foreign investment levels were reported on a non-financial year basis.

4 Source: ABS cat. no. 5302.0 Balance of Payments and International Investment Position, Australia, March Quarter 2009.

Chart 4.1: Level of foreign direct investment by country at 31 December 2008



Source: ABS cat. no. 5352.0 International Investment Position, Australia: Supplementary Country Statistics 2008.

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 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 flows and stocks 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 cross-border investment in equity and debt securities other than direct investment. Financial derivatives are linked to a specific financial instrument or indicator, or to a particular commodity. Other investment is a residual group that comprises many different kinds of investment. Reserve assets are those external financial assets available to and controlled by the

Reserve Bank of Australia or the Australian Treasury for use in financing payment imbalances or intervention in foreign exchange markets.

Table 4.1 provides a breakdown of the flow of foreign investment over the past five years measured by ABS statistics. In 2007-08, the inflow of foreign investment into Australia was \$159.2 billion. The outflow of Australian investment abroad was \$91.9 billion.

Table 4.1: Foreign investment flows 2003-04 to 2007-08

	2003-04	2004-05(a)	2005-06	2006-07	2007-08
	\$b	\$b	\$b	\$b	\$b
Australian investment abroad(b)					
Direct investment					
Equity and reinvested earnings	-24.8	55.6	-30.9	-23.9	-25.5
Other capital	-1.4	3.7	1.2	-6.7	-7.9
Portfolio investment					
Equity	-7.7	-15.2	-27.7	-39.7	-42.1
Debt	-14.9	-16.4	-33.3	-38.9	-24.4
Derivatives	24.7	23.2	13.0	14.4	-4.1
Other investment(c)	-14.8	-3.1	-17.3	-21.5	-32.1
Reserve assets	-5.1	-8.1	-5.6	-20.1	44.3
<i>Total Australian investment abroad</i>	<i>-43.9</i>	<i>39.7</i>	<i>-100.6</i>	<i>-136.4</i>	<i>-91.9</i>
Foreign investment in Australia(b)					
Direct investment					
Equity and reinvested earnings	12.0	-13.7	17.7	25.4	36.2
Other capital	-1.7	5.9	5.5	15.3	23.6
Portfolio investment					
Equity	18.3	-37.8	18.0	31.9	2.9
Debt	86.7	70.0	105.6	110.0	58.4
Derivatives	-27.5	-22.2	-16.7	-10.9	-5.0
Other investment(c)	0.8	14.0	22.5	21.8	43.0
<i>Total foreign investment in Australia</i>	<i>88.6</i>	<i>16.1</i>	<i>152.6</i>	<i>193.5</i>	<i>159.2</i>
Net foreign investment	44.7	55.8	52.0	57.1	67.2

(a) The figures for 2004-05 were significantly affected by one particular transaction whereby a major corporate reorganisation was recorded both as a transaction reducing Australian investment abroad and also reducing direct investment in Australia. The net effect of this transaction was zero.

(b) 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.

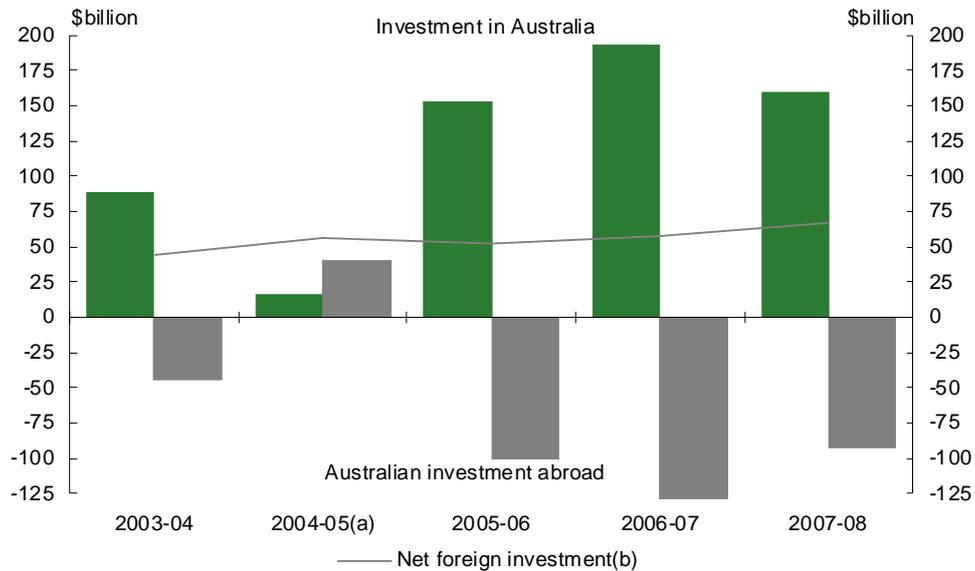
(c) Other investment includes all other investment.

Note: Figures may not add due to rounding.

Source: ABS cat. no. 5302.0 Balance of Payments and International Investment Position, Australia, March Quarter 2009, Table 75. Financial Account — Financial Year.

Chart 4.2 summarises major trends in foreign investment flows using the data in Table 4.1. It indicates that Australia remains a net importer of capital.

Chart 4.2: Foreign investment flows 2003-04 to 2007-08



- (a) The figures for 2004-05 were significantly affected by one particular transaction whereby a major corporate reorganisation was recorded both as a transaction reducing Australian investment abroad and also reducing direct investment in Australia. The net effect of this transaction was zero.
- (b) The net foreign investment figure has been derived from determining the difference between foreign investment in Australia and Australian investment abroad.

Source: ABS cat. no. 5302.0 Balance of Payments and International Investment Position, Australia, March Quarter 2009, Table 75. Financial Account — Financial Year.

Useful references on international investment issues

Websites

Organisation	Address
APEC: Investment Experts Group (IEG)	www.apecsec.org.sg
Attorney-General's Department	www.ag.gov.au
Australian Bureau of Statistics (ABS)	www.abs.gov.au
Australian Competition and Consumer Commission	www.accc.gov.au
ANCP for the <i>OECD Guidelines for Multinational Enterprises</i>	www.ausncp.gov.au
Australian Prudential Regulatory Authority	www.apra.gov.au
Australian Securities and Investments Commission	www.asic.gov.au
Australian Treasurer	www.treasurer.gov.au
Business and Industry Advisory Committee to the OECD	www.biac.org
ComLaw (Commonwealth Law)	www.comlaw.gov.au
Department of Foreign Affairs and Trade	www.dfat.gov.au
Foreign Investment Review Board	www.firb.gov.au
International Monetary Fund	www.imf.org
OECD Guidelines for Multinational Enterprises	www.oecd.org
Online guide to Australia's Free Trade Agreements	www.fta.gov.au
Organisation for Economic Co-operation and Development (OECD)	www.oecd.org
The Treasury	www.treasury.gov.au
United Nations Conference on Trade and Development (UNCTAD)	www.unctad.org
World Trade Organization (WTO)	www.wto.org

Documents

Document title	Available at:
<i>Code of Liberalisation of Capital Movements</i>	www.oecd.org
<i>Economic Roundup</i> (Treasury series)	www.treasury.gov.au
General Agreement on Tariffs in Trade (GATT)	www.wto.org
General Agreement on Trade in Services (GATS)	www.wto.org
<i>Guide to the Investment Regimes of the APEC Member Economies</i> (5th Edition)	www.apecsec.org.sg
<i>International Direct Investment Statistics Yearbook</i>	www.oecd.org
<i>OECD Code of Liberalisation of Current Invisible Operations</i>	www.oecd.org
<i>OECD Declaration on International Investment and Multinational Enterprises</i>	www.ausncp.gov.au
<i>OECD Guidelines for Multinational Enterprises</i>	www.ausncp.gov.au
<i>Policies and International Integration: Influences on Trade and Foreign Direct Investment</i> (OECD Study)	www.oecd.org
The Trade and Investment Effects of Preferential Trading Arrangements – Old and New Evidence (Australian Productivity Commission Staff Working Paper)	www.pc.gov.au
<i>The Treasury Annual Report 2007-08</i>	www.treasury.gov.au
UNCTAD Series on Issues in International Investment Agreements	www.unctad.org
UNCTAD World Investment Directory	www.unctad.org
<i>UNCTAD World Investment Report</i>	www.unctad.org

Appendix A

Australia's Foreign Investment Policy

Australia's Foreign Investment Policy¹

General²

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 (the policy) is to balance these concerns against the strong economic benefits to Australia that arise from foreign investment.

3. The policy provides the framework for Government scrutiny of proposed foreign purchases of Australian businesses and real estate. The Government has the power under the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) to block those proposals subject to the FATA which would result in a foreign person acquiring control of an Australian corporation or business or an interest in real estate where this is determined to be contrary to the national interest. The FATA and the *Foreign Acquisitions and Takeovers Regulations 1989* provide monetary thresholds below which the relevant FATA provisions do not apply, and separate thresholds for acquisitions by US investors.³ The FATA also provides a legislative mechanism for ensuring compliance with the policy.

4. In the majority of industry sectors, smaller proposals are exempt from the FATA or notification under the policy and larger proposals are approved unless determined to be contrary to the national interest. The screening process undertaken by the Foreign Investment Review Board (FIRB) enables comments to be obtained from

1 This document should be considered in conjunction with the *Foreign Acquisitions and Takeovers Act 1975* and the *Foreign Acquisitions and Takeovers Regulations 1989*.

2 Definitions of relevant terms are provided at Attachment D.

3 Under the Australia-United States Free Trade Agreement (AUSFTA) which came into effect on 1 January 2005.

relevant parties and other Government agencies in considering whether larger or more sensitive foreign investment proposals are contrary to the national interest.

5. The Government determines what is 'contrary to the national interest' by having regard to the widely held community concerns of Australians. For example, reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and in the residential real estate area. 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 real estate.

6. 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 dwellings and is not speculative in nature. The policy seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (that is, new developments such as house and land, home units and townhouses) and brings benefits to the local building industry and its suppliers.

7. The effect of the more restrictive policy measures on developed residential real estate is twofold. Firstly, it helps reduce the possibility of excess demand building up in the existing housing market. 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 be to maintain greater stability of house prices and the affordability of housing for the benefit of Australian residents.

Who should apply?

8. The FATA and the policy apply to certain acquisitions by foreign persons. A **foreign person** 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 substantial interest;
- a corporation in which two 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;
- 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 two 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.

Prior approval

9. The types of foreign investment proposals which are subject to the FATA and hence should be notified to the Government for approval, include:

- acquisitions of interests in an Australian business or corporation which is valued above, or the proposal values it above, \$100 million.⁴ For US investors⁵ different exemption thresholds apply:⁶ \$110 million⁷ for investments in prescribed sensitive sectors or by an entity controlled by a US government, or \$953 million⁸ in any other case. Such interests include:
 - acquisitions of shares representing a substantial interest in the corporation;
 - acquisitions of assets resulting in control of the business; or
 - any other type of arrangement which results in control of the business/corporation;
- takeovers of offshore companies whose Australian subsidiaries or gross assets exceed \$200 million⁹ and represent less than 50 per cent of global assets. For US investors the \$953 million threshold applies, except for offshore takeovers involving prescribed sensitive sectors or an entity controlled by a US government, where a \$219 million threshold applies;
- acquisitions of interests in Australian real estate (including interests that arise via leases, financing and profit sharing arrangements) that involve:
 - developed non-residential commercial real estate, where the property is subject to heritage listing, valued at \$5 million or more and the acquirer is not a US investor;
 - developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at \$50 million or more, or \$953 million for US investors;
 - vacant non-residential land irrespective of value;

4 \$50 million prior to December 2006.

5 The FATA does not apply to investments by US investors in those financial sector entities which are subject to the operation of the *Financial Sector (Shareholdings) Act 1998*.

6 The US thresholds are subject to annual indexation.

7 \$105 million during the calendar year 2008.

8 \$913 million during the calendar year 2008.

9 \$50 million prior to December 2006.

- residential real estate irrespective of value;¹⁰ or
 - shares or units in Australian urban land corporations or trust estates, 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. The types of foreign investment proposals which are subject to the policy and hence should also be notified to the Government for approval include:
- proposals to establish new businesses involving a total investment of \$10 million or more. Proposals by US investors, except an entity controlled by a US government, do not require notification but remain subject to other relevant policy requirements;
 - direct investments by foreign governments and their agencies irrespective of size,¹¹ or
 - portfolio investments in the media sector of 5 per cent or more and all non-portfolio investments irrespective of size.

Statutory notices

11. Acquisitions which are subject to the FATA require a statutory notice to be submitted in accordance with the relevant form as prescribed under the *Foreign Acquisitions and Takeovers (Notices) Regulations 1975*.

- Statutory notices are not applicable to proposals which are not subject to the FATA.

12. Submitting a statutory notice activates a time clock and, if the Treasurer does not take action within 30 days and notify the parties of this action within a further 10 days, the Treasurer loses the ability to either prohibit the proposal or to impose conditions. The normal 30 day examination period may be extended by up to a further 90 days by the issue of an interim order.

10 Some exemptions apply – refer to Acquisitions not requiring notification under Residential real estate.

11 The guidelines for foreign government investment proposals are provided at Attachment A, as announced in the Treasurer’s media release of 17 February 2008.

Examination by sector

13. The real estate sector (especially residential real estate) is regarded as sensitive and hence the policy outlines specific eligibility criteria relating to acquisitions of interests in specific categories of real estate.

14. There are no specific eligibility criteria applicable to acquisitions in non-real estate sectors; proposals are examined on a case-by-case basis and are normally approved unless determined contrary to the national interest.

15. The FATA applies to most examinable proposals and provides penalties for non-compliance.

16. Proposals submitted for consideration will be either:

- 'approved', if the Government raises no objections;¹²
- 'conditionally approved', if the Government raises no objections subject to the parties meeting legally binding conditions imposed under the FATA. Such conditions ordinarily relate to acquisitions of real estate, primarily the time period for the development of vacant land and to second hand residential real estate being used as the acquirer's principle place of residence; or
- prohibited, if the Government determines it to be contrary to the national interest.

Real estate sector

17. All contracts by foreign persons to acquire interests in Australian real estate should be made conditional upon foreign investment approval, unless approval was obtained prior to entering into the contract or the acquisition does not require notification. Foreign persons are in breach of the FATA if they enter an unconditional contract to acquire property (or if their conditional contract becomes unconditional) before approval is granted and may be subject to significant penalties.

Residential real estate

18. Residential real estate means all Australian residential land and housing other than commercial properties (such as, offices, factories, warehouses, hotels, restaurants and shops) and rural properties (that is, land that is used wholly and exclusively for carrying on a substantial business of primary production).¹³ Acquisitions of 'hobby farms' and 'rural residential' blocks by foreign interests are considered to be residential real estate.

12 Under the FATA, the Treasurer's responsibility is to determine whether or not to raise any objections to specific proposals in consideration of the national interest, rather than to technically 'approve' proposals.

13 Additional information regarding rural land is provided at Attachment B.

Acquisitions not requiring notification

19. Acquisitions of residential real estate by the following persons do not require notification:

- Australian citizens living abroad purchasing either in their own name or through an Australian corporation or a trust;
- foreign nationals who are the holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' (that is, New Zealand citizens) purchasing either in their own name or through an Australian corporation or a trust; and
- foreign nationals purchasing, as joint tenants, with their Australian citizen spouse.

20. Certain acquisitions by foreign nationals temporarily resident in Australia on a relevant valid Australian visa (not including short term visitors such as those who come to Australia for tourist or business purposes or medical procedures), purchasing either in their own name or through an Australian corporation or a trust, do not require notification. These acquisitions are:

- single blocks of vacant land;
- new dwellings; and
- an established (second hand) dwelling to be used as their principal place of residence (including if it is going to be demolished first and then redeveloped).

21. Acquisitions of certain types of property do not require notification regardless of the citizenship or residency status of the purchaser:

- new dwellings purchased from the developer, where the developer has pre-approval to sell those dwellings to foreign persons;¹⁴
- an interest in a time share scheme which does not permit more than four weeks entitlement per year;
- certain residential real estate in Integrated Tourism Resorts (ITR);
- an interest acquired by will or devolution by operation of law; or
- an interest acquired from the Government (Commonwealth, State or Territory, or local).

14 It is the intention that such pre-approvals will no longer be issued to developers, but current pre-approvals remain valid.

Acquisitions requiring notification — eligibility criteria

22. If an acquisition is not listed above as exempt, foreign purchaser(s) **must notify** the Government **prior** to acquiring the interest. Proposals by foreign persons to acquire residential real estate that do not meet the eligibility requirements (outlined below) are subject to the FATA but are **not normally approved**.

Vacant land

23. Proposed acquisitions of vacant land for residential development are normally approved subject to development condition(s) imposed under the FATA.

- Acquisitions of **single blocks** of vacant land (that is, land which is zoned to permit the construction of no more than **one** residential dwelling per block of land) for the purpose of building a single residential dwelling on each block are normally approved subject to the following condition:
 - continuous substantial construction must commence within 24 months.
- Acquisitions of **other** vacant land (not single blocks) for the purpose of building multiple residential dwellings are normally approved subject to the following conditions:
 - continuous substantial construction must commence within 24 months; and
 - at least 50 per cent of the acquisition cost or the current market value of the land (whichever is higher) must be spent on development.

New dwellings

24. New dwellings acquired 'off the plan' (before construction commences or during the construction phase) or after construction is complete are normally approved where the dwellings:

- have not previously been sold (that is, they are purchased from the developer); and
- have not been occupied for more than 12 months.

25. There are no restrictions on the number of such dwellings in a new development which may be sold to foreign persons, provided that the developer markets the dwellings locally as well as overseas (that is, the dwellings cannot be marketed exclusively overseas).

26. This category includes dwellings that are part of extensively refurbished buildings where the building's use has undergone a change from non-residential (for example, office or warehouse) to residential. It does not include established residential real estate that has been refurbished or renovated.

Established (second hand) dwellings

27. This category includes **all** residential dwellings which are not new dwellings (that is, they have been previously owned and/or they have been occupied for more than 12 months).

28. Foreign persons are prohibited from acquiring established dwellings for investment purposes (that is, they cannot be purchased to be used as a rental or holiday property), irrespective of whether they are temporary residents in Australia or not.

29. Foreign persons who are temporary residents in Australia do not require approval to acquire a second-hand dwelling which is to be used as their principal place of residence.

30. Proposals by foreign owned companies to acquire second-hand dwellings for the purpose of providing housing for their Australian-based staff are normally approved subject to the following condition:

- the company undertakes to sell or rent the property if it is expected to remain vacant for six months or more.

Redevelopment of established (second hand) dwellings

31. Established dwellings may be acquired for the purpose of redevelopment (that is, to demolish the existing dwelling and build new dwellings). This does not include refurbishing the existing dwelling. Proposals for redevelopment are normally approved subject to the following conditions:

- the proposal must provide for an increase in the housing stock, that is, an increase in the number of dwellings;
- the existing residence cannot be rented out prior to demolition and redevelopment; and
- the existing dwelling must be demolished and continuous substantial construction of the new dwellings must commence within 24 months.

32. A redevelopment proposal which does not increase the number of dwellings may be approved where it can be shown that the existing dwelling is at the end of its economic life (that is, derelict or uninhabitable), since constructing a new dwelling would effectively increase the housing stock. To demonstrate that the property is uninhabitable and must be demolished, a valuation of the existing structures by a licensed valuer and/or a builder's report is generally required. Photographs and other forms of evidence may also be required. Approval of such proposals would be subject to the same conditions outlined above.

Time share schemes

33. The acquisition of an interest in a time share scheme where the entitlement of the foreign person (and any of that person's associates) is greater than four weeks in any year must be notified and will normally be approved according to the eligibility requirements for the relevant category of property outlined above.

Residential real estate in Integrated Tourism Resorts (ITR)

34. Proposed acquisitions of **any** residential property which are within the bounds of a resort that the Treasurer had designated as an 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 it is 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 ITR status.

Commercial real estate

35. Commercial real estate includes vacant and developed property which is not for residential purposes – such as offices, factories, warehouses, hotels, restaurants and shops. It does not include rural land, but may include rural property which does not fall within the definition of rural land (that is, it is not used wholly and exclusively for carrying on a substantial business of primary production), such as vacant land for forestry plantation or mining operations.

Acquisitions not requiring notification

36. Acquisitions of commercial real estate by Australian citizens living abroad purchasing either in their own name or through an Australian corporation or a trust do not require notification.

37. Acquisitions of certain types of property do not require notification, regardless of the citizenship or residency status of the purchaser:

- an interest acquired by will or devolution by operation of law;
- an interest acquired from the Government (Commonwealth, State or Territory, or local);
- an interest in developed commercial property valued at less than \$50 million or \$953 million (indexed annually) for US investors, or \$5 million for heritage listed properties where the acquirer is not a US investor; or
- an interest in developed commercial property where the property is to be used immediately and in its present state for industrial or non-residential commercial

purposes. The acquisition must be wholly incidental to the purchaser's proposed or existing business activities.

Acquisitions requiring notification — eligibility requirements

38. If an acquisition is not listed above as exempt, the foreign purchaser(s) **must notify** the Government **prior** to acquiring the interest. Proposals by foreign persons to acquire commercial real estate are normally approved unless they are determined to be contrary to the national interest.

Developed commercial property

39. This category includes acquisitions of hotels, motels, hostels and guesthouses. It also includes acquisitions of individual dwellings within these properties, where they are part of the hotel, motel, hostel or guesthouse (not just physically located within the property). For example, the acquisition of a hotel room in a strata titled hotel where that room is managed by the hotel operator (that is, it is part of the hotel) is considered to be developed commercial property, but the acquisition of a unit in a hotel building where that unit is owner-occupied or rented out privately by the owner (that is, it is **not** part of the hotel) is considered to be **residential** property.

40. Proposed acquisitions of developed non-residential commercial real estate valued above the relevant thresholds are normally approved unless they are determined to be contrary to the national interest.

Vacant land

41. Proposed acquisitions of real estate for commercial development (not to be used for residential purposes) are normally approved subject to the following development conditions imposed under the FATA:

- continuous construction commencing within five years; and
- a minimum amount equivalent to 50 per cent of the acquisition cost or current market value of the land (whichever is higher) being spent on development.

Mining tenements

42. The acquisition of a mineral right, mining lease, mining tenement or production licence will require foreign investment approval if it involves acquiring an interest in Australian urban land as defined by section 12A of the FATA, including:

- an interest in a lease or licence giving rights to occupy Australian urban land where the term of the lease or licence (including any extension) is reasonably likely, at the time the interest is acquired, to exceed five years (section 12A(1)(c)); or
- an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land (section 12A(1)(d)).

43. Approval is not required if the lease or licence is acquired from the Commonwealth, a State or Territory, or a local governing body (section 12A(7)).

Forestry

44. A forestry business is a primary production business. Acquisitions of existing forestry businesses are treated in similar fashion to acquisitions of other Australian businesses.

45. Where a foreign person wishes to acquire land for the establishment of a forestry business approval is required. These proposals are normally approved subject to:

- continuous development/planting on the land commencing within 12 months;
- a minimum amount equivalent to 50 per cent of the acquisition cost or current market value of the land (whichever is higher) being spent on the development of the business;
- compliance with relevant State codes of practice for the industry; and
- the foreign person agreeing to on-sell the land and any related dwellings to Australian or other eligible purchasers when the forestry operations cease.

Non-real estate sectors

46. There are no specific eligibility criteria applicable to acquisitions in non-real estate sectors; proposals are examined on a case-by-case basis and are normally approved unless determined contrary to the national interest.

47. There are various other Government policies and regulations which impose additional requirements on certain sectors. These additional requirements are administered by the relevant Department(s) and do not form part of the foreign investment policy. However, foreign investment proposals involving these sectors will be examined with regard to these additional requirements to determine whether they are contrary to the national interest. The sectors which are subject to additional requirements are outlined below.

Banking

48. Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* (FSSA) 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. Acquisitions of interests by US investors in financial sector companies, as defined by the FSSA, are exempt from the FATA. The FSSA continues to apply.

49. 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

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

International services

51. 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

52. 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

53. 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.

Media¹⁵

54. All direct (that is, non-portfolio) proposals by foreign persons to invest in the media sector irrespective of size are subject to prior approval under the policy. Proposals involving portfolio shareholdings of 5 per cent or more must also be submitted for examination.

Telecommunications

55. Around 83 per cent of Telstra Corporation Limited (Telstra) is owned by institutional and individual investors, with the remaining approximately 17 per cent to be transferred by the Government to the Future Fund, a fund established by the Government to fund its public service superannuation liabilities. Shares transferred to the Future Fund will be held in escrow for a two year period.

56. Aggregate foreign ownership of Telstra is restricted to 35 per cent of the privatised equity (including instalment receipts) and individual foreign investors are only allowed to acquire a holding of no more than 5 per cent of the privatised equity.

Approval period

57. Approval under the 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.

58. Approvals for share acquisitions involving a full or partial bid under the *Corporations Act 2001* 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 the *Corporations Act 2001* or to acquire the balance of the shares through a subsequent bid, further prior approval must be sought.

59. 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.

60. 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

15 The requirements that previously applied to broadcasting and newspapers were removed following proclamation of the *Broadcasting Services Amendment (Media Ownership) Act 2006* which came into effect on 4 April 2007.

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.

Confidentiality/privacy

61. The Government recognises the commercial-in-confidence sensitivity of much of the information provided to FIRB. 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, subject to the operation of applicable legislation, 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.

62. In addition, the Government is obligated to respect the privacy of personal information that is provided by applicants in accordance with and subject to the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*. In accordance with those Acts, the Government advises that relevant personal information may be passed to other government agencies, such as the Department of Immigration and Citizenship, the Australian Taxation Office or the Australian Federal Police.

Applications

63. Please refer to FIRB's website www.firb.gov.au or the relevant How to Apply guide for further details. **No fees or charges** apply to applications.

Further enquiries

64. Further information on the policy may be found at the FIRB's website www.firb.gov.au.

65. Should you have any further enquiries please contact FIRB's Executive on:

General enquiries:

Phone: 02 6263 3795

Fax: 02 6263 2940

Email: firbenquiries@treasury.gov.au

From overseas:

+61 2 6263 3795

+61 2 6263 2940

firbenquiries@treasury.gov.au

Attachment A

Guidelines for foreign government investment proposals

Proposed investments by foreign governments and their agencies (for example, state-owned enterprises and sovereign wealth funds (SWF)) are assessed on the same basis as private sector proposals. National interest implications are determined on a case-by-case basis.

However, the fact that these investors are owned or controlled by a foreign government raises additional factors that must also be examined.

This reflects the fact that investors with links to foreign governments may not operate solely in accordance with normal commercial considerations and may instead pursue broader political or strategic objectives that could be contrary to Australia's national interest.

The Government is obliged under the *Foreign Acquisitions and Takeovers Act 1975* to determine whether proposed foreign acquisitions are contrary to Australia's national interest. In examining proposed investments by foreign governments and their agencies, the Australian Government will typically have regard to the following six issues.

1. *An investor's operations are independent from the relevant foreign government.*

In considering issues relating to independence, the Government will focus on the extent to which the prospective foreign investor operates at arm's length from the relevant government.

It also considers whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government (including through the investor's funding arrangements).

Where the investor has been partly privatised, the Government would consider the size and composition of any non-government interests, including any restrictions on governance rights.

2. *An investor is subject to and adheres to the law and observes common standards of business behaviour.*

To this end, the Government considers the extent to which the investor has clear commercial objectives and has been subject to adequate and transparent regulation and supervision in other jurisdictions.

The Government will examine the corporate governance practices of foreign government investors. In the case of an SWF, the Government would also

consider the fund's investment policy and how it proposes to exercise voting power in relation to Australian companies.

Proposals by foreign government owned or controlled investors that operate on a transparent and commercial basis are less likely to raise additional national interest concerns than proposals from those that do not.

3. *An investment may hinder competition or lead to undue concentration or control in the industry or sectors concerned.*

These issues are also examined by the Australian Competition and Consumer Commission in accordance with Australia's competition policy regime.

4. *An investment may impact on Australian Government revenue or other policies.*

For example, investments by foreign government entities must be taxed on the same basis as operations by other commercial entities. They must also be consistent with the Government's objectives in relation to matters such as the environment.

5. *An investment may impact on Australia's national security.*

The Government would consider the extent to which investments might affect Australia's ability to protect its strategic and security interests.

6. *An investment may impact on the operations and directions of an Australian business, as well as its contribution to the Australian economy and broader community.*

The Government would consider any plans by an acquiring entity to restructure an Australian business following its acquisition. Key interests would include impacts on imports, exports, local processing of materials, research and development and industrial relations.

The Government would also consider the extent of Australian participation in ownership, control and management of an enterprise that would remain after a foreign investment, including the interests of employees, creditors and other stakeholders.

Attachment B

Rural land

Rural land is land that is used wholly and exclusively for carrying on a substantial business of primary production. The definition of primary production is taken from the *Income Tax Assessment Act 1997* and refers to production resulting directly from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming. Primary production for the purpose of the rural land definition does not include vacant land (even if zoned 'rural'), hobby farms, 'rural residential' blocks or land used for stock agistment or mining.

To constitute a business of primary production, it must be substantial and have a commercial purpose or character and not merely be carried on as a hobby or for recreation purposes. A number of factors are considered in determining a business' commercial purpose or character, including:

- operating as a significant commercial activity, and not a recreation or hobby;
- the intention of the business is to make a profit from the activity;
- repetition and regularity of activity;
- activity organised and carried on in a businesslike manner with associated business records and reports;
- reasonably large scale operation; and
- commercial scale of sales of product.

A primary production business should also meet the following criteria:

- the value of the business' Australian urban land should be less than 50 per cent of its total assets; and
- the land on which the business is being conducted should be zoned rural and not residential.

The acquisition of an interest in a primary production business where the total assets of the business do not exceed \$100 million, or \$953 million for US investors, is exempt from the need for foreign investment approval (that is, the same monetary thresholds that apply to other acquisitions of Australian companies or business assets).

Attachment C

Prescribed sensitive sectors under the Australia-United States Free Trade Agreement (AUSFTA)

For US investors subject to the AUSFTA, the prescribed sensitive sectors are:

- media;
- telecommunications;
- transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided within, or to and from, Australia);
- the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defence Force or other defence forces;
- the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
- the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and
- the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of nuclear facilities.

Acquisitions in these sectors are subject to different thresholds under the FATA.

Attachment D

Definitions

- Under the FATA, a person is **ordinarily resident** if:
 - their continued presence in Australia is not subject to any limitation as to time imposed by law (that is, they are permitted to stay in Australia indefinitely, such as NZ citizens and permanent residents); and
 - the person has actually been in Australia during 200 or more days in the previous 12 months.
- **Spouse** includes de facto partner (whether of the same sex or a different sex) – that is, although they may not be legally married, they have a relationship as a couple and live together on a genuine domestic basis (sections 22A and 22B of the *Acts Interpretation Act 1901*).
- A **substantial interest** occurs when a single foreigner (and any associates)¹⁶ 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 a corporation, business or trust.
- A person is a **temporary resident** if they are living in Australia and:
 - they hold a temporary (that is, non-permanent) visa which permits them to stay in Australia for a continuous period of more than 12 months; or
 - they have submitted an application for permanent residency, and they hold a bridging visa which permits them to stay in Australia until that application has been finalised.
- An **Australian urban land corporation or trust** is a corporation or trust whose assets consist primarily Australian urban land – that is, the value of its eligible land assets exceeds 50 per cent of the value of its total assets (see sections 13C and 13D of the FATA).
- A **'US investor'** is a national or permanent resident of the United States of America; a US enterprise; or a branch of an entity located in the United States of America and carrying on business activities there.
 - A **US enterprise** is an entity constituted or organised under a law of the United States of America. The form in which the entity may be constituted or organised

16 See section 6 of the FATA for the list of 'associates'.

may be, but is not limited to a corporation, a trust, a partnership, a sole proprietorship, or a joint venture.

- A **branch** may be 'carrying on business activities in the United States of America' where it is doing so in a way other than being solely a representative office; and in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the United States of America; and by having its administration in the United States of America.

Appendix B

Legislation and regulations, media releases and policy statements and publications

Legislation and regulations, media releases and policy statements and publications

Legislation and regulations

Current

1. *Foreign Acquisitions and Takeovers Act 1975* (Act No. 92 of 1975 as amended: see Appendix D)
2. *Foreign Acquisitions and Takeovers Regulations 1989* (Statutory Rules No. 177 of 1989 as amended: see Appendix E)
3. *Foreign Acquisitions and Takeovers (Notices) Regulations 1975* (Statutory Rules No. 226 of 1975 as amended: see Appendix E)

Historical

1. *Companies (Foreign Take-overs) Act 1973*, No. 199 of 1973 – **December 1973**.
2. *Companies (Foreign Take-overs) Act 1972*, No. 134 of 1972 – **November 1972**.

Media releases and policy statements

1. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment Decision: Anshan Iron and Steel Group Corporation – Acquisition of up to a 36.28 per cent interest in Gindalbie Metals Ltd – **8 May 2009**.
2. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment Decision: China Minmetals Non-ferrous Metals Co Ltd – Acquisition of certain mining assets of OZ Minerals Ltd – **23 April 2009**.
3. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment Decision: Hunan Valin Iron and Steel Group – Acquisition of up to a 17.55 per cent interest in Fortescue Metals Group – **31 March 2009**.
4. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment: China Minmetals Non-ferrous Metals Co Ltd – Proposed acquisition of OZ Minerals Ltd – **27 March 2009**.
5. Statement by the Treasurer, the Hon Wayne Swan MP – Amendments to Foreign Acquisitions and Takeovers Act – **12 February 2009**.
6. Statement by the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP – Administrative Changes to Foreign Investment Review Process for Real Estate – **18 December 2008**.
7. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment Proposal: Sinosteel Corporation – Acquisition of up to a 49.9 per cent interest in Murchison Metals Ltd – **21 September 2008**.
8. Statement by the Treasurer, the Hon Wayne Swan MP – Foreign Investment Proposal: Chinalco – Acquisition of up to a 14.99 per cent interest in Rio Tinto – **24 August 2008**.
9. Statement by the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP – Foreign Investment Policy Changes – Timeframe for the development of vacant commercial land extended from 12 months to 5 years – **23 April 2008**.
10. Statement by the Treasurer, the Hon Wayne Swan MP – Release of a set of principles to enhance the transparency of Australia's foreign investment screening regime – **17 February 2008**.
11. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Proposal: Red Earth Holdings b.v. – Acquisition of an additional interest in PBL Media Holdings Pty Limited and the PBL Media Holdings Trust – **4 September 2007**.

Appendix B: Legislation and regulations, media releases and policy statements and publications

12. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment: Canwest Global Communications Corp – Acquisition of interest in Ten Network Holdings Limited – **20 August 2007**.
13. Statement by the Treasurer, the Hon Peter Costello MP – Reappointment of Chairman of Foreign Investment Review Board [Mr John Phillips AO] – **18 April 2007**.
14. Joint statement by the Treasurer, the Hon Peter Costello MP, and the Deputy Prime Minister and Minister for Transport and Regional Services, The Hon Mark Vaile MP – Qantas Airways Ltd – **6 March 2007**.
15. Statement by the Treasurer, the Hon Peter Costello MP – Qantas Offer – **14 December 2006**.
16. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment: Brambles Industries Limited – **9 November 2006**.
17. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Proposal: Thales Australia Holdings Pty Limited – Acquisition of remaining 50 per cent interest in ADI Limited – **12 October 2006**.
18. Statement by the Treasurer, the Hon Peter Costello MP – Reappointment of member of Foreign Investment Review Board [Ms Lynn Wood] – **29 April 2005**.
19. Statement by the Treasurer, the Hon Peter Costello MP – BHP Billiton Group – No objections raised to the acquisition of WMC Resources Limited, subject to conditions – **4 April 2005**.
20. Statement by the Treasurer, the Hon Peter Costello MP – Xstrata Plc – No objections raised to the acquisition of WMC Resources Limited, subject to conditions – **11 February 2005**.
21. Statement by the Treasurer, the Hon Peter Costello MP – Village Roadshow Limited – Seeking information from parties who have acquired shares in Village Roadshow Limited on behalf of a number of foreign investors, including interests held by Swiss nominee banks – **9 February 2004**.
22. Statement by the Treasurer, the Hon Peter Costello MP – Announcement of the re-appointment of the Hon Chris Miles as a member of the Foreign Investment Review Board – **9 June 2004**.
23. Statement by the Treasurer, the Hon Peter Costello MP – No objections raised to the proposal for News Corporation Limited to relocate its place of incorporation to the United States – **29 June 2004**.
24. Statement by the Treasurer, the Hon Peter Costello MP – Xstrata Plc – No objections raised to the acquisition of MIM Holdings Ltd – **28 May 2003**.

25. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Review Board: Re-appointment of Mr John Phillips AM – **24 April 2002.**
26. Statement by the Treasurer, the Hon Peter Costello MP – No objections raised to Mitsui’s acquisition of remaining interest in Moura Mine – **12 April 2002.**
27. Statement by the Treasurer, the Hon Peter Costello MP – Singapore Telecommunications Limited – Acquisition of Cable & Wireless Optus Limited – **28 August 2001.**
28. Statement by the Treasurer, the Hon Peter Costello MP – Singapore Telecommunications Limited – Application for Foreign Investment Approval to Acquire Cable & Wireless Optus Limited – **22 August 2001.**
29. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Approval of Brambles Industries Limited – GKN Plc – **26 July 2001.**
30. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Approval of BHP Limited-Billiton Plc Merger – **4 June 2001.**
31. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Proposal – Shell Australia Investments Limited’s Acquisition of Woodside Petroleum Limited – **23 April 2001.**
32. Statement by the Treasurer, the Hon Peter 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.**
33. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Review Board: Re-appointment of Ms Lynn Wood – **4 April 2000.**
34. Statement by the Assistant Treasurer, Senator the Hon Rod Kemp – Virgin receives Foreign Investment Approval – **7 December 1999.**
35. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Policy Changes – **3 September 1999.**
36. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Review Board: Appointment of the Hon Chris Miles – **8 June 1999.**
37. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Case: Tyndall Australia Ltd’s Portfolio Investment in John Fairfax Holdings Ltd – **4 August 1998.**
38. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Policy: Ownership structure for the Ten Group Ltd (TGL) – Canwest/TNQ float proposal – **6 March 1998.**

Appendix B: Legislation and regulations, media releases and policy statements and publications

39. Statement by the Treasurer, the Hon Peter Costello MP – Foreign Investment Review Board: Appointment of Mr John Phillips AM as Chairman – **9 April 1997**.
40. Statement by the Treasurer, the Hon Peter Costello MP – Release of the Report of the Financial System Inquiry and Initial Government Response on Mergers Policy – **9 April 1997**.
41. 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**.
42. Statement by the Treasurer, the Hon Peter Costello MP – Uranium Sector – **19 November 1996**.
43. Statement by the Treasurer, the Hon Peter Costello MP – Rationalisation of Notification Thresholds for Portfolio Investments in the Media Sector – **18 September 1996**.
44. Statement by the Treasurer, the Hon Ralph 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**.
45. Statement by the Treasurer, the Hon Ralph Willis MP – Foreign Investment Review Board: Appointment of Ms Lynn Wood – **4 April 1995**.
46. Statement by the Treasurer, the Hon John Dawkins MP – Foreign Investment Policy: Mass Circulation Newspapers – **20 April 1993**.
47. Statement by the Treasurer, the Hon John Dawkins MP – Modification to Foreign Investment Policy: Residential Real Estate and Developed Non-Commercial Real Estate – **1 April 1993**.
48. Statement by the Treasurer, the Hon John Dawkins MP – Economic Statement: Foreign Investment Policy Changes – **26 February 1992**.
49. Statement by the Treasurer, the Hon John Kerin MP – Foreign Investment in the Print Media – **10 October 1991**.
50. Statement by the Treasurer, the Hon John Kerin MP – Foreign Investment Policy: Integrated Tourism Resorts – **25 July 1991**.
51. 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**.
52. Statement by the Treasurer, the Hon Paul Keating MP – Foreign Investment Policy: New Oil and Gas Developments – **20 January 1988**.

53. Statement by the Treasurer, the Hon Paul Keating MP – Foreign Investment Policy: Developed Residential Real Estate – **29 September 1987**.
54. Statement by the Treasurer, the Hon Paul Keating MP – Thin Capitalisation and Corporate Restructures in relation to Foreign Investment Policy – **30 April 1987**.
55. Statement by the Treasurer, the Hon Paul Keating MP – Further Liberalisation of Foreign Investment Policy – **30 April 1987**.
56. Statement by the Treasurer, the Hon Paul Keating MP – Foreign Investment Policy Relaxations – **28 July 1986**.
57. Statement by the Acting Treasurer, the Hon Chris Hurford MP – Economic and Rural Policy Statement – **15 April 1986**.
58. Statement by the Acting Treasurer, the Hon Chris Hurford MP – Review of Foreign Investment Policy – **29 October 1985**.
59. Statement by the Treasurer, the Hon Paul Keating MP – New Banking Authorities – **27 February 1985**.
60. Statement by the Treasurer, the Hon Paul Keating MP – Foreign Investment Policy and Stockbroking – **18 December 1984**.
61. Statement by the Treasurer, the Hon Paul Keating MP – Participation in Banking in Australia and Other Issues of Financial Deregulation – **10 September 1984**.
62. Statement by the Treasurer, the Hon Paul Keating MP – Foreign Investment Policy and Stockbroking – **18 April 1984**.
63. Statement by the Treasurer, the Hon Paul Keating MP – Review of Foreign Investment Policy – **20 December 1983**.

Publications

- Australia's Foreign Investment Policy.
- Guidelines relating to submitting applications under Australia's foreign investment policy:
 - How to Apply – Residential Real Estate; and
 - How to Apply – Business Proposals.
- Statutory notices (for proposed acquisitions which are subject to the *Foreign Acquisitions and Takeovers Act 1975*):
 - Notice under section 25 – Form 1;
 - Notice under section 26 – Form 2;
 - Notice under section 26A:
 - : Form 3 – non-residential real estate;
 - : Form 4 – residential real estate acquired in individual name(s); and
 - : Form 5 – residential real estate acquired in the name of a company or trust estate.
- Retrospective application forms (for residential real estate acquired without prior approval).
- FIRB service charter.
- Foreign Investment Review Board annual reports, 1977 to 2007.

The current versions of the policy, guidelines, statutory notices, retrospective application forms and the FIRB service charter, as well as annual reports (from 1995), are available on the Foreign Investment Review Board's website at www.firb.gov.au.

Appendix C

Chronology of policy measures

Chronology of policy measures

6 June 2009

The definition of 'spouse' was amended in the *Foreign Acquisitions and Takeovers Regulations 1989* (the Regulations) to ensure consistency with the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) and the *Acts Interpretation Act 1901* as amended in December 2008 by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (the Same-Sex Relationships Act – see below). Also, an additional streamlined application form/statutory notice was introduced for acquisitions of residential real estate (as well as minor modifications to the streamlined forms/notices which were introduced in March – see below).

31 March 2009

Amendments to the Regulations came into effect, fully implementing the Government's changes to the screening of real estate acquisitions (announced on 18 December 2008 – see below). The changes which came into effect on this date were as follows:

- Temporary residents are no longer required to notify proposed acquisitions of:
 - an established dwelling to be used as their principal place of residence (not for investment purposes);
 - new dwellings; and
 - single blocks of vacant residential land (other acquisitions of vacant land will require notification and will normally be approved subject to development within 24 months).
- Accommodation facilities such as hotels, motels, hostels and guesthouses are treated as commercial real estate rather than residential real estate. Acquisitions of such facilities – or individual units that are part of such facilities – valued below the relevant developed commercial property threshold are exempt from the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) and do not require notification and approval.
- New application forms and statutory notices have been introduced to facilitate new, streamlined administrative procedures for non-resident foreign persons, foreign-owned companies and trust estates to notify and receive approval for proposed acquisitions of residential real estate which meet the eligibility criteria.

18 December 2008

The Assistant Treasurer announced changes to the administration of the foreign investment review processes applying to real estate – see <http://assistant.treasurer.gov.au>. The policy changes which took immediate effect are summarised as follows:

- The definition of ‘temporary resident’ was expanded to include foreign persons living in Australia on bridging visas pending the outcome of their permanent residency visa applications.
- The previous \$300,000 limit applying to student visa holders purchasing an established dwelling as their principal place of residence was removed.
- The timeframe for the development of vacant residential land (and redevelopment of existing dwellings) was extended from 12 months to two years.
- The definition of a new dwelling was amended to include dwellings that have not been sold and have not been occupied for more than 12 months.
- The previous requirement that only 50 per cent of new dwellings could be sold to foreign persons on an ‘off the plan’ basis was removed provided that developers market the dwellings locally as well as overseas. Vendors are no longer required to have concurrently developed a similar dwelling in order to be able to sell a new stand-alone dwelling to a foreign person. This will be reviewed after two years.
- Foreign-owned companies can now purchase established dwellings for the use of their Australian-based staff provided that they sell or rent the dwelling if it is expected to remain vacant for more than six months.

10 December 2008

The Same-Sex Relationships Act was introduced to address discrimination against same-sex couples and their children in various Commonwealth laws, including the FATA. The ‘associates’ provision of the FATA was amended to reflect ‘spouse or de facto partner’, ‘child’ and ‘parent’ as defined in the *Acts Interpretation Act 1901* and the *Family Law Act 1975*. The amendment included a six-month transitional period, whereby persons who became associates by virtue of that amendment would not be subject to penalties under the FATA until 10 June 2009.

23 April 2008

The Assistant Treasurer announced changes to the foreign investment policy to extend the timeframe for the development of vacant commercial land from 12 months to five years.

17 February 2008

The Treasurer released a set of principles to enhance the transparency of Australia's foreign investment screening regime as it applies to foreign governments and their agencies (such as State-owned and/or controlled enterprises and sovereign wealth funds).

4 April 2007

Legislation came into effect implementing the Government's decision (announced on 13 July 2006) to remove foreign ownership restrictions in the media sector, including newspapers (regional/suburban and metropolitan) and broadcasting.

November/December 2006

Following a review of Australia's foreign investment policy (including the FATA) flowing from a commitment made by Australia under the Australia-United States Free Trade Agreement, the reforms listed below were made to Australia's foreign investment screening arrangements.

1. As of 2 December 2006 the FATA's general asset value threshold was raised from \$50 million to \$100 million.¹ This \$100 million threshold also applies to investments in prescribed sensitive sectors by United States (US) investors and investments by entities controlled by a US government (all indexed annually).
2. As of 2 December 2006 the threshold for offshore takeovers was raised from \$50 million to \$200 million.¹ This threshold applies where the target is a foreign corporation whose Australian assets account for less than 50 per cent of its total assets.
3. As of 18 November 2006 foreign custodians are exempt from the FATA where they acquire interests in shares in relevant corporations and interests in Australian urban land when only acting at the direction of clients. In relation to such holdings, foreign beneficiaries (clients) remain subject to the FATA and foreign custodians remain subject to the FATA where they are not acting at the direction of their clients.

13 July 2006

The Government announced that it is proposing to remove elements of the Government's foreign investment policy that impose foreign ownership restrictions on both regional/suburban and metropolitan newspapers. These changes came into effect upon proclamation of the applicable amending legislation on 4 April 2007.

1 Different thresholds apply to US investors (see Appendix A).

1 January 2005

US investor specific thresholds agreed under the Australia-United States Free Trade Agreement came into effect. The initial thresholds of \$800 million and \$50 million are indexed annually. The latter threshold has been affected by the reforms announced in November 2006. For current US investor thresholds, see Appendix A.

May 2004

The Australia-United States Free Trade Agreement was signed in May 2004 and came into effect on 1 January 2005. A number of changes were made to Australia's foreign investment policy as it applies to US investors through amendments to the FATA and the Regulations (see 1 January 2005 compilation at www.comlaw.gov.au).

30 March 2004

The *Foreign Acquisitions and Takeovers Amendment Regulations 2004 (No. 1)* provided a mechanism to exempt from the FATA acquisitions of interests in shares in Australian companies held by foreign custodians on behalf of Australian investors. The custodian must apply in writing to the Treasurer for an exemption and must meet the requirements specified in the Regulations. This has been superseded by the exemption for foreign custodians introduced in November 2006.

3 May 2000

The *Aviation Legislation Amendment Act (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 Regulations. These included changes to the thresholds that:

Appendix C: Chronology of policy measures

- increased the threshold for foreign investment in existing businesses from \$5 million (\$3 million for rural businesses) to \$50 million (superseded by a \$100 million threshold as of 1 December 2006);
- increased the 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 (superseded by a \$200 million threshold as of 1 December 2006); and
- increased the 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 which case the threshold remains at \$5 million). For US investors, this threshold was superseded as of 1 January 2005.

Other amendments to the 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 Act 2001*) 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 subregulation 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 might 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 FATA. 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 FATA 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 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 threshold that applies to portfolio investments by foreign interests in the media sector. This change rationalised the 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 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 being 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 thresholds where the relevant total assets/total investment falls below \$50 million. 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 (see 10 September 1999 and November 2006 for announcements that affect some of these thresholds);
- 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 might 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 FATA. The ITR exemption would only apply to residential real estate within resorts that have applied to be 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 1989* and the gazettal of the Foreign Acquisitions and Takeovers Regulations. The amended legislation, to be known as the *Foreign Acquisitions and Takeovers Act 1975*, 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 substantially restrict foreign acquisitions of developed residential real estate and to introduce legislation to require compliance with the amended policy. The \$600,000 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 the manufacturing, tourism and non-bank finance sectors since July 1986) to other sectors, namely resource processing, services, insurance, stockbroking 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 that:

- 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 that:

- 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.

Appendix D

Foreign Acquisitions and Takeovers Act 1975



Foreign Acquisitions and Takeovers Act 1975

Act No. 92 of 1975 as amended

This compilation was prepared on 22 December 2008¹
taking into account amendments up to Act No. 144 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

¹ The latest compilation of this Act can be via ComLaw (Commonwealth Law) at
www.comlaw.gov.au

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Notes

An Act relating to the foreign acquisition of certain land interests and to the foreign control of certain business enterprises and mineral rights

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Foreign Acquisitions and Takeovers Act 1975*.

2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

3 Transitional provisions

- (1) The *Companies (Foreign Take-overs) Act 1972*, the *Companies (Foreign Take-overs) Act 1973* and the *Companies (Foreign Take-overs) Act 1974* are repealed.
- (2) Notwithstanding the repeal of the *Companies (Foreign Take-overs) Act 1972-1974*, that Act, other than section 17 shall be deemed to continue in force in relation to:
 - (a) an offer (including an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares that was accepted before the date of commencement of this Act; and
 - (b) an issue of shares that occurred before that date.
- (3) Without limiting the generality of subsection (2), orders may be made under sections 14 and 15 of the repealed Act in pursuance of that subsection.
- (4) For the purposes of this Act, but without limiting the operation of subsection (2):
 - (b) an order in force under subsection 13(6) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under section 22 of this Act;
 - (c) an order in force under paragraph 13(2)(c) or (3)(c) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under subsection 18(2) of this Act; and
 - (d) an order in force under paragraph 13(2)(d) or (3)(d) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under subsection 18(3) of this Act.

- (4A) For the purposes of the institution, after the commencement of this subsection, of proceedings for an offence referred to in section 21 of the *Companies (Foreign Take-overs) Act 1972*, the reference in that section to the Commonwealth Industrial Court shall be read as a reference to the Federal Court of Australia.
- (5) Nothing in this section affects the operation of section 8 of the *Acts Interpretation Act 1901-1973*.
- (6) Expressions used in this section have the same respective meanings as they had in the repealed Act.

4 Additional operation of Act

- (1) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on by a prescribed corporation or prescribed corporations together with any other person or persons.
- (2) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on solely by a person other than a prescribed corporation or persons other than prescribed corporations.
- (3) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to a foreign person were references to:
 - (a) a natural person not ordinarily resident in Australia;
 - (b) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
 - (c) a corporation (other than a foreign 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;
 - (d) 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
 - (e) 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.

- (4) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if:
- (a) references in sections 19 and 21 to a foreign person were references to:
 - (i) a natural person not ordinarily resident in Australia;
 - (ii) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
 - (iii) a corporation (other than a foreign 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;
 - (iv) 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
 - (v) 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; and
 - (b) references in those sections to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on by a prescribed corporation or prescribed corporations together with any other person or persons.
- (5) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if:
- (a) references in sections 19 and 21 to a foreign person were references to:
 - (i) a natural person not ordinarily resident in Australia;
 - (ii) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
 - (iii) a corporation (other than a foreign 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;
 - (iv) 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
 - (v) 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; and

- (b) references in those sections to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on solely by a person other than a prescribed corporation or persons other than prescribed corporations.
- (6) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in section 21A to a foreign person were references to:
- (a) a natural person not ordinarily resident in Australia;
 - (b) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
 - (c) a corporation (other than a foreign 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 substantial interest;
 - (d) 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
 - (e) 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.

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

acquisition includes an agreement to acquire, but does not include an acquisition:

- (a) by will or by devolution by operation of law; or
- (b) by way of enforcement of a security held solely for the purposes of a moneylending agreement.

agreement means any agreement, whether formal or informal and whether express or implied, other than a moneylending agreement.

asset includes an interest in an asset.

Australia includes the external Territories to which this Act extends.

Australian corporation means a corporation of a kind referred to in paragraph 13(1)(a), (b) or (c).

Australian rural land means land situated in Australia that is used wholly and exclusively for carrying on a business of primary production.

Australian urban land means land situated in Australia that is not Australian rural land.

Australian urban land corporation means a corporation to which section 13C applies.

Australian urban land trust estate means a trust estate to which section 13D applies.

balance-sheet includes a statement of assets and liabilities or any similar document.

child has the meaning given by subsection 6(2).

constituent document, in relation to a corporation, means the constitution of the corporation or any rules or other document constituting the corporation or governing its activities.

debenture includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a corporation, whether constituting a charge on the assets of the corporation or not.

director includes any person occupying the position of director of a corporation, by whatever name called.

financial corporation means a financial corporation to which paragraph 51(xx) of the Constitution is applicable, and includes a corporation formed within the limits of Australia that carries on as its sole or principal business the business of banking or insurance, other than banking or insurance to which paragraph 51(xiii) or (xiv) of the Constitution, as the case may be, is not applicable.

foreign corporation means a foreign corporation to which paragraph 51(xx) of the Constitution is applicable or a corporation that is incorporated in an external Territory to which this Act does not extend.

foreign government investor has the meaning given by section 17F.

foreign person means:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- (c) 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;
- (d) 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

- (e) the trustee of a trust estate in which two 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.

interest in Australian urban land has the meaning given by section 12A.

land includes a building or other structure, or a part of a building or other structure.

lease includes a sub-lease.

mineral right means:

- (a) a right (however described) under a law of the Commonwealth or of a State or Territory to recover minerals, other than a right to recover minerals for the purposes of prospecting or exploring for minerals;
- (b) a lease by virtue of which the lessee has a right falling within paragraph (a); or
- (c) an interest in a right falling within paragraph (a) or in a lease falling within paragraph (b).

moneylending agreement means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, not being an agreement dealing with any matter unrelated to the carrying on of that business.

officer, in relation to a corporation, includes:

- (a) a director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

parent has the meaning given by subsection 6(2).

prescribed foreign government investor has the meaning given by section 17G.

prescribed foreign investor has the meaning given by section 17E.

prescribed sensitive sector has the meaning given by section 17H.

primary production has the same meaning as in the *Income Tax Assessment Act 1936*.

profit and loss account includes any statement of profits and losses or any similar document.

repealed Act means the *Companies (Foreign Take-overs) Act 1972-1974*.

share, in relation to a corporation, means a share in the share capital of the corporation, and:

- (a) includes stock into which all or any of the share capital of the corporation has been converted; and
- (b) except in section 11 or 26, includes an interest in such a share or in such stock.

Territory means an internal Territory or an external Territory to which this Act extends.

trading corporation means a trading corporation to which paragraph 51(xx) of the Constitution is applicable.

- (2) In this Act, a reference to the determination of the policy of a business of exploiting a mineral right includes a reference to the determination of questions relating to the disposal of the right.
- (3) In this Act:
 - (a) a reference to a person proposing to acquire shares or assets includes:
 - (i) a reference to a person making an offer to acquire shares or assets;
 - (ii) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of shares or assets to offer to dispose of shares or assets; and
 - (iii) a reference to a person taking part in, or proposing to take part in, negotiations with a view to the acquisition of shares or assets;
 - (aa) a reference to a person proposing to acquire an interest in Australian urban land includes:
 - (i) a reference to a person making an offer to acquire such an interest;
 - (ii) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of such an interest to offer to dispose of that interest; and
 - (iii) a reference to a person taking part in, or proposing to take part in, negotiations with a view to the acquisition of such an interest;
 - (b) a reference to a person proposing to enter into an agreement or arrangement includes a reference to a person taking part in, or proposing to take part in, negotiations with a view to entering into an agreement or arrangement; and
 - (c) a reference to a person proposing to terminate an arrangement includes a reference to a person taking part in, or proposing to take part in, negotiations with a view to terminating an arrangement.

- (4) In this Act, a reference to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication, and, without limiting the generality of the foregoing, includes a reference to:
 - (a) entering into an agreement, other than a moneylending agreement;
 - (b) creating a trust, whether express or implied; and
 - (c) entering into a transaction;and references to an arrangement shall be construed accordingly.
- (5) In this Act, a reference to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.
- (6) In this Act, an act done or proposed to be done by an agent on behalf of his or her principal shall be deemed to be done or proposed to be done by his or her principal.
- (8) A reference in this Act to an offence against this Act or against a particular provision of this Act includes a reference to an offence consisting of an attempt to commit such an offence.

5A Ordinarily resident non-citizens

- (1) For the purposes of this Act, a natural person who is not an Australian citizen is ordinarily resident in Australia at a particular time if and only if:
 - (a) the person has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and
 - (b) at that time, either:
 - (i) the person is in Australia and the person's continued presence in Australia is not subject to any limitation as to time imposed by law; or
 - (ii) the person is not in Australia but, immediately before the person's most recent departure from Australia, the person's continued presence in Australia was not subject to any limitation as to time imposed by law.
- (2) For the purposes of paragraph (1)(b), but without otherwise limiting the generality of that paragraph, a person's continued presence in Australia is subject to a limitation as to time imposed by law if the person is an unlawful non-citizen within the meaning of the *Migration Act 1958*.

6 Associates

- (1) For the purposes of this Act, the following persons are associates of a person:

- (a) the person's spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*), or a parent or remoter lineal ancestor, child or remoter issue, brother or sister of the person;
 - (b) any partner of the person;
 - (c) any corporation of which the person is an officer;
 - (d) where the person is a corporation—any officer of the corporation;
 - (e) any employee or employer of the person;
 - (f) any officer of any corporation of which the person is an officer;
 - (g) any employee of a natural person of whom the person is an employee;
 - (h) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of the directors of the person;
 - (i) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
 - (j) any corporation in which the person holds a substantial interest;
 - (k) where the person is a corporation—a person who holds a substantial interest in the corporation;
 - (ka) the trustee of a trust estate in which the person holds a substantial interest;
 - (kb) where the person is the trustee of a trust estate—a person who holds a substantial interest in the trust estate;
 - (l) any person who is, by virtue of this section, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph).
- (2) In this Act:
- child:** without limiting who is a child of a person for the purposes of this Act, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.
- parent:** without limiting who is a parent of a person for the purposes of this Act, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this section.
- (3) For the purposes of paragraph (1)(a), if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

7 Australian business

- (1) A reference in this Act to an Australian business is a reference to a business that is carried on wholly or partly in Australia in anticipation of profit or gain.
- (2) For the purposes of this Act, the holder of a mineral right shall, by virtue of his or her holding that right, be deemed to carry on in Australia, in anticipation of profit or gain, a business of exploiting that right, and that right shall be deemed to be an asset of that business.
- (3) A reference in this Act, other than this section, to an Australian business does not include a reference to a business that is, or is deemed to be, carried on by any of the following persons, whether alone or together with any other person or persons:
 - (a) the Commonwealth, a State or a Territory;
 - (b) a corporation constituted for a public purpose by a law of the Commonwealth or of a State or Territory; or
 - (c) a local governing body.

8 Control of voting power

A reference in this Act to control of the voting power in a corporation is a reference to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

9 Substantial and controlling interests in corporations

- (1) For the purposes of this Act:
 - (a) a person shall be taken to hold a substantial interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than 15 per centum of the voting power in the corporation or holds interests in not less than 15 per centum of the issued shares in the corporation; and
 - (b) two or more persons shall be taken to hold an aggregate substantial interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than 40 per centum of the voting power in the corporation or hold interests in not less than 40 per centum of the issued shares in the corporation.
- (2) Where:
 - (a) a person holds a substantial interest in a corporation; or

- (b) two or more persons hold an aggregate substantial interest in a corporation;

that person shall be taken to hold a controlling interest in the corporation, or those persons shall be taken to hold an aggregate controlling interest in the corporation, as the case may be, unless the Treasurer is satisfied that, having regard to all the circumstances, that person together with the associate or associates (if any) of that person is not, or those persons together with the associate or associates (if any) of each of them are not, in a position to determine the policy of the corporation.

9A Substantial interests in trust estates

- (1) For the purposes of this Act:
 - (a) a person shall be taken to hold a substantial interest in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15 per cent of the corpus or income of the trust estate; or
 - (b) two or more persons shall be taken to hold an aggregate substantial interest in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40 per cent of the corpus or income of the trust estate.
- (2) Where, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary shall, for the purposes of subsection (1), be taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.

10 Holding corporations and subsidiaries

- (1) For the purposes of this Act, but subject to subsection (2):
 - (a) a corporation shall be deemed to be a subsidiary of another corporation if that other corporation:
 - (i) is in a position to control more than one-half of the voting power in the first-mentioned corporation; or
 - (ii) holds more than one-half of the issued shares in the first-mentioned corporation (excluding any shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); and
 - (b) a corporation shall be deemed to be a subsidiary of another corporation if the first-mentioned corporation is a subsidiary of any corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).

- (2) In determining whether a corporation is a subsidiary of another corporation:
- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable:
 - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity;
shall be treated as held or exercisable by that other corporation;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable solely by way of security for the purposes of a moneylending agreement.
- (3) A reference in this Act to a holding corporation of another corporation is a reference to a corporation of which that other corporation is a subsidiary.

11 Interests in shares

- (1) Subject to this section, a person holds an interest in a share if he or she has any legal or equitable interest in that share.
- (2) Without limiting the generality of subsection (1), where a person:
- (a) has entered into a contract to purchase a share;
 - (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or herself or to his or her order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

- (d) is entitled (otherwise than by reason of his or her having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he or she is the registered holder;
that person shall be deemed to hold an interest in that share.
- (3) A person shall not be deemed not to hold an interest in a share by reason only that he or she holds the interest in the share jointly with another person.
- (4) It is immaterial, for the purpose of determining whether a person holds an interest in a share, that the interest cannot be related to a particular share.
- (5) There shall be disregarded:
 - (a) an interest in a share of a person whose ordinary business includes the lending of money if he or she holds the interest solely by way of security for the purposes of a moneylending agreement;
 - (b) an interest of a person in a share, being an interest held by him or her by reason of his or her holding a prescribed office; and
 - (c) an interest of a prescribed kind in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (6) An interest in a share shall not be disregarded by reason only of:
 - (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.
- (7) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the corporation having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

12 Interests in assets

For the purpose of determining whether a person holds an interest in an asset, the provisions of section 11 (other than paragraph (2)(d), subsection (4), paragraphs (5)(b) and (c) and subsection (7)) have effect as if references in those provisions to a share were references to an asset.

12A Interests in Australian urban land

- (1) In this Act, *interest in Australian urban land* means:

- (a) a legal or equitable interest in Australian urban land, other than an interest under a lease or licence or in a unit in a unit trust estate;
 - (b) an interest in a share in a company that owns Australian urban land, being a share that entitles the holder to a right to occupy a dwelling of a kind known as a flat or home unit situated on the land;
 - (c) an interest as lessee or licensee in a lease or licence giving rights to occupy Australian urban land where the term of the lease or licence (including any extension) is reasonably likely, at the time the interest is acquired, to exceed five years;
 - (d) an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land;
 - (e) an interest in a share in an Australian urban land corporation;
 - (f) an interest in a unit in an Australian urban land trust estate; or
 - (g) if the trustee of an Australian urban land trust estate is a corporation—an interest in a share in that corporation.
- (2) For the purposes of this Act, an interest is an interest in Australian urban land even if it is the only interest that exists in the land or other thing concerned.
- (3) For the purposes of this Act, a person acquires an interest in Australian urban land even if:
- (a) the person acquires the interest jointly with another person or persons;
 - (b) the person has previously acquired an interest in Australian urban land; or
 - (c) the interest is an increase in the amount of an existing interest of the person in Australian urban land.
- (4) For the purposes of this Act, where a person:
- (a) enters into an agreement; or
 - (b) acquires an option;
- to acquire an interest in Australian urban land, the person shall be taken to have acquired that interest in Australian urban land.
- (5) For the purposes of this Act, a person shall be taken not to acquire an interest in Australian urban land if the person acquires the interest:
- (a) solely to hold as security for the purposes of a moneylending agreement; or
 - (b) by way of enforcement of a security held solely for the purposes of a moneylending agreement.
- (6) For the purposes of this Act, a person shall be taken not to acquire an interest in Australian urban land if the person acquires the interest by will or by devolution by operation of law.

- (7) A reference in this Act to the acquisition of an interest in Australian urban land does not include a reference to the acquisition of an interest in Australian urban land from:
 - (a) the Commonwealth, a State or a Territory;
 - (b) a corporation constituted for a public purpose by a law of the Commonwealth or of a State or Territory; or
 - (c) a local governing body.
- (8) Where the regulations provide that this Act, or a specified provision or provisions of this Act, does not or do not apply in relation to an acquisition, of a kind specified in the regulations, of an interest in Australian urban land, this Act, or the provision or provisions, does not or do not so apply.

12B Interests in trust estates

- (1) For the purposes of this Act, a reference to a person holding an interest in a trust estate is a reference to a person holding a beneficial interest in the corpus or income of the trust estate.
- (2) For the purposes of this Act, where a person:
 - (a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust estate;
 - (b) has a right, otherwise than by reason of holding an interest in a trust estate, to have such an interest transferred to the person or to the person's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
 - (c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not;the person shall be taken to hold that interest in the trust estate.
- (3) For the purposes of this Act, a person holds an interest in a trust estate even if the person holds the interest jointly with another person.
- (4) For the purposes of this Act, a person shall be taken not to hold an interest in a trust estate if:
 - (a) the person holds the interest solely by way of security for the purposes of a moneylending agreement; and
 - (b) the ordinary business of the person includes the lending of money.
- (5) For the purposes of this Act, a person holds an interest in a trust estate despite:
 - (a) its remoteness;
 - (b) the manner in which it arose; or

- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

12C Tracing of substantial interests in corporations and trust estates

Where:

- (a) a person holds a substantial interest, or 2 or more persons hold an aggregate substantial interest, (including a substantial interest held by that person, or an aggregate substantial interest held by those persons, by another application or other applications of this subsection) in a corporation or a trust estate (which corporation or the trustee of which trust estate is in this section called the *first level entity*); and
- (b) the first level entity:
 - (i) is in a position to control all or any of the voting power, or holds interests in all or any of the issued shares, in a corporation (in this section called the *second level corporation*); or
 - (ii) holds an interest in a trust estate (in this section called the *second level trust estate*);

the following provisions have effect for the purposes of this Act:

- (c) where subparagraph (b)(i) applies—the person or those persons together shall be taken to be in a position to control so much of the voting power of the second level corporation as the first level entity is in a position to control or to hold the interests in the issued shares in the second level corporation that the first level entity holds, as the case may be;
- (d) where subparagraph (b)(ii) applies—the person or those persons together shall be taken to hold the interest in the second level trust estate that the first level entity holds.

13 Prescribed corporations

- (1) A reference in this Act to a prescribed corporation is a reference to:
 - (a) a trading corporation;
 - (b) a financial corporation;
 - (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
 - (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded \$20,000,000 or such other amount as is prescribed, being assets consisting of all or any of the following:
 - (i) land situated in Australia (including legal and equitable interests in such land);

- (ii) mineral rights;
 - (iii) shares in a corporation incorporated in Australia;
 - (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded \$20,000,000 or such other amount as is prescribed;
 - (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e);
 - (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d), where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of that corporation and of all the subsidiaries of that corporation; or
 - (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.
- (2) For the purposes of subsection (1), the assets of a corporation shall be deemed not to include any shares in a subsidiary of that corporation.
- (3) In this section, *last accounting date*, in relation to a corporation, means the date of the expiration of the most recent period in relation to which a profit and loss account of the corporation has been laid before it in general meeting, including an account so laid before it before the commencement of this Act.
- (4) For the purposes of this section, the value on a particular date of an asset of a corporation shall be taken to be:
- (a) the value of that asset as shown in the last balance-sheet of the corporation that was prepared and audited before that date; or
 - (b) if no balance-sheet of the corporation was prepared and audited before that date, the value of that asset as shown on that date in the accounting records of the corporation.

13A Exempt dealings

- (1) Sections 18 and 26 do not apply to shares in an exempt corporation.
- (2) Section 20 does not apply to the control of an exempt corporation.

- (3) Sections 19 and 21 do not apply to the control of an exempt business.
- (4) For the purposes of this section:

exempt corporation means a corporation:

- (a) that is of a kind referred to in paragraph 13(1)(a), (b), (c), (g) or (h);
and
- (b) the value of whose total assets, determined under section 13B, does not exceed:
 - (i) if more than 50 per cent of the value of those assets is attributable to Australian rural land—\$3,000,000 or such other amount as is prescribed; or
 - (ii) in any other case—\$5,000,000 or such other amount as is prescribed;

exempt business means a business the value of whose total assets, determined under section 13B, does not exceed:

- (a) if more than 50 per cent of the value of those assets is attributable to Australian rural land—\$3,000,000 or such other amount as is prescribed; or
- (b) in any other case—\$5,000,000 or such other amount as is prescribed.

13B Valuation of assets for purposes of section 13A

- (1) For the purposes of Part IA, or in determining whether a corporation is an exempt corporation, in relation to the application of section 18 or 26, the value of a corporation's total assets at a particular time is:
 - (a) where the corporation is not a holding corporation:
 - (i) the value of those assets as shown in the last balance-sheet of the corporation audited before that time or, if no balance-sheet was audited before that time, as shown at that time in the accounting records of the corporation; or
 - (ii) if the value of the issued shares of the corporation determined under subsection (2) or (3) is greater—that greater value; or
 - (b) where the corporation is a holding corporation:
 - (i) the aggregate value of the assets of the corporation, and of each of its subsidiaries that is a prescribed corporation carrying on an Australian business, determined, in each case, under subparagraph (a)(i); or
 - (ii) if the aggregate value of the issued shares of the corporation and each of those subsidiaries determined under subsection (2) or (3) is greater—that greater value.

- (2) For the purposes of subparagraphs (1)(a)(ii) and (b)(ii) in relation to the application of section 18, the value of the issued shares of a corporation, or the aggregate value of the issued shares of a group of corporations, is the value ascertained under the formula:

$$\frac{C \times TS}{NS}$$

where:

C is:

- (a) where the transaction referred to in section 18 is the proposed acquisition of shares—the total consideration for the acquisition; or
- (b) where the transaction is the issue of shares—the total issue price of all the shares to be issued;

TS is the total number of issued shares, immediately before the proposed acquisition or issue, of the corporation or group of corporations, as the case may be; and

NS is the number of shares proposed to be acquired or issued, as the case may be.

- (3) For the purposes of subparagraphs (1)(a)(ii) and (b)(ii) in relation to the application of section 26, the value of the issued shares of a corporation, or the aggregate value of the issued shares of a group of corporations, is the value ascertained under the formula:

$$\frac{C \times TS}{NS}$$

where:

C is the consideration for the shares acquired or proposed to be acquired under the agreement referred to in section 26;

TS is the total number of issued shares, immediately before the acquisition or proposed acquisition, of the corporation or group of corporations, as the case may be; and

NS is the number of shares to which the agreement relates.

- (4) For the purposes of Part IA, or in determining whether a business is an exempt business, in relation to the application of section 19, the value of a business' total assets is the consideration for the acquisition referred to in that section.
- (5) For the purposes of Part IA, or in determining whether a corporation is an exempt corporation, in relation to the application of section 20, the value of a corporation's total assets at a particular time is:

- (a) where the corporation is not a holding corporation—the value of those assets as shown in the last balance-sheet of the corporation audited before that time or, if no balance-sheet was audited before that time, as shown at that time in the accounting records of the corporation; or
 - (b) where the corporation is a holding corporation—the aggregate value of the assets of the corporation, and of each of its subsidiaries that is a prescribed corporation carrying on an Australian business, determined, in each case, under paragraph (a).
- (6) For the purposes of Part IA, or in determining whether a business is an exempt business, in relation to the application of section 21, the value of a business' total assets at a particular time is the value determined by a person who was at the time of the valuation a suitably qualified valuer acting at arm's length in relation to the valuation where:
- (a) the valuation was made at the particular time; or
 - (b) the valuation was made not more than 12 months before the particular time and the value had not increased significantly between the time of the valuation and the particular time.

13C Australian urban land corporations

- (1) For the purposes of this Act, a corporation is an Australian urban land corporation if:
- (a) where the corporation is not a holding corporation—the value of its eligible land assets exceeds 50 per cent of the value of its total assets; or
 - (b) where the corporation is a holding corporation—the sum of the values of the eligible land assets of the corporation and of each of its subsidiaries exceeds 50 per cent of the sum of the values of the total assets of the corporation and of each of its subsidiaries.
- (2) Where a reasonable value of the eligible land assets or of the total assets of a corporation is:
- (a) shown in the last audited balance-sheet of the corporation; or
 - (b) if not shown in the last audited balance-sheet—shown in the accounting records of the corporation;
- the value of those assets as shown shall be taken to be their value for the purposes of subsection (1).
- (3) For the purposes of determining the values referred to in paragraph (1)(b), any asset of a corporation that consists of shares in any subsidiary of the corporation shall be disregarded.
- (4) In this section:

eligible land assets, in relation to a corporation, means so much of the corporation's total assets as consists of interests in Australian urban land.

13D Australian urban land trust estates

- (1) For the purposes of this Act, a trust estate is an Australian urban land trust estate if it is a unit trust estate and the value of so much of its total assets as consists of interests in Australian urban land exceeds 50 per cent of the value of its total assets.
- (2) Where a reasonable value of the particular assets or of the total assets of a trust estate is given in a valuation, that value shall be taken to be their value at a particular time for the purposes of subsection (1) if:
 - (a) the person giving the valuation was at the time of the valuation a suitably qualified valuer acting at arm's length in relation to the valuation;
 - (b) the valuation was made not more than 12 months before the particular time; and
 - (c) the value of those assets had not increased significantly between the time of the valuation and the particular time.

14 Voting power

In this Act, a reference to the voting power in a corporation is a reference to the maximum number of votes that might be cast at a general meeting of the corporation.

15 Application of Act

This Act does not apply in relation to:

- (a) an acquisition of shares or assets, or an issue of shares, that occurred before the date of commencement of this Act;
- (b) an arrangement that was entered into before that date; or
- (c) an acquisition of shares or assets occurring on or after that date, where notice in writing was issued by the Commonwealth Government before that date to the effect that the Commonwealth Government did not object to the acquisition or, in the case of an acquisition occurring by way of the exercise of an option, that it did not object to the acquisition of the option or to the acquisition of those shares or assets in pursuance of the option.

16 Extra-territorial operation of Act

This Act applies both within and outside Australia and extends to every external Territory other than Papua New Guinea.

17 Persons obliged to comply with Act

The obligation to comply with this Act extends to all natural persons, whether resident in Australia or not and whether Australian citizens or not, and to all corporations, whether incorporated or carrying on business in Australia or not.

Part IA—Exempt foreign investments

17A Exempt foreign investments in prescribed corporations etc.

- (1) Section 18 applies in relation to a prescribed corporation as if neither of the following were a foreign person for the purposes of that section:
 - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation; and
 - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (2) Section 20 applies in relation to an Australian corporation as if neither of the following were a foreign person for the purposes of that section:
 - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation; and
 - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (3) Sections 19 and 21 apply in relation to a business as if neither of the following were a foreign person for the purposes of those sections:
 - (a) a prescribed foreign investor that is covered by subsection 17B(3) in relation to the business; and
 - (b) a prescribed foreign government investor that is covered by subsection 17C(2) in relation to the business.
- (4) Section 26 applies in relation to an Australian corporation as if neither of the following were a person covered by that section:
 - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation; and
 - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (5) In applying section 18, 19, 20, 21 or 26 in relation to an entity that is neither a prescribed foreign investor nor a prescribed foreign government investor, do not apply subsection (1), (2), (3) or (4) for the purposes of:
 - (a) determining whether two or more persons (whether or not those persons are associates) hold an aggregate controlling interest in a corporation;
 - (b) determining whether two or more persons (whether or not those persons are associates) together are in a position to control an amount of the voting power in a corporation;

- (c) determining whether two or more persons (whether or not those persons are associates) together hold interests in the issued shares in a corporation; or
- (d) determining whether two or more persons (whether or not those persons are associates) together are in a position to determine the policy of a business or corporation.

17B Asset thresholds for exempt foreign investments in prescribed corporations etc.—prescribed foreign investors

- (1) A prescribed foreign investor is covered by this subsection in relation to a corporation if:
 - (a) the corporation, or a subsidiary of the corporation, carries on a business wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
 - (b) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation’s total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
 - (c) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph.
- (2) A prescribed foreign investor is covered by this subsection in relation to a corporation if:
 - (a) neither the corporation, nor a subsidiary of the corporation, carries on a business wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
 - (b) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation’s total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
 - (c) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph.
- (3) A prescribed foreign investor is covered by this subsection in relation to a business if:
 - (a) both of the following conditions are satisfied:

- (i) the business is wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
 - (ii) the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subparagraph; or
- (b) both of the following conditions are satisfied:
 - (i) the business is neither wholly nor partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
 - (ii) the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subparagraph.
- (4) Regulations made for the purposes of a particular provision of this section may provide for different amounts for different prescribed foreign investors, depending on all or any of the following:
 - (a) the kind of prescribed foreign investor concerned;
 - (b) in relation to subsection (1) or paragraph (3)(a)—the kind of prescribed sensitive sector concerned;
 - (c) in relation to subsection (1) or (2)—the kind of corporation concerned;
 - (d) in relation to subsection (3)—the kind of business concerned; and
 - (e) any other matter.
- (5) Regulations made for the purposes of a particular provision of this section may provide for a method for indexing an amount.
- (6) Subsections (4) and (5) do not limit the regulations that may be made for the purposes of this section.

17C Asset thresholds for exempt foreign investments in prescribed corporations etc.—prescribed foreign government investors

- (1) A prescribed foreign government investor is covered by this subsection in relation to a corporation if:
 - (a) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation's total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
 - (b) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the

amount ascertained in accordance with regulations made for the purposes of this paragraph.

- (2) A prescribed foreign government investor is covered by this subsection in relation to a business if the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subsection.
- (3) Regulations made for the purposes of a particular provision of this section may provide for different amounts for different prescribed foreign government investors, depending on all or any of the following:
 - (a) the kind of prescribed foreign government investor concerned;
 - (b) in relation to subsection (1)—the kind of corporation concerned;
 - (c) in relation to subsection (2)—the kind of business concerned; and
 - (d) any other matter.
- (4) Regulations made for the purposes of a particular provision of this section may provide for a method for indexing an amount.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

17D Exempt foreign investments in financial sector companies etc.

- (1) Section 18 applies in relation to a financial sector company as if a prescribed foreign investor covered by subsection (3) were not a foreign person for the purposes of that section.
- (2) Section 26 applies in relation to a financial sector company as if a prescribed foreign investor covered by subsection (3) were not a person covered by that section.
- (3) A prescribed foreign investor is covered by this subsection if the conditions specified in the regulations are satisfied in relation to the prescribed foreign investor.
- (4) In applying section 18 or 26 in relation to an entity that is not a prescribed foreign investor covered by subsection (3), do not apply subsection (1) or (2) for the purposes of:
 - (a) determining whether two or more persons (whether or not those persons are associates) hold an aggregate controlling interest in a corporation; or
 - (b) determining whether two or more persons (whether or not those persons are associates) together are in a position to control an amount of the voting power in a corporation; or

- (c) determining whether two or more persons (whether or not those persons are associates) together hold interests in the issued shares in a corporation; or
 - (d) determining whether two or more persons (whether or not those persons are associates) together are in a position to determine the policy of a business or corporation.
- (5) In this section:

financial sector company has the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

17E Prescribed foreign investor

- (1) An entity is a *prescribed foreign investor* if:
- (a) the conditions specified in the regulations are satisfied in relation to the entity; and
 - (b) the entity is not a foreign government investor.
- (2) The conditions specified in the regulations for the purposes of subsection (1) may include any or all of the following kinds of conditions:
- (a) a condition that the entity be a national of a specified foreign country;
 - (b) a condition that the entity be incorporated under the law of a specified foreign country, or a specified part of a foreign country; and
 - (c) a condition that the entity be constituted or organised under the law of a specified foreign country, or a specified part of a foreign country.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (3) Subsection (2) does not limit the regulations that may be made for the purposes of subsection (1).
- (4) In this section:

entity includes an individual.

17F Foreign government investor

An entity is a *foreign government investor* if:

- (a) the entity is:
 - (i) a body politic of a foreign country;
 - (ii) a body politic of part of a foreign country;
 - (iii) a part of a body politic mentioned in subparagraph (i) or (ii);

- (b) the entity is controlled by an entity mentioned in paragraph (a); or
- (c) an entity mentioned in paragraph (a) holds an interest in the entity that satisfies the conditions specified in the regulations.

17G Prescribed foreign government investor

An entity is a *prescribed foreign government investor* if:

- (a) the entity is a foreign government investor; and
- (b) the conditions specified in the regulations are satisfied in relation to the entity.

17H Prescribed sensitive sector

A kind of business activity is a *prescribed sensitive sector* in relation to a prescribed foreign investor if:

- (a) the conditions specified in the regulations are satisfied in relation to the prescribed foreign investor; and
- (b) the conditions specified in the regulations are satisfied in relation to the kind of business activity.

Part II—Control of takeovers and other transactions

18 Acquisitions of shares

- (1) In this section, *corporation* means:
 - (a) a prescribed corporation that carries on an Australian business, whether alone or together with any other person or persons; or
 - (b) a holding corporation (other than a foreign corporation that is not a prescribed corporation) of such a prescribed corporation.
- (2) Where the Treasurer is satisfied that:
 - (a) a person proposes, or persons propose, to acquire shares in a corporation or a corporation proposes to issue shares;
 - (b) the proposed acquisition or acquisitions or the proposed issue would have the result that:
 - (i) in the case of a corporation not controlled by foreign persons—the corporation would be controlled by foreign persons; or
 - (ii) in the case of a corporation controlled by foreign persons—the corporation would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
 - (c) that result would be contrary to the national interest;the Treasurer may make an order prohibiting the proposed acquisition or all or any of the proposed acquisitions, or the proposed issue, as the case may be.
- (3) Where the Treasurer makes an order under subsection (2) prohibiting a proposed acquisition of shares in a corporation, he or she may also make an order in relation to a specified foreign person, or in relation to a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person, directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them:
 - (a) be in a position to control more of the total voting power in the corporation than:
 - (i) such proportion of the total voting power in the corporation as is equal to the proportion of the total voting power in the corporation at the time of the coming into operation of the first-mentioned order that that foreign person, together with any associate or associates of that person, was in a position to control at that time; or

- (ii) such greater proportion (if any) of the total voting power in the corporation as is specified in the order; or
 - (b) hold interests in a number of issued shares in the corporation exceeding:
 - (i) the number that bears to the total number of issued shares in the corporation the same proportion as the number of issued shares in the corporation in which that foreign person, together with any associate or associates of that person, held interests at the time of the coming into operation of the first-mentioned order bears to the total number of issued shares in the corporation at that time; or
 - (ii) such greater number (if any) as is specified in the order.
- (4) Where a person has acquired shares in a corporation, and the Treasurer is satisfied that:
 - (a) the acquisition has had the result that:
 - (i) in the case of a corporation that, before the acquisition, was not controlled by foreign persons—the corporation is controlled by foreign persons; or
 - (ii) in the case of a corporation that, before the acquisition, was controlled by foreign persons—the corporation continues to be controlled by foreign persons, but those persons include a person who is not, or do not include a person who is, one of the foreign persons first referred to in this subparagraph; and
 - (b) that result is contrary to the national interest;the Treasurer may make an order directing the person who acquired the shares to dispose of those shares within a specified time to any person or persons approved in writing by the Treasurer.
- (5) Before the expiration of the time specified in an order made under subsection (4) or of that time as extended under this subsection, the Treasurer may, by writing signed by him or her, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (6) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless he or she is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the shares concerned.
- (7) For the purposes of this section:
 - (a) a corporation shall be taken to be controlled by foreign persons if, and only if, a foreign person holds a controlling interest in the

corporation or two or more foreign persons hold an aggregate controlling interest in the corporation;

- (b) where, by virtue of paragraph (a), a corporation is taken to be controlled by foreign persons by reason that a foreign person, together with an associate or associates, is in a position to control not less than 15 per centum of the voting power in the corporation or holds interests in not less than 15 per centum of the issued shares in the corporation, references to the foreign persons who control the corporation include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons; and
- (c) where, by virtue of paragraph (a), a corporation is taken to be controlled by foreign persons by reason that 2 or more foreign persons, together with an associate or associates of any of them, are in a position to control not less than 40 per centum of the voting power in the corporation or hold interests in not less than 40 per centum of the issued shares in the corporation, references to the foreign persons who control the corporation are references to any foreign persons, and any associates of foreign persons (whether or not those associates are in fact foreign persons), each of whom is in a position to control any of the voting power in the corporation or holds interests in any of the issued shares in the corporation.

19 Acquisitions of assets

- (1) In this section, *foreign person* means:
 - (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; or
 - (b) a foreign corporation in which two 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.
- (2) Where the Treasurer is satisfied that:
 - (a) a person proposes, or persons propose, to acquire assets of an Australian business carried on solely by a prescribed corporation or prescribed corporations;
 - (b) the proposed acquisition or acquisitions would have the result that:
 - (i) in the case of a business not controlled by foreign persons—the business would be controlled by foreign persons; or
 - (ii) in the case of a business controlled by foreign persons—the business would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and

- (c) that result would be contrary to the national interest;
the Treasurer may make an order prohibiting the proposed acquisition or all or any of the proposed acquisitions, as the case may be.
- (3) Where the Treasurer makes an order under subsection (2) prohibiting a proposed acquisition of assets of an Australian business, he or she may also make an order in relation to a specified foreign person, or in relation to a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person, directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them, acquire any interests in assets of that business, or acquire any such interests except to a specified extent.
- (4) Where a person has acquired assets of an Australian business carried on solely by a prescribed corporation or prescribed corporations, and the Treasurer is satisfied that:
- (a) the acquisition has had the result that:
 - (i) in the case of a business that, before the acquisition, was not controlled by foreign persons—the business is controlled by foreign persons; or
 - (ii) in the case of a business that, before the acquisition, was controlled by foreign persons—the business continues to be controlled by foreign persons, but those persons include a person who is not, or do not include a person who is, one of the foreign persons first referred to in this subparagraph; and
 - (b) that result is contrary to the national interest;
the Treasurer may make an order directing the person who acquired the assets to dispose of those assets within a specified time to any person or persons approved in writing by the Treasurer.
- (5) Before the expiration of the time specified in an order made under subsection (4) or of that time as extended under this subsection, the Treasurer may, by writing signed by him or her, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (6) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless he or she is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the assets concerned.
- (7) For the purposes of this section:
- (a) an Australian business shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates

- of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the business; and
- (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the business, references to the foreign persons who control the business include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

20 Arrangements relating to directorate of corporations

- (1) In this section, *corporation* means:
 - (a) an Australian corporation that carries on an Australian business, whether alone or together with any other person or persons; or
 - (b) a holding corporation (other than a foreign corporation) of such an Australian corporation.
- (2) Where the Treasurer is satisfied that:
 - (a) a person proposes to enter into an agreement in relation to the affairs of a corporation or it is proposed to alter a constituent document of a corporation;
 - (b) under the proposed agreement or in consequence of the proposed alteration, a director or directors of the corporation will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the corporation or of an associate of such a foreign person;
 - (c) the proposed agreement or alteration would have the result that:
 - (i) in the case of a corporation not controlled by foreign persons—the corporation would be controlled by foreign persons; or
 - (ii) in the case of a corporation controlled by foreign persons—the corporation would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
 - (d) that result would be contrary to the national interest;the Treasurer may make an order prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be.
- (3) Where an agreement has been entered into in relation to the affairs of a corporation, or an alteration has been made to a constituent document of a corporation, and the Treasurer is satisfied that:
 - (a) the agreement or alteration has had, or will have, the result that:

- (i) in the case of a corporation that, before the agreement was entered into or the alteration was made, was not controlled by foreign persons—the corporation is or will be controlled by foreign persons; or
 - (ii) in the case of a corporation that, before the agreement was entered into or the alteration was made, was controlled by foreign persons—the corporation continues or will continue to be controlled by foreign persons, but those persons include or will include a person who is not, or do not or will not include a person who is, one of the foreign persons first referred to in this subparagraph; and
- (b) that result is or will be contrary to the national interest;
- the Treasurer may, for the purpose of restoring the control of the corporation as closely as possible to the position in which it was before the agreement was entered into or the alteration was made or for the purpose of preventing the occurrence of a change in the control of the corporation of a kind mentioned in paragraph (a), as the case may be, make orders directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.
- (4) Where a time is specified in an order made under subsection (3), the Treasurer may, before the expiration of that time or of that time as extended under this subsection, by writing signed by him or her, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (5) For the purposes of this section:
- (a) a corporation shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the corporation; and
 - (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the corporation, references to the foreign persons who control the corporation include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

21 Arrangements relating to control of Australian businesses

- (1) In this section:

arrangement, in relation to an Australian business, means an arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of such a business or relating to the participation by a person in the profits or management of such a business;

foreign person means:

- (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; or
- (b) a foreign corporation in which two 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.

(2) Where the Treasurer is satisfied that:

- (a) a person proposes to enter into an arrangement in relation to an Australian business carried on solely by a prescribed corporation or prescribed corporations or proposes to terminate an arrangement that exists in relation to such an Australian business;
- (b) the proposal, if carried out, would have the result that:
 - (i) in the case of a business not controlled by foreign persons—the business would be controlled by foreign persons; or
 - (ii) in the case of a business controlled by foreign persons—the business would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
- (c) that result would be contrary to the national interest;

the Treasurer may make an order prohibiting the entering into of the proposed arrangement or prohibiting the termination of the existing arrangement, as the case may be.

(3) Where an arrangement has been entered into in relation to an Australian business carried on solely by a prescribed corporation or prescribed corporations or an arrangement that existed in relation to such an Australian business has been terminated, and the Treasurer is satisfied that:

- (a) the entering into or the termination of the arrangement has had, or will have, the result that:
 - (i) in the case of a business that, before the entering into or termination of the arrangement, was not controlled by foreign persons—the business is or will be controlled by foreign persons; or
 - (ii) in the case of a business that, before the entering into or termination of the arrangement, was controlled by foreign persons—the business continues or will continue to be

controlled by foreign persons, but those persons include or will include a person who is not, or do not or will not include a person who is, one of the foreign persons first referred to in this subparagraph; and

(b) that result is or will be contrary to the national interest;

the Treasurer may, for the purpose of restoring the control of the business as closely as possible to the position in which it was before the arrangement was entered into or terminated or for the purpose of preventing the occurrence of a change in the control of the business of a kind referred to in paragraph (a), as the case may be, make orders directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.

- (4) Where a time is specified in an order made under subsection (3), the Treasurer may, before the expiration of that time or of that time as extended under this subsection, by writing signed by him or her, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (5) For the purposes of this section:
- (a) an Australian business shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the business; and
 - (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the business, references to the foreign persons who control that business include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

21A Acquisitions of interests in Australian urban land

- (1) In this section:

foreign person means:

- (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- (b) a foreign corporation in which two or more persons, each of whom is a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

- (2) Where the Treasurer is satisfied that:
 - (a) a foreign person proposes to acquire an interest in Australian urban land; and
 - (b) the proposed acquisition would be contrary to the national interest; the Treasurer may make an order prohibiting the proposed acquisition.
- (3) Where the Treasurer makes such an order in relation to an interest in Australian urban land, he or she may also make an order in relation to:
 - (a) a specified foreign person;
 - (b) a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person;directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them, acquire:
 - (c) any interest in the land or other thing concerned; or
 - (d) any such interest except to a specified extent.
- (4) Where a foreign person has acquired an interest in Australian urban land and the Treasurer is satisfied that the acquisition is contrary to the national interest, the Treasurer may make an order directing the foreign person to dispose of that interest within a specified period to any person or persons approved in writing by the Treasurer.
- (5) Before the end of the period specified in the order or of that period as extended under this subsection, the Treasurer may, by writing signed by the Treasurer, extend or further extend that period or that period as so extended, and in that event the order has effect as if the period as so extended or further extended had been specified in the order.
- (6) For the purposes of subsection (4), but without limiting the generality of that subsection:
 - (a) a foreign person shall be taken to have acquired an interest in Australian urban land if the person becomes, with or without the knowledge of the person, a beneficiary in a trust estate (other than a deceased estate) that consists of or includes an interest in Australian urban land; and
 - (b) where paragraph (a) applies and the trust estate is a discretionary trust estate—a reference to the disposal of the interest of the foreign person is a reference to the disposal of such assignable benefits in relation to that trust estate as may ultimately vest in that foreign person.
- (7) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless the Treasurer is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the interest concerned.

22 Interim orders

- (1) For the purpose of enabling due consideration to be given to the question whether an order should be made under subsection 18(2), 19(2), 20(2), 21(2) or 21A(2), the Treasurer may make an order of the kind that he or she would be empowered to make under that subsection if it were applicable.
- (2) An order made under this section has effect for such period, not exceeding 90 days after the coming into operation of the order, as is specified in the order.

23 Revocation of orders

The Treasurer may at any time make an order revoking an order made under section 18, 19, 20, 21, 21A or 22 or an order referred to in subsection 3(4).

24 Publication of orders

An order made by the Treasurer under this Part shall be made in writing signed by him or her, shall be published in the *Gazette* within 10 days after the date on which it is made, and comes into operation:

- (a) except in a case to which paragraph (b) applies—on the date of publication; or
- (b) in the case of an order under subsection 18(3) or (4), 19(4), 20(3), 21(3) or 21A(3) or (4)—on such date as is specified in the order, being a date not earlier than 30 days after the date of publication.

25 Effect of notification of transactions

- (1) This section has effect where the Treasurer receives:
 - (a) a notice from a person stating that the person proposes to acquire shares, assets or interests or to enter into an agreement or enter into or terminate an arrangement;
 - (b) a notice from a corporation stating that the corporation proposes to issue shares; or
 - (c) a notice from a corporation stating that it is proposed to alter a constituent document of the corporation.
- (1A) Where the Treasurer is empowered to make an order under subsection 18(2), 19(2), 20(2), 21(2) or 21A(2) in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice, the Treasurer may, instead of making such an order, decide that the Commonwealth Government has no objection to the proposal specified in the notice, provided that the person or corporation complies with

conditions that the Treasurer, when making the decision, considers necessary in order that the proposal, if carried out, will not be contrary to the national interest.

- (1B) Where the Treasurer makes a decision under subsection (1A), the person or corporation shall be given advice in writing of the decision, being advice that includes a statement of the conditions to be complied with, before the end of 10 days after the day on which the decision is made.
- (1C) If the person or corporation:
- (a) is given an advice under subsection (1B) of a decision;
 - (b) carries out the proposal to which the decision relates;
 - (c) does or fails to do an act, resulting in a contravention of a condition set out in the advice; and
- the person or corporation is guilty of an offence punishable on conviction, by:
- (d) in the case of a natural person—a fine not exceeding 500 penalty units, or imprisonment for a period not exceeding 2 years, or both; or
 - (e) in the case of a corporation—a fine not exceeding 2,500 penalty units.
- (1D) If the person or corporation:
- (a) is given advice under subsection (1B) of a decision; and
 - (b) carries out the proposal to which the decision relates:
- the Treasurer may only make an order under subsection 18(4), 19(4), 20(3), 21(3) or 21A(4) in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice if:
- (c) the person or corporation is convicted of an offence against subsection (1C) in relation to a condition; or
 - (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or corporation in respect of such an offence.
- (2) If 30 days pass after the day on which the Treasurer receives the notice and by the end of that period:
- (a) the Treasurer has not:
 - (i) made a decision under subsection (1A) in relation to the proposal specified in the notice, being a decision of which advice is given in writing to the person or corporation before the end of 10 days after the day on which the decision is made; or
 - (ii) made an order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration specified in the

- notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- (b) the person or corporation has not carried out the proposal;
- the Treasurer is not empowered:
- (c) to make an order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration; or
 - (d) to make a decision under subsection (1A) in relation to the proposal.
- (3) If:
- (a) before the end of 30 days after the day on which the Treasurer receives the notice, the Treasurer makes an order under section 22 in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice;
 - (b) the order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and
 - (c) 90 days pass after the day on which the order is published and by the end of that period:
 - (i) the Treasurer has not:
 - (A) made a decision under subsection (1A) in relation to the proposal specified in the notice, being a decision of which advice is given in writing to the person or corporation before the end of 10 days after the day on which the decision is made; or
 - (B) made any other order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
 - (ii) the person or corporation has not carried out the proposal;
- the Treasurer is not empowered:
- (d) to make a further order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration; or
 - (e) to make a decision under subsection (1A) in relation to the proposal.
- (4) For the purposes of this section, a notice stating that a person has an option to acquire shares or assets shall be taken to be a statement that the person proposes to acquire the shares or assets, and references in this section to the proposal and to the acquisition shall be construed accordingly.
- (4A) For the purposes of this section but without limiting its generality, a person or corporation may be given advice in writing of a decision of the Treasurer in relation to a proposal if that advice in writing is given to the

person or corporation at an address specified, in the notice containing the proposal, as the address for service of notices in relation to the proposal.

- (5) In this section, *notice* includes a notice furnished under section 26 or 26A.

26 Compulsory notification of certain section 18 transactions

- (1) In this section, *person to whom this section applies* means:
- (a) a natural person not ordinarily resident in Australia;
 - (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
 - (c) a corporation in which two 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;
 - (d) 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
 - (e) the trustee of a trust estate in which two 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.
- (2) Where a person to whom this section applies:
- (a) enters into an agreement by virtue of which he or she acquires a substantial shareholding in an Australian corporation and did not, before entering into the agreement, furnish to the Treasurer a notice stating his or her intention to enter into that agreement; or
 - (b) having furnished a notice to the Treasurer stating his or her intention to enter into an agreement by virtue of which he or she is to acquire a substantial shareholding in an Australian corporation, enters into that agreement before:
 - (i) the expiration of 40 days after the date on which the notice was received by the Treasurer; or
 - (ii) the date on which advice is given that the Commonwealth Government does not object to the person entering into that agreement (whether or not the advice is subject to conditions imposed under subsection 25(1A));whichever first occurs;
- the person is guilty of an offence and is punishable, on conviction, by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.
- (3) Where:
- (a) a person enters into an agreement of a kind mentioned in subsection (2); and

- (b) the provisions of the agreement that relate to the acquisition of the interests in the shares concerned do not become binding until the fulfilment of a condition or conditions set out in the agreement; the person shall not be taken, for the purposes of that subsection, to have entered into the agreement until the time when those provisions become binding.
- (4) Without affecting the operation of section 25, this section does not apply in relation to a shareholder of a corporation subscribing for shares in the corporation if:
 - (a) the shares were subscribed for in pursuance of a resolution by the corporation or the directors of the corporation agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to persons who were registered as the holders of shares in the corporation on a date specified in the resolution; and
 - (b) the number of shares for which the shareholder so subscribed bears to the total number of shares made available for allotment in pursuance of the resolution as nearly as practicable the same proportion as the number of issued shares in the corporation held by him or her immediately before the date specified in the resolution bears to the total number of issued shares in the corporation immediately before that date.
- (5) For the purposes of subsection (4), it is immaterial that the shares in the corporation comprise two or more classes of shares to which different rights are attached.
- (5A) Without affecting the operation of section 25, this section does not apply in relation to the acquisition of a substantial shareholding in an Australian corporation if that acquisition is also an acquisition of an interest in Australian urban land.
- (6) In this section, a reference to an agreement by virtue of which a person acquires a substantial shareholding in a corporation is a reference to an agreement by virtue of which the person acquires any interests in any shares in the corporation where:
 - (a) he or she already holds a substantial interest in the corporation; or
 - (b) upon the acquisition by him or her of those interests, or of those interests and of any interests in other shares in the corporation, being interests that he or she has offered to acquire, he or she would hold a substantial interest in the corporation.
- (7) For the purposes of subsection (6), a reference to a person offering to acquire interests in shares includes a reference to a person making or publishing a statement, however expressed, that expressly or impliedly

invites a holder of interests in shares to offer to dispose of interests in shares.

26A Compulsory notification of certain section 21A transactions

- (1) In this section, *person to whom this section applies* means:
 - (a) a natural person not ordinarily resident in Australia;
 - (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
 - (c) a corporation in which two or more persons, each of whom is a natural person not ordinarily resident in Australia or a foreign corporation hold an aggregate substantial interest;
 - (d) 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
 - (e) the trustee of a trust estate in which two 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.
- (2) Where a person to whom this section applies:
 - (a) enters into an agreement by virtue of which he or she acquires an interest in Australian urban land and did not, before entering into the agreement, furnish to the Treasurer a notice stating his or her intention to enter into that agreement; or
 - (b) having furnished a notice to the Treasurer stating his or her intention to enter into an agreement by virtue of which he or she is to acquire an interest in Australian urban land, enters into that agreement before:
 - (i) the end of 40 days after the day on which the notice was received by the Treasurer; or
 - (ii) the day on which advice is given that the Commonwealth Government does not object to the person entering into that agreement (whether or not the advice is subject to conditions imposed under subsection 25(1A));whichever first occurs;the person is guilty of an offence and is punishable, on conviction, by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.
- (3) Where:
 - (a) a person enters into an agreement by virtue of which he or she acquires an interest in Australian urban land; and

- (b) the provisions of the agreement that relate to the acquisition of the interest do not become binding until the fulfilment of a condition or conditions set out in the agreement;

the person shall not be taken, for the purposes of subsection (2), to have entered into the agreement until the time when those provisions become binding.

- (4) Without affecting the operation of section 25, this section does not apply to an acquisition of an interest in Australian urban land if:
 - (a) that interest is an interest in a share in a corporation;
 - (b) the acquisition occurs because of a shareholder subscribing for shares in the corporation;
 - (c) the shares were subscribed for in pursuance of a resolution by the corporation or the directors of the corporation agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to persons who were registered as the holders of shares in the corporation on a day specified in the resolution; and
 - (d) the proportion of the total shares made available for allotment represented by the shares for which the shareholder so subscribed is as near as practicable to the proportion of the issued shares in the corporation, immediately before the day specified in the resolution, that were held by the shareholder immediately before that day.
- (5) For the purposes of subsection (4), it is immaterial that the shares in the corporation comprise two or more classes of shares to which different rights are attached.

27 Form of notification

A notice does not have effect for the purposes of section 25, 26 or 26A unless it is in accordance with the prescribed form and complies with the directions set out in the form.

28 Notification of options

A notice furnished in accordance with section 25 stating that a person proposes to acquire an option to acquire a share or asset has effect as if it included a statement that the person proposes to exercise that option.

Part III—Miscellaneous

30 Offences

- (1) A person who contravenes or fails to comply with an order made under Part II is guilty of an offence against this section.
- (2) Where a person has been convicted of an offence consisting of a contravention, or failure to comply with, an order made under Part II and the contravention or failure continues after he or she has been so convicted, the person is guilty of a further offence against this section.
- (3) Where an order made under Part II requires a person to do anything within a particular time and the person fails to do that thing within that time, the person shall be deemed to continue to fail to comply with the order until he or she does that thing.
- (4) A person who is convicted of an offence against this section is punishable by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.

31 Offences by officers of corporations

- (1) Where an offence against a provision of this Act is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section and is punishable on conviction by the penalty provided in that provision.
- (2) A reference in subsection (1) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who authorizes or permits the commission of the offence.

35 Powers of court to enforce Treasurer's orders

- (1) Where a person (in this section referred to as *the offender*) has contravened or failed to comply with an order in force under Part II, the Supreme Court of a State or Territory may, on the application of the Treasurer, whether or not that contravention or failure still continues, and whether or not other proceedings in respect of that contravention or failure have been or are to be instituted, make such order or orders as it thinks fit for the attainment of the purpose for which the order was made by the Treasurer.
- (2) The orders that may be made under subsection (1) in relation to a change in the control of a corporation other than a foreign corporation (in this

section referred to as *the corporation concerned*) or a change in the control of an Australian business (in this section referred to as *the business concerned*) include, but are not limited to:

- (a) an order restraining the exercise of any rights attached to shares or assets held by the offender;
- (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of shares or assets held by the offender;
- (c) an order directing the disposal of shares or assets held by the offender;
- (d) an order that any exercise of rights attached to shares or assets held by the offender be disregarded;
- (e) an order prohibiting a person from acting as a director of the corporation concerned or from being involved in the management of the corporation or business concerned; and
- (f) an order directing the corporation concerned to make such alterations of any of its constituent documents as are specified in the order.

(3) For the purpose of subsection (2):

- (a) a reference to shares is a reference to shares in the corporation concerned; and
- (b) a reference to assets is a reference to assets of the corporation or business concerned.

(4) The orders that may be made under subsection (1) in relation to a change in the control of a foreign corporation include, but are not limited to:

- (a) an order restraining the exercise of any rights attached to shares held by the foreign corporation in an Australian subsidiary;
- (b) an order prohibiting or deferring the payment of any sums due to the foreign corporation in respect of shares held by it in an Australian subsidiary;
- (c) an order directing the disposal of shares in, or assets of, an Australian subsidiary of the foreign corporation;
- (d) an order directing the disposal of assets of the foreign corporation that consist of assets of an Australian business carried on by the foreign corporation (whether alone or together with any other person or persons) or prohibiting or deferring the payment of any sums due to the foreign corporation in respect of any such assets;
- (e) an order that any exercise of rights attached to shares held by the foreign corporation in an Australian subsidiary be disregarded;
- (f) an order that any exercise of rights attached to assets of the foreign corporation of a kind referred to in paragraph (d) be disregarded;

- (g) an order prohibiting a person from acting as a director of, or from being concerned in the management of, an Australian subsidiary of the foreign corporation; and
 - (h) an order directing an Australian subsidiary of the foreign corporation to make such alterations of any of its constituent documents as are specified in the order.
- (4A) The orders that may be made under subsection (1) in relation to the acquisition of an interest in Australian urban land include, but are not limited to:
- (a) an order restraining the exercise of any rights attached to any interest held by the offender in the land or other thing concerned;
 - (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of any such interest held by the offender;
 - (c) an order directing the disposal of any such interest held by the offender; and
 - (d) an order that any exercise of rights attached to any such interest held by the offender be disregarded.
- (5) In addition to the powers conferred on a Court by subsections (1), (2), (4) and (4A), the Court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (6) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (7) The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
- (10) In this section, *Australian subsidiary*, in relation to a foreign corporation, means a corporation incorporated in Australia that is a subsidiary of that foreign corporation.

36 Treasurer may require information

- (1) Where the Treasurer has reason to believe that a person is capable of giving information or producing documents relating to matters that are relevant to the exercise by the Treasurer of his or her powers under this Act, he or she may, by notice in writing served on that person, require that person:

- (a) to furnish, within the time and in the manner specified in the notice, any such information to him or her by writing signed by that person or, in the case of a corporation, by a competent officer of the corporation; or
 - (b) to produce, in accordance with the notice, any such documents to him or her or to a person specified in the notice acting on his or her behalf.
- (2) A person who does not comply with a notice under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding 20 penalty units or imprisonment for 12 months, or both.
- (2A) Subsection (2) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2A), (see subsection 13.3(3) of the *Criminal Code*).
- (3) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate him or her, but his or her answer to any question asked in the notice, or his or her furnishing of any other information in pursuance of the notice, is not admissible in evidence against him or her in any criminal proceedings other than proceedings under this Act.

37 Effect of Act on other laws

It is the intention of the Parliament that this Act shall not apply to the exclusion of any law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

38 Validity of acts done in contravention of Act

An act is not invalidated by the fact that it constitutes an offence against this Act.

38A Anti-avoidance

- (1) In this section, *scheme* means:
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

- (2) Where:
- (a) a person or persons enter into, commence to carry out or carry out a scheme (other than a scheme entered into before the commencement of this section);
 - (b) it would be concluded that the person, or any of the persons, who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to any person or persons (whether or not a person or persons who entered into, commenced to carry out or carried out the scheme or any part of the scheme); and
 - (c) the scheme or the part of the scheme has achieved, or apart from this section, would achieve, that purpose;
- the Treasurer may make any order under this Act that the Treasurer would have been able to make if the scheme or the part of the scheme had not achieved that purpose.
- (3) Subsection (2) does not authorise the making of an order prohibiting a person from doing any thing that has already been done by the person before the order is made.

39 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Notes to the *Acquisitions and Takeovers Act 1975*

Note 1

The *Foreign Acquisitions and Takeovers Act 1975* as shown in this compilation comprises Act No. 92, 1975 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Foreign Takeovers Act 1975</i>	92, 1975	28 Aug 1975	1 Jan 1976 (see <i>Gazette</i> 1975, No. S267)	
<i>Foreign Takeovers Amendment Act 1976</i>	93, 1976	20 Sept 1976	sections 1, 2, 3(2), 5, 9, 11 and 12: Royal Assent Remainder: 1 Jan 1976	sections 11 and 12
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (sections 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	section. 124
<i>Commonwealth Functions (Statutes Review) Act 1981</i>	74, 1981	18 June 1981	Part XII (sections 185–187): Royal Assent (a)	—
<i>Foreign Takeovers Amendment Act 1989</i>	14, 1989	13 Apr 1989	1 Aug 1989 (see <i>Gazette</i> 1989, No. S240)	section 32
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	section. 85: 1 Sept 1994 (b)	—
<i>Crimes and Other Legislation Amendment Act 1997</i>	20, 1997	7 Apr 1997	Schedule 2 (item 5): Royal Assent (c)	—
<i>Company Law Review Act 1998</i>	61, 1998	29 June 1998	Schedule 4 (item 10): 1 July 1998 (see <i>Gazette</i> 1998, No. S317) (d)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	sections 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Schedule. 2 (items 418, 419) [see Table A]
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001</i>	31, 2001	28 Apr 2001	sections 1–3, Schedule 1 (items 1–4) and Schedule 2: Royal Assent Schedule 1 (items 171, 172): 18 Jan 2001 (see section 2(2)) Remainder: 15 Dec 2001 (see section 2(4))	—
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 5: 1 Jan 2005	—
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (items 295–298): 4 July 2008	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 14 (items 105–111): 10 Dec 2008	Schedule 14 (item 111) [see Table A]

- (a) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Part XII (sections 185–187) only of the *Commonwealth Functions (Statutes Review) Act 1981*, subsection 2(1) of which provides as follows:
- (1) Parts I, IV, IX, X, XI, XII, XIII, XVII (other than sections 220, 221, 222, 223, 225, 226, 227, 228, and 230), XX, XXI, XXII and XXIII shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *Foreign Acquisitions and Takeovers Act 1975* was amended by section 85 only of the *Migration Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.
Section 3 commenced on 1 September 1994.
- (c) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Schedule 2 (item 5) only of the *Crimes and Other Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (d) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Schedule 4 (item 10) only of the *Company Law Review Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), section 3 and Schedules 1, 2, 3 and 4 commence on a day to be fixed by Proclamation.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	rs. No. 14, 1989
Part I	
Section 1	am. No. 14, 1989
Section 3	am. No. 93, 1976; No. 19, 1979
Section 4	am. No. 14, 1989
Section 5	am. No. 93, 1976; No. 74, 1981; No. 14, 1989; No. 61, 1998; No. 120, 2004; Nos. 73 and 144, 2008
Section 5A	ad. No. 14, 1989 am. No. 60, 1994
Section 6	am. No. 14, 1989; No. 144, 2008
Section 7	am. No. 14, 1989; No. 73, 2008
Section 8	am. No. 93, 1976
Section 9	am. No. 14, 1989
Section 9A	ad. No. 14, 1989
Section 11	am. No. 73, 2008
Sections 12A–12C	ad. No. 14, 1989
Section 13	am. No. 14, 1989
Section 13A	ad. No. 14, 1989
Section 13B	ad. No. 14, 1989 am. No. 120, 2004
Sections 13C, 13D	ad. No. 14, 1989
Section 15	am. No. 93, 1976
Part IA	
Part IA	ad. No. 120, 2004
Sections 17A–17H	ad. No. 120, 2004
Part II	
Heading to Part II	am. No. 14, 1989
Sections 18–21	am. No. 73, 2008
Section 21A	ad. No. 14, 1989
Section 22	am. No. 14, 1989; No. 73, 2008
Section 23	am. No. 14, 1989
Section 24	am. No. 14, 1989; No. 73, 2008
Section 25	am. No. 14, 1989; No. 31, 2001
Section 26	rs. No. 93, 1976 am. No. 74, 1981; No. 14, 1989; No. 31, 2001; No. 73, 2008
Section 26A	ad. No. 14, 1989 am. No. 31, 2001
Section 27	am. No. 14, 1989
Section 28	rs. No. 93, 1976
Section 29	rep. No. 93, 1976
Part III	
Section 30	am. No. 14, 1989; No. 31, 2001; No. 73, 2008
Section 32	am. No. 14, 1989 rep. No. 31, 2001
Section 33	rep. No. 20, 1997

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Section 34.....	rep. No. 14, 1989
Section 35.....	am. No. 14, 1989
Section 36.....	am. No. 14, 1989; No. 31, 2001; No. 73, 2008
Section 36A	ad. No. 14, 1989 rep. No. 137, 2000
Section 38.....	rs. No. 93, 1976
Section 38A	ad. No. 14, 1989

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences)
Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
 - (a) an offence committed before the commencement of this item;
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions;
- (b) any or all of those other provisions are repealed by this Schedule; and
- (c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 (No. 144, 2008)

Schedule 14

111 Transitional provisions

- (1) If:
- (a) apart from this subitem, a person would be an associate of another person for the purposes of paragraph 9(1)(a) or (b) or paragraph 9A(1)(a) or (b) of the *Foreign Acquisitions and Takeovers Act 1975* on the commencement day; and
 - (b) the persons would be associates only because of the amendments of that Act made by this Part;

then, during the period of 6 months starting on the commencement day, the provision does not apply to them as associates of each other for so long as the persons would otherwise have been associates of each other.

- (2) If:
- (a) apart from this subitem, a person would be an associate of another person on the commencement day; and
 - (b) the persons would be associates only because of the amendments of the *Foreign Acquisitions and Takeovers Act 1975* made by this Part;

then, the Treasurer may not make an order under Part II of that Act in relation to them as associates of each other during the period of 6 months starting on the commencement day.

- (3) In this item:

commencement day means the day on which the amendments of the *Foreign Acquisitions and Takeovers Act 1975* made by this Part commence.

Appendix E

Foreign Acquisitions and Takeovers Regulations 1989

*Foreign Acquisitions and Takeovers (Notices)
Regulations*



Foreign Acquisitions and Takeovers Regulations 1989

Statutory Rules 1989 No. 177 as amended

made under the

Foreign Acquisitions and Takeovers Act 1975

This compilation was prepared on 6 June 2009¹
taking into account amendments up to SLI 2009 No. 104

Prepared by the Office of Legislative Drafting and Publishing,
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¹ The latest compilation of the Regulations can be accessed via ComLaw(Commonwealth Law) at www.comlaw.gov.au.

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Notes

1 Name of Regulations [see Note 1]

These Regulations are the *Foreign Acquisitions and Takeovers Regulations 1989*.

2 Definitions

In these Regulations, unless the contrary intention appears:

Act means the *Foreign Acquisitions and Takeovers Act 1975*.

charitable institution means:

- (a) any charitable, religious, scientific or educational institution (including an institution providing residential accommodation wholly or principally for full-time students attending an educational institution);
- (b) any institution being, or carrying on, a hospital; and
- (c) any institution the sole or principal purpose of which is to assist in the saving of life, or the prevention of loss or damage to property, whether at sea or otherwise;

being an institution which is not carried on for the purpose of profit or gain to its individual members and which is not empowered to make any distribution, whether in money, property or otherwise, to its members.

entity includes an individual.

foreign person includes a person to whom section 26A of the Act applies.

spouse, in relation to a person, includes a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*.

temporary resident means a person:

- (a) who resides in Australia; and
- (b) who is the holder of a temporary visa within the meaning of the *Migration Act 1958*; and
- (c) to whom one of the following circumstances applies:
 - (i) if the person holds a bridging visa — the person has applied for a permanent visa under that Act and the application has not been withdrawn or otherwise finally determined;
 - (ii) if the person holds any other temporary visa — the visa permits the person to remain in Australia for a continuous period of more than 12 months.

US enterprise has the meaning given by regulation 2AB.

US national means:

- (a) a national of the United States of America, as defined in Title III of the *Immigration and Nationality Act* of the United States of America; or
- (b) a permanent resident of the United States of America.

2AA References to *United States of America*

In these Regulations:

- (a) a reference to the territory of the United States of America includes Puerto Rico and the District of Columbia; and
- (b) a reference to a law of the United States of America includes a law that applies in a State of the United States of America or in any part of the territory of the United States of America.

2AB Meaning of *US enterprise*

- (1) A *US enterprise* is:
 - (a) an entity of a kind described in subregulations (2) to (4); or
 - (b) a branch of an entity (other than an entity that is a US enterprise under paragraph (a)) that satisfies subregulation (5);
that is not disqualified under subregulation (6).
- (2) The entity is constituted or organised under a law of the United States of America.
- (3) The form in which the entity may be constituted or organised may be, but is not limited to, any of the following forms:
 - (a) a corporation;
 - (b) a trust;
 - (c) a partnership;
 - (d) a sole proprietorship;
 - (e) a joint venture;
 - (f) an unincorporated association.
- (4) It is immaterial whether the entity:
 - (a) is carried on for profit; or
 - (b) is owned or controlled privately.
- (5) If an entity is not described in subregulations (2) to (4), a branch of that entity is a US enterprise if the branch:
 - (a) is located in the United States of America; and

- (b) is carrying on business activities in the United States of America:
 - (i) in a way other than being solely a representative office; and
 - (ii) in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the United States of America; and
 - (iii) by having its administration in the United States of America.
- (6) However, an entity or a branch of an entity is not a US enterprise if the Treasurer decides that this subregulation should apply to the entity or branch because:
 - (a) it is owned or controlled by a person or persons of a country other than the United States of America, and:
 - (i) Australia does not maintain diplomatic relations with that country; or
 - (ii) Australia adopts or maintains measures in relation to that country or a person of that country that have the effect of prohibiting transactions with the entity or branch; or
 - (b) it is owned or controlled by a person or persons of a country other than the United States of America (including Australia) and the entity or branch has no substantial business activities in the United States of America.

2A Prescribed interests in shares

For paragraph 11 (5) (c) of the Act, an interest in a share is prescribed if:

- (a) the interest is of the kind described in regulation 2B; and
- (b) the interest is held by a corporation (a *foreign custodian company*) that:
 - (i) is a foreign person; and
 - (ii) is in the business of providing custodian services to other persons in relation to the holding of shares.

2B Kind of interest

For paragraph 2A (a), the interest is an interest in a share:

- (a) in:
 - (i) a prescribed corporation to which paragraph 18 (1) (a) of the Act applies; or

- (ii) a holding corporation of a prescribed corporation to which paragraph 18 (1) (a) of the Act applies; and
- (b) in which an equitable interest is held by a person that is not the holder of the legal interest in the share; and
- (c) in which the holder of the legal interest in the share exercises voting rights associated with the interest in the share only at, or in accordance with, the direction of:
 - (i) another person that is providing custodian services to a person in relation to the holding of the legal interest; or
 - (ii) the holder of an equitable interest in the share that is receiving custodian services that are related to that interest.

3 Exempt acquisitions of interests in Australian urban land

For subsection 12A (8) of the Act, the Act does not apply in relation to an acquisition of an interest in Australian urban land of each of the following kinds, namely, the acquisition of such an interest by a foreign person:

- (a) that is:
 - (i) a charitable institution operating in Australia primarily for the benefit of persons ordinarily resident in Australia; or
 - (ii) a trustee of a foreign-controlled trust established for charitable or benevolent purposes, where the beneficiaries of the trust are persons ordinarily resident in Australia;
- (b) that is a life insurance company operating in Australia and the acquisition is made by way of investment of its statutory funds (within the meaning of the *Life Insurance Act 1995*) primarily for the benefit of policy holders ordinarily resident in Australia;
- (c) that is an insurance company (other than a life insurance company) operating in Australia and the acquisition:
 - (i) is made from the reserves of the company; and
 - (ii) is consistent with the company's obligations under the *Insurance Act 1973*;
- (d) that is a corporation operating in Australia that maintains a superannuation fund for its employees, (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), for the benefit of the members of the fund or their dependents, being persons ordinarily resident in Australia, and the acquisition is made as an investment of all or part of the assets of that fund;
- (e) where:
 - (i) the acquisition is of an interest in land on which a dwelling will be or is being constructed; and

- (ii) the Treasurer has certified that the sale of that interest, (whether or not the certificate also refers to other interests) by a specified real estate developer to foreign persons is not contrary to the national interest; and
 - (iia) the conditions (if any) set out in the certificate are satisfied; and
 - (iii) the real estate developer provides the foreign person with a copy of that certificate;
- (f) where:
- (i) the land is being used, or is able to be used immediately and in its present state, for industrial or non-residential commercial purposes; and
 - (ii) the acquisition is wholly incidental to the conduct of the existing or proposed business activities of the foreign person (other than business activities that include acquisitions of land or the development of, or investment in, land or the development or operation of any form of accommodation facility);
- (g) where the acquisition is of an interest in a time share scheme and the entitlement of the foreign person and any of that person's associates is not in the aggregate greater than 4 weeks in any year;
- (h) where:
- (i) the Treasurer has certified that a programme of land acquisitions by a foreign person in respect of a year is not contrary to the national interest; and
 - (ii) the acquisition is an acquisition referred to in that certificate;
- (i) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate that the corporation has not developed itself, being an Australian urban land corporation that is:
- (i) publicly listed on an Australian Stock Exchange; and
 - (ii) primarily involved in the development of land;
- (j) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate, being an Australian urban land corporation that is publicly listed on an Australian Stock Exchange, or, where

- 2 or more foreign persons hold interests in the Australian urban land corporation, those foreign persons hold less than an aggregate substantial interest in that corporation;
- (k) who is an Australian citizen not ordinarily resident in Australia;
 - (l) that is a corporation in which the government of an overseas country within the meaning of the *Diplomatic Privileges and Immunities Act 1967* holds a substantial interest and the acquisition is of an interest in land where the land is to be used exclusively for the purposes of the diplomatic mission of that country or as a diplomatic residence;
 - (m) that is an Australian corporation that is a foreign person only because of direct interests held in it by Australian citizens not ordinarily resident in Australia;
 - (n) that is a trustee of a trust estate, where the trustee is a foreign person only because of direct interests held in the trust estate by Australian citizens not ordinarily resident in Australia;
 - (o) where the acquisition is of units in a unit trust as a consequence of which:
 - (i) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders;
 - (C) that is primarily engaged in the development of land; and
 - (D) that has less than 10 per cent of its real estate assets in the form of developed residential real estate that the trust has not developed itself; or
 - (ii) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders; and
 - (C) that has less than 10 per cent of its real estate assets in the form of developed residential real estate;
- or, where 2 or more foreign persons hold interests in the Australian urban land trust estate, those foreign persons

hold less than an aggregate substantial interest in that trust estate;

- (p) if:
 - (i) the acquisition is of an interest:
 - (A) in non-residential commercial land; or
 - (B) in land that comprises a hotel, motel, hostel or guesthouse, or an individual dwelling that is part of a hotel, motel, hostel or guesthouse; and
 - (ii) the land is valued at:
 - (A) for land which is being acquired by a prescribed foreign investor — less than:
 - (I) for the calendar year 2009 — \$953 000 000; or
 - (II) for any later calendar year — the amount worked out under regulation 13; and
 - (B) for land the whole or part of which is entered in the Register of the National Estate and the interest is being acquired by a foreign person other than a prescribed foreign investor — less than \$5 000 000; and
 - (C) in any other case — less than \$50 000 000; and
 - (iii) the land is not vacant land;
- (q) where the acquisition is of an interest in land that is zoned as residential property and the person:
 - (i) is, at the time of acquisition, the holder of a permanent visa (within the meaning of the *Migration Act 1958*); or
 - (ii) is, at the time of acquisition, the holder of a special category visa (within the meaning of that Act); or
 - (iii) if he or she had entered Australia lawfully immediately before the time of acquisition, would have been entitled to the grant, on presentation of a passport, of a special category visa (within the meaning of that Act); or
 - (iv) is an Australian corporation that is a foreign person only because of a direct interest held in it by a person to whom subparagraph (i), (ii) or (iii) applies; or
 - (v) is the trustee of a trust estate, where the trustee is a foreign person only because of a direct interest held in the trust estate by a person to whom subparagraph (i), (ii) or (iii) applies;
- (r) if:

- (i) the acquisition is of an interest in land on which a dwelling exists that is, or may be, used for residential purposes, other than land that is part of a subdivided building in which hotel services are provided; and
 - (ii) the Treasurer has certified that the sale of an interest of that kind to foreign persons is not contrary to the national interest; and
 - (iii) the conditions (if any) set out in the certificate are satisfied; and
 - (iv) the person who intends to dispose of the interest gives the foreign person a copy of the certificate;
- (t) where the acquisition is of an interest in land that is zoned as residential property and:
 - (i) the person is the spouse of an Australian citizen; and
 - (ii) the interest is held by the person and his or her spouse as joint tenants;
- (u) that is the responsible entity of a managed investment scheme registered under section 601EB of the *Corporations Act 2001* and the acquisition is primarily for the benefit of scheme members ordinarily resident in Australia;
- (v) where the following circumstances apply:
 - (i) the foreign person is a corporation;
 - (ii) the foreign person is in the business of providing custodian services to other persons in relation to the holding of interests in Australian urban land;
 - (iii) the foreign person acquires the interest in Australian urban land in the course of the foreign person's business;
 - (iv) the foreign person exercises rights associated with the interest only at, or in accordance with, the direction of:
 - (A) another person that is providing custodian services to a person in relation to the holding of the legal interest in the Australian urban land; or
 - (B) the holder of an equitable interest in the interest in the Australian urban land that is receiving custodian services that are related to that interest;
- (w) if:
 - (i) the foreign person is:
 - (A) a temporary resident; or
 - (B) an Australian corporation that is a foreign person only because of a direct interest held in it by a person referred to in sub-subparagraph (i) (A); or

- (C) the trustee of a trust estate, where the trustee is a foreign person only because of a direct interest held in the trust by a person referred to in subparagraph (i) (A); and
- (ii) the acquisition is of an interest in land that is zoned as residential property, and one or more of the following circumstances apply:
 - (A) the acquisition is of a single residential block of vacant land that is zoned to permit the construction of no more than one residential dwelling on the block and the person does not have an interest in any vacant land adjacent to the land to be acquired;
 - (B) the acquisition is of an interest in land on which a single established residential dwelling exists that is to be used as the person's principal place of residence;
 - (C) the acquisition is of an interest in land on which a new residential dwelling exists.

4 Prescribed corporations — value of assets of foreign corporation

- (1) For paragraph 13 (1) (d) of the Act, the amount of \$200 000 000 is prescribed.
- (2) For paragraph 13 (1) (e) of the Act, the amount of \$200 000 000 is prescribed.

5 Exempt dealings — value of assets

- (1) For subparagraph (b) (i) of the definition of *exempt corporation* in subsection 13A (4) of the Act, the amount of \$100 000 000 is prescribed.
- (2) For subparagraph (b) (ii) of the definition of *exempt corporation* in subsection 13A (4) of the Act, the amount of \$100 000 000 is prescribed.
- (3) For paragraph (a) of the definition of *exempt business* in subsection 13A (4) of the Act, the amount of \$100 000 000 is prescribed.
- (4) For paragraph (b) of the definition of *exempt business* in subsection 13A (4) of the Act, the amount of \$100 000 000 is prescribed.

6 Asset thresholds for exempt foreign investments in prescribed corporations etc — prescribed foreign investors

For a provision of section 17B of the Act mentioned in the following table, the amount is set out in the table:

Item	Provision	Amount
1	paragraph 17B (1) (b)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$100 000 000; or (b) For any other calendar year — the amount worked out under regulation 13
2	paragraph 17B (1) (c)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$200 000 000; or (b) For any other calendar year — the amount worked out under regulation 13
3	paragraph 17B (2) (b)	(a) For the calendar year 2005 — \$800 000 000; or (b) For any other calendar year — the amount worked out under regulation 13
4	paragraph 17B (2) (c)	(a) For the calendar year 2005 — \$800 000 000; or (b) For any other calendar year — the amount worked out under regulation 13

Appendix E: Foreign Acquisitions and Takeovers Regulations

Item	Provision	Amount
5	subparagraph 17B (3) (a) (ii)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$100 000 000; or (b) For any other calendar year — the amount worked out under regulation 13
6	subparagraph 17B (3) (b) (ii)	(a) For the calendar year 2005 — \$800 000 000; or (b) For any other calendar year — the amount worked out under regulation 13

7 Asset thresholds for exempt foreign investments in prescribed corporations etc — prescribed foreign government investors

For a provision of section 17C of the Act mentioned in the following table, the amount is set out in the table:

Item	Provision	Amount
1	paragraph 17C (1) (a)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$100 000 000; or (b) For any other calendar year — the amount worked out under regulation 13

Item	Provision	Amount
2	paragraph 17C (1) (b)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$200 000 000; or (b) For any other calendar year — the amount worked out under regulation 13
3	subsection 17C (2)	(a) For the calendar year 2006 — \$52 000 000; or (aa) For the calendar year 2007 — \$100 000 000; or (b) For any other calendar year — the amount worked out under regulation 13

8 Condition relating to exempt foreign investments in financial sector companies etc

For subsection 17D (3) of the Act, the condition is that the investor is a prescribed foreign investor.

9 Condition relating to prescribed foreign investor

For paragraph 17E (1) (a) of the Act, the condition to be satisfied by an entity is that the entity is:

- (a) a US national; or
- (b) a US enterprise.

10 Condition relating to foreign government investor

For paragraph 17F (c) of the Act, it is a condition that the interest is greater than 15%.

11 Conditions relating to prescribed foreign government investor

- (1) For paragraph 17G (b) of the Act, the conditions are that:

- (a) the entity mentioned in section 17G of the Act (*entity 1*) is not:
 - (i) a body politic of a foreign country; or
 - (ii) a body politic of part of a foreign country; or
 - (iii) a part of a body politic of a foreign country or part of a foreign country; and
 - (b) either:
 - (i) entity 1 is controlled by another entity (*entity 2*); or
 - (ii) an entity (*entity 2*) holds an interest in entity 1 that satisfies the condition specified in regulation 10 for paragraph 17F (c) of the Act; and
 - (c) entity 2 is:
 - (i) a body politic of a relevant foreign country; or
 - (ii) a body politic of part of a relevant foreign country; or
 - (iii) a part of a body politic of a relevant foreign country or part of a relevant foreign country.
- (2) In subregulation (1):
relevant foreign country means the United States of America.

12 Conditions relating to prescribed sensitive sector

- (1) For paragraph 17H (a) of the Act, the condition is that the investor is a prescribed foreign investor.
- (2) For paragraph 17H (b) of the Act, the condition is that the business activity is any of the following:
 - (a) media;
 - (b) telecommunications;
 - (c) transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided within, or to or from, Australia);
 - (d) the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defence Force or other defence forces;
 - (e) the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
 - (f) the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems;
 - (g) the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of nuclear facilities.

13 Indexation of amounts

(1) This regulation explains how to work out an amount for a provision of regulation 3, 6 or 7.

(2) In this regulation:

existing amount, for a calendar year, means:

(a) if an indexed amount has not been previously worked out under this regulation — the original amount; or

(b) the indexed amount for the year before the relevant year.

GDP implicit price deflator value, for a calendar year, means the GDP implicit price deflator value that was published by the Australian Bureau of Statistics in the publication *Australian System of National Accounts (cat. 5204.0)* (Table 7, Expenditure on GDP, Implicit Price Deflators), for the last financial year that ended before the calendar year.

indexed amount means an amount mentioned in subregulation (1).

latest GDP implicit price deflator value, for a relevant year, means the GDP implicit price deflator value for that year.

original amount means an amount that is replaceable under this regulation by an indexed amount.

relevant year means the calendar year for which an indexed amount is worked out.

(3) The indexed amount for a relevant year is worked out in accordance with the formula:

$$\frac{\text{existing amount} \times \text{latest GDP implicit price deflator value}}{100}$$

(4) If, apart from this subregulation, an indexed amount that is worked out under this regulation would not be a multiple of \$1 000 000, the indexed amount is rounded to the nearest multiple of \$1 000 000 (rounding up if the indexed amount ends in \$500 000).

(5) However, if the amount worked out under subregulation (3) (after any rounding under subregulation (4)) is less than the existing amount, the indexed amount for the relevant year is taken to be the existing amount.

- (6) If, at any time, whether before or after the commencement of these Regulations, the Australian Statistician publishes a GDP implicit price deflator value for a financial year in substitution for a GDP implicit price deflator value previously published for the financial year, the publication of the later GDP implicit price deflator value is to be disregarded for this regulation.
- (7) However, if, at any time, whether before or after the commencement of these Regulations, the Australian Statistician changes the reference base for the GDP implicit price deflator value, then, in applying this regulation after the change is made, regard is to be had only to values published in terms of the new reference base.

Notes to the *Foreign Acquisitions and Takeovers Regulations 1989*

Note 1

The *Foreign Acquisitions and Takeovers Regulations 1989* (in force under the *Foreign Acquisitions and Takeovers Act 1975*) as shown in this compilation comprise Statutory Rules 1989 No. 177 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1989 No. 177	6 July 1989	1 Aug 1989 (<i>see Gazette</i> 1989, No. S240)	
1991 No. 302	30 Sept 1991	30 Sept 1991	—
1994 No. 295	31 Aug 1994	1 Sept 1994	—
1995 No. 416	19 Dec 1995	19 Dec 1995	—
1999 No. 199	10 Sept 1999	10 Sept 1999	—
2004 No. 49	30 Mar 2004	30 Mar 2004	—
2004 No. 316	11 Nov 2004	1 Jan 2005 (<i>see r. 2 and Gazette</i> 2004, No. GN51)	—
2004 No. 401	23 Dec 2004	1 Jan 2005 (<i>see r. 2 and Gazette</i> 2004, No. GN51)	—
2006 No. 286	17 Nov 2006 (<i>see F2006L03741</i>)	18 Nov 2006	—
2006 No. 316	1 Dec 2006 (<i>see F2006L03836</i>)	2 Dec 2006	—
2006 No. 364	13 Dec 2006 (<i>see F2006L04021</i>)	14 Dec 2006	—
2009 No. 53	30 Mar 2009 (<i>see F2009L01190</i>)	Rr. 1–3 and Schedule 1: 2 Dec 2006 Rr. 4, 5, Schedules 2 and 3: 31 Mar 2009	R. 4
2009 No. 104	5 June 2005 (<i>see F2009L02155</i>)	6 June 2009	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	rs. 1999 No. 199
Heading to r. 2	rs. 2004 No. 316
R. 2	am. 1995 No. 416; 1999 No. 199; 2004 No. 316; 2009 Nos. 53 and 104
R. 2AA.....	ad. 2004 No. 316
R. 2AB.....	ad. 2004 No. 316
R. 2A	ad. 2004 No. 49 am. 2006 No. 286
R. 2B	ad. 2004 No. 49 rs. 2006 No. 286
R. 2C.....	ad. 2004 No. 49 rep. 2006 No. 286
R. 3	am. 1991 No. 302; 1994 No. 295; 1995 No. 416; 1999 No. 199; 2004 Nos. 49 and 316; 2006 No. 286; 2009 No. 53
R. 4	ad. 1999 No. 199 am. 2006 No. 316
R. 5	ad. 1999 No. 199 am. 2006 No. 316
R. 6	ad. 2004 No. 316 am. 2006 No. 316; 2009 No. 53
R. 7	ad. 2004 No. 316 am. 2006 No. 364
R. 8	ad. 2004 No. 316
R. 9	ad. 2004 No. 316
R. 10	ad. 2004 No. 316
R. 11	ad. 2004 No. 316 am. 2004 No. 401
R. 12	ad. 2004 No. 316
R. 13	ad. 2004 No. 316 am. 2006 No. 316

Table A Application, saving or transitional provisions

Select Legislative Instrument 2009 No. 53

4 Amendment of *Foreign Acquisitions and Takeovers Regulations 1989*

- (1) Schedule 2 amends the *Foreign Acquisitions and Takeovers Regulations 1989*.
- (2) The amendment made by item 6 of Schedule 2 applies in relation to a contract for the acquisition of an interest in land that was entered into on or after 18 December 2008.



Foreign Acquisitions and Takeovers (Notices) Regulations 1975

Statutory Rules 1975 No. 226 as amended

made under the

Foreign Acquisitions and Takeovers Act 1975

This compilation was prepared on 6 June 2009²
taking into account amendments up to SLI 2009 No. 104

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

² The version shown here is an edited version. The latest compilation of the Regulations can be accessed via ComLaw (Commonwealth Law) at www.comlaw.gov.au.

Contents

- 1 Name of Regulations [see Note 1]
- 2 Commencement [see Note 1]
- 3 Interpretation
- 4 Prescribed forms of notice
- 5 Balance sheet and profit and loss account to be furnished by corporation
- 6 Documents relating to agreement or arrangement
- 7 Constituent document
- 8 Person signing notice

Schedule *[Omitted]*

Notes

1 Name of Regulations [see Note 1]

These Regulations are the *Foreign Acquisitions and Takeovers (Notices) Regulations 1975*.

2 Commencement [see Note 1]

These Regulations shall come into operation on the date of commencement of the Act.

3 Interpretation

In these Regulations, *the Act* means the *Foreign Acquisitions and Takeovers Act 1975*.

4 Prescribed forms of notice

- (1) The prescribed form of notice under section 25 of the Act is Form 1 in Schedule 1.
- (2) The prescribed form of notice under section 26 of the Act is Form 2 in Schedule 1.
- (3) The prescribed form of notice for section 26A of the Act is:
 - (a) unless paragraph (b) or (c) applies — Form 3 in Schedule 1; and
 - (b) if a natural person acquires an interest in Australian residential land — Form 4 in Schedule 1; and
 - (c) if a company or trust estate acquires an interest in Australian residential land — Form 5 in Schedule 1.

5 Balance sheet and profit and loss account to be furnished by corporation

Where a corporation furnishes a notice under section 25 of the Act stating that:

- (a) the corporation proposes to enter into an agreement, being an agreement in relation to the affairs of the corporation;
- (b) the corporation proposes to enter into or terminate an arrangement, being an arrangement in relation to an Australian business of the corporation;
- (c) the corporation proposes issue shares; or

- (d) it is proposed to alter a constituent document of the corporation; the corporation shall annex to the notice a copy of the balance sheet and a copy of the profit and loss account of the corporation for each period in relation to which a profit and loss account of the corporation has been laid before it in general meeting during the preceding four years.

6 Documents relating to agreement or arrangement

Where a person furnishes:

- (a) a notice under section 25 of the Act stating that the person proposes to enter into an agreement, being an agreement of the kind referred to in section 20 of the Act, or to enter into or terminate an arrangement, being an arrangement of the kind referred to in section 21 of the Act; or
- (b) a notice under section 26 of the Act;
the person shall annex to the notice copies of all documents and other papers in the person's possession or control relating to or evidencing the agreement or arrangement to which the notice relates.

Note See section 27 of the Act for compliance with forms.

7 Constituent document

Where a corporation furnishes a notice under section 25 of the Act stating that it is proposed to alter a constituent document of the corporation, the corporation shall annex to the notice a copy of that constituent document.

8 Person signing notice

- (1) A notice under section 25 or 26 of the Act furnished by a natural person shall be signed:
 - (a) if the person is not ordinarily resident in Australia — by that person or by his Australian agent; or
 - (b) in any other case — by the person furnishing the notice.
- (2) A notice under section 25 or 26 of the Act furnished by a corporation shall be signed by a person authorized in writing by the corporation to sign the notice for and on behalf of the corporation.

Note See section 27 of the Act for compliance with forms.

Schedule [Omitted]

Notes to the Foreign Acquisitions and Takeovers (Notices) Regulations 1975

Note 1

The *Foreign Acquisitions and Takeovers (Notices) Regulations 1975* (in force under the *Foreign Acquisitions and Takeovers Act 1975*) as shown in this compilation comprise Statutory Rules 1975 No. 226 amended as indicated in the Tables below.

Table of Instruments

Year and number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
1975 No. 226	30 Dec 1975	1 Jan 1976 (see r. 2 and Gazette 1975, No. S267)	
1976 No. 203	23 Sept 1976	Rr. 1 and 3: 1 Jan 1976 Remainder: 23 Sept 1976	—
1989 No. 178	6 July 1989	6 July 1989	R. 1 (as am by 1989 No. 197)
as amended by			
1989 No. 197	31 July 1989	1 Aug 1989	—
2009 No. 53	30 Mar 2009 (see F2009L01190)	Rr. 1–3 and Schedule 1: 2 Dec 2006 Rr. 4, 5, Schedules 2 and 3: 31 Mar 2009	—
2009 No. 104	5 June 2009 (see F2009L02155)	6 June 2009	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 1	am. 1989 No. 178 rs. 2009 No. 53
R. 3	am. 1989 No. 178
R. 4	am. 1989 No. 178; 2009 No. 53; 2009 No. 104
R. 6	rs. 1976 No. 203 am. 1989 No. 178; 2009 No. 53
Note to r. 6	ad. 2009 No. 53
R. 8	am. 1989 No. 178; 2009 No. 53
Note to r. 8	ad. 2009 No. 53
Heading to Schedule.....	rep. 2009 No. 104
Schedule	am. 1976 No. 203 rs. 1989 No. 178 am. 2009 No. 53
Schedule 1	
Heading to Schedule 1	ad. 2009 No. 104
Schedule 1	am. 2009 No. 104

Appendix F

*OECD Guidelines for
Multinational Enterprises*

OECD Guidelines for Multinational Enterprises

OECD Declaration on international investment and multinational enterprises

Australia has associated itself with a declaration and a number of procedural decisions made by the member countries of the Organisation for Economic Co-operation and Development (OECD) in June 1976, on international investment and multinational enterprises. The text of the 1976 Declaration as amended is as follows:

The Governments of OECD Member Countries

CONSIDERING:

- That international investment has assumed increased importance in the world economy and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in the investment process;
- That co-operation by Member economies can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic and social progress, and minimise and resolve difficulties which may arise from their various operations;
- That, while continuing endeavours within the OECD may lead to further international arrangements and agreements in this field, it seems appropriate at this stage to intensify their co-operation and consultation on issues relating to international investment and multinational enterprises through inter-related instruments each of which deals with a different aspect of the matter and together constitute a framework within which the OECD will consider these issues;

DECLARE:

Guidelines for Multinational Enterprises

- I. That they jointly recommend to multinational enterprises operating in their territories the observance of the Guidelines as set forth in Annex 1 hereto having regard to the considerations and understandings which introduce the Guidelines and are an integral part of them;

National Treatment

- II.1. That Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned and controlled directly or indirectly by nationals of another Member country (hereinafter referred to as 'Foreign Controlled Enterprises') treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable treatment than that is accorded in like situations to domestic enterprises (hereinafter referred to as 'National Treatment');
2. That Member countries will consider applying 'National Treatment' in respect of countries other than Member countries;
3. That Member countries will endeavour to ensure that their territorial subdivisions apply 'National Treatment';
4. That this Declaration does not deal with the right of Member countries to regulate the entry of foreign investment or the conditions of established foreign enterprises;

Conflicting Requirements

- III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements in multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto.

International Enterprises Incentives and Disincentives

- IV.1. That they recognise the need to strengthen their co-operation in the Field of international direct investment;
2. That they thus recognise the need to give due weight to the interests of Member countries affected by specific laws, regulations and administrative practices in this field (hereinafter called 'measures') providing official incentives and disincentives to international direct investment;
3. That Member countries will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

Consultation Procedures

- V. That they are prepared to consult one another on the above matters in conformity with the Decisions of the Council on the Guidelines for Multinational Enterprises, on National Treatment and on International Investment Incentives and Disincentives;

Review

- VI. That they will review the above matters within three years with a view to improving the effectiveness of international economic co-operation among Member countries on issues relating to international investment and multinational enterprises.

Annex 1: Guidelines for Multinational Enterprises

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.

Annex 2: Conflicting requirements imposed on multinational enterprises: General considerations and practical approaches

These considerations and approaches are embodied in Annex 2 to the Declaration on International Investment and Multinational Enterprises, adopted by the Governments of the OECD Member countries in 1976. They were adopted with the aim of avoiding or minimising the imposition of conflicting requirements on multinational enterprises by governments. In view of this objective, the OECD Council has adopted a procedural decision seeking to promote co-operation among Member countries.

General considerations

1. In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member country and lead to conflicting requirements being imposed on multinational enterprises, the Member countries concerned should:
 - (a) Have regard to relevant principles of international law;
 - (b) Endeavour to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries*;
 - (c) Take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries;
 - (d) Bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.
2. Member countries should endeavour to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavour to arrive at mutually acceptable solutions to such problems.

Practical approaches

3. Member countries recognised that in the majority of circumstances, effective co-operation may best be pursued on a bilateral basis. On the other hand, there may be cases where the multilateral approach could be more effective.

4. Member countries should therefore be prepared to:
- (a) Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other Member countries;
 - (b) Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis made by any Member country which considers that its interests may be affected by a measure of the type referred to under paragraph 1 above, taken by another Member country with which it does not have such bilateral arrangements;
 - (c) Inform the other concerned Member countries as soon as practicable of new legislation or regulations proposed by their Governments for adoption which have significant potential for conflict with the legal requirements or established policies of other Member countries and for giving rise to conflicting requirements being imposed on multinational enterprises;
 - (d) Give prompt and sympathetic consideration to requests by other Member countries for consultation in the Committee on International Investment and Multinational Enterprises or through other mutually acceptable arrangements. Such consultations would be facilitated by notification at the earliest stage practicable;
 - (e) Give prompt and full consideration to proposals which may be by other Member countries in any such consultations that would lessen or eliminate conflicts.

These procedures do not apply to those aspects of restrictive business practices or other matters, which are the subject of existing OECD arrangements.

Appendix G

Contact details

Contact details

Executive Member of the Foreign Investment Review Board

The General Manager of Treasury's Foreign Investment and Trade Policy Division, Mr Patrick Colmer, performs the role of the Executive Member of the Foreign Investment Review Board (FIRB). His phone number is 02 6263 3763.

Foreign investment proposals

Application lodgement

Statutory notices (sections 25, 26, and 26A) and retrospective application forms (for residential real estate acquired without prior approval) are available on the FIRB's website at www.firb.gov.au. The 30-day statutory examination period, where applicable, commences upon receipt of a valid statutory notice. Applications for residential real estate which meet the eligibility criteria and include the relevant Declaration are generally processed in a shorter period of time.

Electronic lodgement (via email or fax) is preferred for **all** applications, including business proposals – do not post originals in addition to electronic lodgement. Applications should only be posted if you are unable to submit your application via email or fax. Please note that postal applications generally take longer to process.

Please refer to the website for full details regarding submitting applications.

Email: firbapplications@treasury.gov.au

Fax: 02 6263 2940

Post: The Executive Member
Foreign Investment Review Board
c/- The Treasury
Langton Crescent
PARKES ACT 2600

General enquiries

The FIRB website (www.firb.gov.au) includes current versions of the policy, guidelines, statutory notices and retrospective application forms, as well as responses to frequently asked questions.

Written enquiries may be forward by email to firbenquiries@treasury.gov.au, or by fax or post as shown above under 'Application lodgement'.

General enquiries may also be made by calling 02 6263 3795 (9:00 am to 12:30 pm and 1:30 pm to 5:00 pm AEST, Monday to Friday, excluding public holidays in Canberra).

Foreign Investment and Trade Policy Division

Foreign investment policy

The **Investment Review Unit** is responsible for the management of foreign investment applications and providing advice on the Government's foreign investment policy and the operation of the *Foreign Acquisitions and Takeovers Act 1975*. The unit also deals with foreign investment compliance issues.

Mr John Hill
Co-Manager
Tel: 02 6263 3072

Mr Michael Rosser
Co-Manager
Tel: 02 6263 3834

International investment and trade policy issues

The **International Investment and Trade Policy Unit** is responsible for international investment and trade policy matters.

Ms Angela McGrath
Manager
Tel: 02 6263 3395

Singaporean business investors (Singapore Help Desk)

This service assists Singaporean business investors with the lodgement of foreign investment applications for proposed direct investments in Australia. This includes the provision of foreign investment policy advice and assistance with the application process. The service is for Singaporean business investors and their agents only. All correspondence should be sent to:

Singapore Help Desk
Foreign Investment Review Board
c/- The Treasury
Langton Crescent
Parkes ACT 2600
AUSTRALIA

Tel: +61 2 6263 3755
Fax: +61 2 6263 2940
Internet: www.firb.gov.au/singaporehelpdesk.asp
Email: singaporehelpdesk@treasury.gov.au

Australian National Contact Point for the *OECD Guidelines for Multinational Enterprises*

Suggestions, comments, questions and complaints in relation to the *OECD Guidelines for Multinational Enterprises* should be addressed to:

The Executive Member
Foreign Investment Review Board
c/- The Treasury
Langton Crescent
Parkes ACT 2600

Executive Member — Mr Patrick Colmer

Tel: 02 6263 3763

Fax: 02 6263 2940

Internet: www.ausncp.gov.au

Email: ancp@treasury.gov.au

