Foreign Investment Review Board

Report 1999-2000

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Main Points

Changes to Membership

- There were no changes to the membership of the Board during 1999-2000.

Proposals

- Of the 4,003 proposals decided in 1999-2000:
  - 3,907 were approved (2,737 with conditions, mainly in the real estate sector) and 96 were rejected. There were 4,754 approvals (2,918 with conditions) and 112 rejections in 1998-99.
- During 1999-2000 there were 8 divestiture orders.
- Approvals in 1999-2000 involved proposed investment (either alone or in partnership with Australians) of around $78.0 billion. This represented a 16 per cent increase on the previous year's approvals of $67.0 billion. Approvals do not necessarily mean investments proceed.
  - The value of approvals increased in the services sector (excluding tourism) from $22.6 billion in 1998-99 to $25.0 billion in 1999-2000. Approvals for manufacturing increased from $16.5 billion to $21.7 billion and for real estate declined from $11.2 billion to $9.5 billion. After a sharp decline in the tourism sector in 1998-99, the value of approvals increased from $1.1 billion to $2.4 billion in 1999-2000.
- The 221 largest proposals (each with proposed investment of more than $50 million) accounted for about $68.4 billion or about 87 per cent of total proposed investment.
- The United States remained the largest source of proposed foreign investment in Australia during 1999-2000 accounting for around 38 per cent of the total. The other major source of proposed foreign

investment was the United Kingdom, its proposed investment in Australia remained steady at $11.5 billion in 1999-2000 or 15 per cent of the total. The next largest contributors of proposed foreign investment in Australia during 1999-2000 were Singapore, Hong Kong and South Africa with proposed investments valued at $5.2 billion, $4.1 billion and $3.1 billion, respectively.

CHAPTER 1

Foreign Investment Review Board

Functions of the Board

The Foreign Investment Review Board (FIRB) is a non-statutory body established in April 1976 to advise the Government on foreign investment policy and its administration.

The main functions of the Board are:

- to examine proposals by foreign interests for acquisitions and new investment projects in Australia and, against the background of the Government's foreign investment policy, to make recommendations to the Government on those proposals;
- to advise the Government on foreign investment matters generally;
- to foster an awareness and understanding, both in Australia and abroad, of the Government's foreign investment policy;
- to provide guidance, where necessary, to foreign investors so that their proposals conform with the policy; and
- to monitor and ensure compliance with foreign investment policy.

The Board's functions are advisory only. Responsibility for the Government's foreign investment policy and for making decisions on proposals rests with the Treasurer.

Membership

There were no changes to the composition of the Board during 1999-2000. As at 30 June 2000 the Board comprised three part-time members and a full-time Executive Member.

Mr John Phillips, AM was appointed Chairman of the Board on 16 April 1997 for a term of five years. He has extensive high level experience in the public,

finance and business sectors including the position of Deputy Governor of the Reserve Bank of Australia. His present responsibilities include Chairman, the Australian Gas Light Company, Chairman, IBJ Australia Bank Limited, and Deputy Chairman, QBE Insurance Group Limited.

Ms Lynn Wood has been a Board member since April 1995 and was re-appointed to the Board on 4 April 2000 for a term of five years. Ms Wood has considerable business experience in financial services, including having been a Director of Schroders Australia Ltd and Sedgwick (Holdings) Pty Ltd. She has also served as a Director of the Investment Funds Association of Australia and as a Member of the Economic Development Council of New South Wales. Ms Wood is currently a Director of the New South Wales Lotteries Corporation, Syscorp Pty Limited and the Multiple Sclerosis Society of New South Wales.

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

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

Relationship of the Executive to the Board

Executive assistance to the Board is provided by the Foreign Investment Policy Division of the Treasury. During 1999-2000 the Executive was headed by Ms Murphy as General Manager of the Division. The Executive provides secretariat services for the Board, prepares draft and final reports on proposals and is usually the first point of contact for foreign investment applicants.

In addition to its function as a secretariat for the Board, the Executive also advises the Government on general foreign investment policy matters, including Australia's participation in multilateral and bilateral international agreements on investment.

Administration of Foreign Investment Policy

The number of cases received in 1999-2000 was 4,411 (5,091 in 1998-99). Of these 4,003 (4,754) were decided. Additionally, in 1999-2000 the Executive handled over 40,000 incoming telephone calls, answered 314 (667) letters and 419 (13) electronic mail messages during the year with regard to specific potential proposals and the operation of foreign investment policy more generally.

The Executive welcomes direct contact from the general public seeking advice on foreign investment policy questions and encourages contact either via its telephone inquiry line, its electronic-mail address, firb@treasury.gov.au or alternatively from http://www.firb.gov.au on the internet. During 1999-2000, for the first time, more persons contacted the Executive by electronic message than by normal mail.

Under the *Foreign Acquisitions and Takeovers Act 1975*, the statutory time limit for reaching a decision is 30 days, with up to a further ten days to notify the parties. There is scope for an interim order extending the period of examination for up to a further 90 days. In 1999-2000 there were 133 interim orders and 87 final orders issued. Interim orders are usually sought where the applicant has failed to provide adequate information to assess the proposal against the national interest test within the 30 day statutory deadline or to give the opportunity to the parties to address issues arising from the proposal. Final orders are issued where a proposal is inconsistent with Australia's foreign investment policy and not in the national interest.

In keeping with the Board's responsibility to foster an awareness and understanding of the Government's policy and to provide guidance to investors, the Board's Executive is available to meet with both potential foreign investors and Australian businesses to explain foreign investment policy and its application to particular proposals. The Board and the Executive are ready to comment on proposals in draft form.

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

Cost of the Board's operations

Consistent with the proper discharge of its functions, the Board is concerned to ensure that its operating costs are minimised. Total Board expenses in 1999-2000 were $95,500 ($97,000 in 1998-99). Remuneration of Board members was around 88 per cent of total Board expenses, the remainder was for local travel, car hire, legal advice and incidentals. Board members' fees are determined by the Remuneration Tribunal. Under the *Remuneration Tribunal Act 1973*, the Tribunal is required to make reports or determinations in respect of the remuneration and allowances of officers at intervals of not more than one year.

Total expenses of the Executive were $2.0 million in 1999-2000 compared with $2.2 million in 1998-99. These expenses were mainly for employees, including expenses for superannuation and accruing leave entitlements, with other expenses being incurred for travel, printing and advertising. The total cost of foreign investment screening would also include the expenses for other Government authorities and agencies, at both the Commonwealth and State levels, that are consulted on proposals.

At 30 June 2000, there were 23 staff members in the Foreign Investment Policy Division of Treasury. This compares with 27 officers at the end of June 1999. The lower number of staff members and resulting lower expenses of the Executive can be mainly attributed to changes in foreign investment regulations leading to a decline in the number of applications received during 1999-2000 (see Appendix D for policy changes).

1999-2000 outcomes

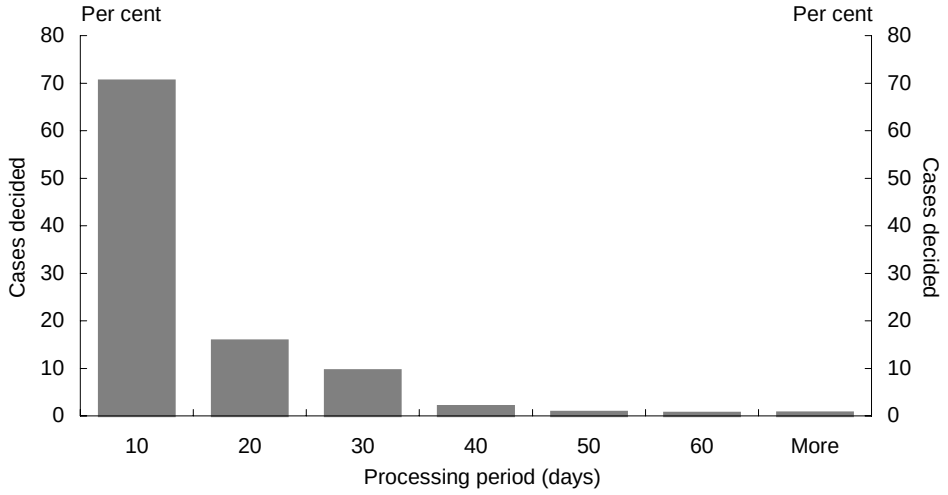
Minimising the impact on commercial decision making processes and ensuring proper consideration of cases against policy requirements continue to be important objectives of the administration of foreign investment policy. The Board continues to ensure that proposals are dealt with quickly and efficiently

and every effort is made to avoid unnecessary interference in business decision making.

The information requirements for processing proposals have been designed to keep to a minimum the time taken (and hence the cost involved) in obtaining foreign investment approval. In 1999-2000, 71 per cent of applications (2,821) were decided within 10 days of receipt of a completed application (refer Chart 1.1) and 96 per cent of cases were decided within 30 days. A 'completed' application is one incorporating all the information needed for a decision to be taken. Cases taking more than 30 days to process usually involve significant complexity or sensitivity.

Delays may occur where applications lack necessary information. For example, last year it was reported that 40 per cent of applications were decided within 10 days and 86 per cent within 30 days of receipt of a completed application. However, these figures were based on the time taken from original receipt of the application to decision. If the time is measured from receipt of all the necessary information, 65 per cent of applications were decided within 10 days and 95 per cent within 30 days in 1998-99. This basis of measurement has been adopted this year since it is more realistic and is consistent with normal practice.

Chart 1.1: Processing time for cases decided



Processing of proposals

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

The Board considers reports prepared by the Executive on major proposals on a weekly basis. Formal meetings are held approximately every four weeks, with a telephone discussion between the Executive Member and the other Board members in each of the intervening weeks. Following examination of a report, the Board's views and recommendations are submitted by the Executive Member to the Treasurer or Assistant Treasurer. The Board's views need not be unanimous. For the more significant cases, the Executive Member usually meets with the Treasurer and the Executive also discusses cases with the Assistant Treasurer. Should a proposal raise important considerations and/or impinge on other ministerial responsibilities, the Treasurer may consult his colleagues or seek Cabinet's view.

The nature of a report and the level to which it is submitted for decision are normally determined by the features of the foreign investment proposal. In the case of significant proposals (because of their size, complexity or the policy issues raised), a full report is usually considered at a formal Board meeting prior to seeking the decision of the Treasurer or Assistant Treasurer. Where time constraints make a formal meeting impracticable the Board's involvement will be by telephone.

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

Conclusions are reached only after examination of the proposal as submitted and necessary consultations to determine whether it conforms to the general and particular requirements of foreign investment policy including the proponent's fulfillment of conditions attached to past approvals. Proposals are

blocked using foreign investment powers only in circumstances involving major national interest concerns. Reasons for rejecting substantial commercial proposals are published in the Treasurer's press releases.

Consultation arrangements

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

The Board acknowledges the assistance received during 1999-2000 from the relevant Commonwealth and State departments and authorities whose advice and comments are important in assessing the implications of proposals. The Board regards its liaison with key stakeholders as an integral part of the administration of Australia's foreign investment policy.

During 1999-2000 foreign investment proposals that were considered environmentally significant required environmental impact assessment under the *Environment Protection (Impact of Proposals) Act 1974*. During 1999-2000, the practice continued that the Board would not provide any decision on proposals with significant environmental aspects until the Minister for the Environment and Heritage provided advice and recommendations based on environmental impact assessment. This approach was consistent with meeting the object of the *Environment Protection (Impact of Proposals) Act 1974*.

The *Environment Protection and Biodiversity Conservation Act 1999*, which came into effect on 16 July 2000 has altered these arrangements. The Board's decision on foreign investment approval of proposals no longer triggers environmental impact assessment under Commonwealth legislation. The *Environment Protection and Biodiversity Conservation Act 1999* will allow the Minister for the Environment and Heritage to act independently of the foreign investment process when examining proposals for Commonwealth environmental approval. Under the Act provision exists for the Board, as a Commonwealth agency aware of a proposal by a person to take an action, to refer the action to the Minister for the Environment and Heritage for a decision on whether or not the action is a controlled action.

Handling of Commercial-in-Confidence information

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

The Government is also obligated to respect the privacy of personal information that is provided by applicants to the Foreign Investment Review Board in accordance with the requirements of the *Privacy Act 1988*. In accordance with that Act, in situations where the applicant has breached, or is strongly suspected of having breached the *Foreign Acquisitions and Takeovers Act 1975* the Board may seek the assistance of other Government agencies in its efforts to ensure compliance. In seeking such assistance, the Board may pass relevant personal information to those government agencies. Most commonly these agencies will be the Department of Immigration and Multicultural Affairs, the Australian Taxation Office or the Australian Federal Police.

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

In 1999-2000, the Board's Executive dealt with eight applications under the *Freedom of Information Act 1982* (FOI Act). All applications sought information concerning foreign investment matters. Of the eight applications, seven were received during 1999-2000 while one was an application being processed as at 30 June 1999. Of these, two were still being processed as at 30 June 2000, two applications were withdrawn or lapsed, two were denied access, one was granted partial access and one was granted full access.

There are provisions in the FOI Act authorising denial of access to commercially confidential documents. This has relevance to documents provided to the Board (or prepared by the Board or Executive) in examination of proposals. It is the practice of the Executive to consult with the parties to a proposal about the documents that are the subject of a FOI request to establish whether the parties are prepared to have the documents released to an applicant or whether there are justifiable grounds to withhold documents.

Monitoring and compliance activity

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

- unwind (by requiring the parties to sell shares, assets or property) transactions that have gone ahead, without prior foreign investment approval having been obtained, where that purchase is inconsistent with policy;
- prosecute persons and companies who fail to obtain prior approval;
- prosecute persons and companies who fail to comply with an order to sell shares, assets or property; and
- prosecute persons and companies who fail to comply with conditions attached to any approval given under the foreign investment legislation.

There are also general powers that make it an offence to provide false or misleading information, or to enter into any schemes for the purpose of avoiding the provisions of the Act.

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

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

During 1999-2000, the International and Compliance Unit examined around 1,000 past proposals to ensure compliance with the conditions attached to foreign investment approval. In addition, several hundred proposals generated further correspondence in settling outstanding matters.

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

Foreign Investment Policy during 1999-2000

Significant changes were made to the administration of foreign investment policy during 1999-2000. Generally the changes represent a significant easing of compliance and administrative costs associated with Australia's foreign investment regime.

These changes followed several developments.

First, the Treasurer announced on 28 June 1996 a comprehensive schedule of legislative reviews, including a review of foreign investment policy. The review was proposed to examine costs imposed upon business in complying with foreign investment policy.

Secondly, in its Individual Action Plans from 1996 to 1998, Australia committed to other Asia Pacific Economic Cooperation (APEC) countries that it would rationalise restrictions on foreign investment in real estate, and review the screening system in relation to foreign investment in 'non-sensitive' sectors.

Lastly, in February 1999, the Prime Ministers of Australia and New Zealand established a Joint Prime Ministerial Task Force on Australia and New Zealand Bilateral Economic Relations.

Flowing from the work of the Task Force, on 4 August 1999, the Prime Minister announced a number of changes to Australia's foreign investment regime that would facilitate investment between Australia and New Zealand. On 3 September 1999, following work pertaining to the review of foreign investment and in accord with APEC commitments, the Treasurer announced a further set of measures.

These announcements have led to numerous changes to the *Foreign Acquisition and Takeovers Regulations 1989*.

The main changes resulted in increases to the notification threshold for foreign investment purposes for acquisitions of existing businesses from $5 million ($3 million for rural businesses) to $50 million and similarly for developed non-residential commercial real estate from $5 million to $50 million (unless such properties are subject to heritage listing).

Another key amendment to the regulations provided an exemption for Australian citizens and their foreign spouses when purchasing residential real estate as joint tenants.

These and other changes (discussed in Appendix D) commenced on 10 September 1999.

International aspects

Review of the OECD Guidelines for Multinational Enterprises

The *OECD Guidelines for Multinational Enterprises* (the Guidelines) are recommendations jointly addressed by the OECD Governments to multinational enterprises (MNEs) operating in their territories. They form part of the *1976 OECD Declaration on International Investment and Multinational Enterprises,* an instrument imposing responsibilities on both governments and business. The approach in the Declaration represents a commitment by adhering governments to facilitate direct investment among OECD members in recognition that such investment contributes to higher rates of economic growth, employment and standards of living.

The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws. Their aim is to ensure that the operations of MNEs strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and enhance the contribution to sustainable development made by MNEs.

In June 1998, the OECD Committee on International Investment and Multinational Enterprises (CIME) instigated a review of the Guidelines. The review of the Guidelines was undertaken over a period of two years, and included extensive dialogue with business, labour organisations and non-governmental organisations, to ensure the Guidelines continued to be relevant and effective in the rapidly changing global economy. The revised Guidelines were adopted by the governments of the 29 OECD Member countries and four non-Members, Argentina, Brazil, Chile and the Slovak Republic, at the OECD Ministerial Council Meeting (MCM) in Paris in June 2000. The 2000 MCM was chaired by the Hon Peter Costello, Treasurer of the Commonwealth of Australia.

The revised text of the Guidelines (see Appendix E) contains far-reaching changes that reinforce the economic, social and environmental elements of the OECD's sustainable development agenda. These include the addition of recommendations on the elimination of child labour and forced labour, a recommendation on human rights, and new chapters on combating corruption and consumer protection. The environment chapter now encourages multinational enterprises to raise their environmental performance through improved internal environmental management and better contingency planning for environmental impacts.

The review also resulted in revised implementation procedures. The Guidelines are recommendations addressed to business. However, governments through their National Contact Points (NCPs) are responsible for promoting the Guidelines, handling inquiries and helping to resolve issues that arise in certain instances. While the review of the Guidelines has not changed the role of NCPs to any great extent, the Procedural Guidance does make the functions of the NCP far more explicit and these functions emphasise more 'pro-active' responsibilities for NCPs.

The Board advises the Government on its approach to the revised implementation procedures, including through consultation with business organisations, employee representatives and other non-governmental organisations. Currently, the Australian NCP is the Executive Member of the FIRB. The NCP will put in place measures to raise the awareness of the Guidelines, including the hosting of seminars and using the Internet to disseminate information on the Guidelines as widely as possible. Information on Australia's NCP and a copy of the Guidelines text and other relevant documents are available at http://www.treasury.gov.au/OECD Aus. NCP.

Joint Prime Ministerial Task Force on Australia New Zealand Bilateral Economic Relations

As discussed above, in February 1999, the Prime Ministers of Australia and New Zealand established a Joint Prime Ministerial Task Force on Australia and New Zealand Bilateral Economic Relations.

Following the work of the Task Force, on 4 August 1999 the Prime Minister of Australia announced a number of changes to Australia's foreign investment regime aimed at facilitating investment between Australia and New Zealand. One change resulted in an exemption from the need for foreign investment

approval for a special category of visa holders, which includes most New Zealand citizens, when investing in Australian residential real estate through Australian companies and trusts. These changes are at Appendix D.

Asia Pacific Economic Cooperation (APEC)

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

Australia's IAP for 1999-2000, and those of the other APEC member countries, was set out in a new streamlined, electronic format. This new format provides for greater transparency and comparability, making the IAPs a more useful tool for business in considering their investment options. This year's IAP included information pertaining to liberalisations of Australia's foreign investment policy and investment related measures which have occurred in the past twelve months, as well as those which have been implemented since the base year of 1996. Copies of APEC IAPs are available at www.apecsec.org.sg/iap/2000 on the Internet.

Bilateral Investment Promotion and Protection Agreements (IPPAs)

Australia's bilateral IPPAs provide a clear set of obligations relating to the promotion and protection of investments with other countries, to promote the flow of capital for economic activity and development. The IPPAs provide 'most favoured nation' commitments in regard to treatment of foreign investment, give undertakings about expropriation/nationalisation, including the nature of compensation for such acts, and establish mechanisms for resolving disputes over investment matters. A model IPPA text has been established, and was updated in 1999, to provide the basis on which these agreements can be negotiated.

Australia has entered into IPPAs with a number of countries. To date, Australia has signed IPPAs with Argentina, Chile, the Czech Republic, Hong Kong, Hungary, Indonesia, Laos, Lithuania, Pakistan, Papua New Guinea, the People's Republic of China, Peru, the Philippines, Poland, Romania, Ukraine

and Vietnam. Australia is negotiating further agreements with Egypt, Russia, Uruguay, Turkey and the United Arab Emirates.

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

CHAPTER 2

Foreign Investment Proposals

This chapter provides statistical information on the proposals submitted in 1999-2000 for examination under Australia's foreign investment policy and comments on some of the more significant cases. There is also a section covering the Board's monitoring and compliance activities in respect of residential real estate.

Limitations of the Board's data

The Board urges particular caution in the use of FIRB statistics, including making comparisons with earlier years.

The Board's statistics on foreign investment proposals relate to the administration of foreign investment policy and are therefore substantively different from the Australian Bureau of Statistics' (ABS) statistics of foreign investment in Australia. ABS statistics, which are set out in Chapter 3 of this Report, seek to measure actual investment transactions between residents of Australia and non-residents.

The term 'proposed investment' is used widely throughout this Report. Total proposed investment is the aggregation of:

- the proposed cost of acquisition (shares, real estate or other assets);
- the proposed cost of development following acquisition; and
- in the case of a new business, the proposed cost of both establishment and development.

The FIRB statistics are not a reliable indicator of **trends** in foreign investment inflows because:

- they are inherently 'lumpy' (that is, the tendency for a few large investments to skew any one year's figures);

- they include proposals approved, which may not be implemented, or which could be implemented over a number of years; and
- major liberalisations of foreign investment policy that have occurred since the mid-1980s limit comparability over time.
    - For example, the increase in the notification exemption thresholds from $5 million to $50 million on 10 September 1999 will act to reduce the number of proposals and proposed investment values for existing business assets as well as commercial real estate in 1999-2000 compared to 1998-99.

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

- The data are restricted to investments within the scope of the Act and the Government's foreign investment policy. They do not cover foreign portfolio investments, direct foreign investments below the notification thresholds, new businesses below the notification thresholds, expansions of existing foreign-owned businesses in Australia, both in existing areas and into related areas, and sales by foreign investors to Australian residents. The current notification / examination thresholds for the various sectors are specified in the policy summary at Appendix A.
- The figures provide no indication of the source of the funds for the investment. Some of the proposed funds to be invested would be contributed by Australians where they are in partnership with foreign interests. The extent to which approved investment proposals will directly result in foreign capital inflows depends, not only upon whether the proposals are implemented, but also upon the proportion financed from foreign sources. In many cases, this proportion will be quite low. For example the acquisition by a foreign interest of a business operating in Australia, may involve no inflow of capital to Australia where the purchase is financed from existing Australian operations.
- The figures do not necessarily reflect changes in foreign ownership levels as, in some cases, both the vendor and purchaser are defined as a 'foreign interest'.

Applications decided in 1999-2000[1]

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

Chart 2.1: Applications decided — number

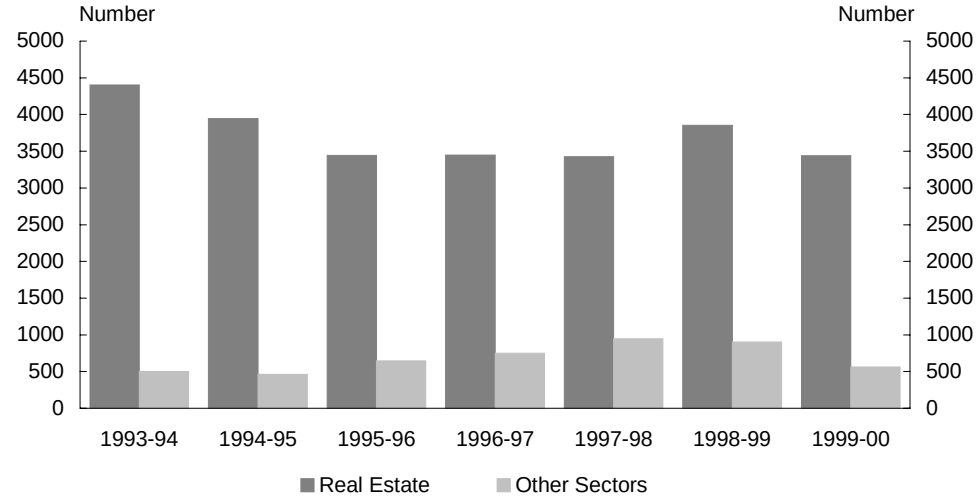


Chart 2.2: Applications decided — proposed investment

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

The number of applications decided during 1999-2000 was around 16 per cent lower than in 1998-99. In contrast, the value of proposed foreign investment associated with applications decided in 1999-2000 was about 16 per cent higher than the level in 1998-99. A breakdown on the outcome for applications submitted over the last four years is provided in Table 2.1**.**

Table 2.1: Applications considered (number and proposed investment) 1996-97 to 1999-2000

	1996-97		1997-98		1998-99		1999-00	
Action	No.	$b	No.	$b	No.	$b	No.	$b
Approved unconditionally	1,486	41.9	1,694	54.3	1,724	56.4	1,170	56.3
Approved with conditions	2,610	16.7	2,567	25.2	2,918	10.7	2,737	21.7
Total approved	4,096	58.6	4,261	79.5	4,642	67.0	3,907	78.0
Rejected	105	0.4	114	0.1	112	0.2	96	0.1
Total decided	4,201	59.0	4,375	79.7	4,754	67.2	4,003	78.1
Withdrawn	342	-	390	-	337	-	408	-
Total considered	4,543		4,765		5,091		4,411	

There were 96 rejected proposals in 1999-2000, or 2.4 per cent of all decided proposals. Of these, all were in the real estate sector.

Foreign investors are encouraged to discuss potential or actual proposals with the FIRB to ensure they are consistent with policy. As a result, proposals clearly inconsistent with policy may not proceed to a decision, ie they are not lodged or if lodged are withdrawn. Alternatively the proponent may modify a proposal to ensure it conforms to policy. The data for withdrawn cases reflect proposals that do not proceed for commercial or personal reasons, as well as those cases that are withdrawn by the parties instead of proceeding to a formal rejection. The low rejection rate reflects the consultative approach taken in the administration of foreign investment policy, particularly in respect of real estate proposals.

The great bulk of conditional approvals were in the real estate sector. Only 63 proposals outside the real estate sector were approved subject to conditions. Three main kinds of conditions were applied in the non-real estate sectors: to protect the environment; to protect the tax base by ensuring that agencies of foreign governments do not claim sovereign immunity in relation to Australian taxes or charges; and to restrict levels of equity. For real estate, 2674

proposals were approved with conditions relating to the period during which development should commence**,** the need for temporary residents to sell established properties when they cease to reside in Australia, or the imposition of reporting requirements on 'off the plan' sales.

Approvals by sector

General summary

Table 2.2 provides details for 1999-2000 of approved proposals for each sector and the associated proposed investment on acquisitions and new businesses. The bulk of the total proposed investment is attributable to the proposed cost of acquisitions. The skewing of the foreign investment data towards acquisition costs is a consequence of the notification requirements, as the expansion of existing businesses generally does not require foreign investment approval. Additionally, the increase in the notification exemption threshold from $5 million to $50 million on 10 September 1999 would have acted to reduce the number of proposals and proposed investment values for existing business assets as well as commercial and rural real estate in 1999-2000 compared to 1998-99. Bearing in mind the limitations of the Board's data noted at the beginning of this chapter, the following general points can be made.

The services sector (excluding tourism) attracted the highest level of proposed investment, with approvals totalling $25.0 billion.

Other major sectors were manufacturing ($21.7 billion), real estate ($9.5 billion), mineral exploration and development ($10.1 billion) and resource processing ($5.5 billion).

Table 2.2: Approvals by Industry Sector 1999-2000 ($billion)

Industry Sector(a)	Number of Approvals(b)	Acquisition Cost	Proposed Investment on Development	Total Proposed Investment
Agriculture, Forestry & Fishing				
Total	18	0.8	..	0.8
Finance & Insurance				
Total	27	2.9	0.1	3.0
Manufacturing				
Total	118	20.5	1.1	21.7
Mineral Exploration & Development				
Total	75	6.2	3.9	10.1
Resource Processing				
Total	14	5.2	0.3	5.5
Services (Excl Tourism)				
Total	172	24.3	0.7	25.0
Tourism				
Total	56	2.4	..	2.4
Real Estate(c)				
Total	3,344	7.7	1.8	9.5
Total	**3,824**	**70.0**	**7.9**	**78.0**

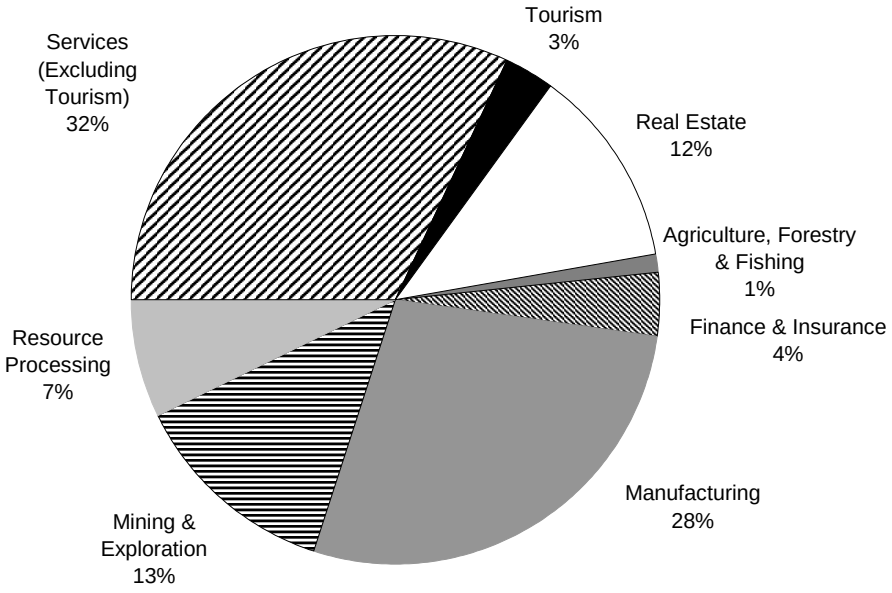
Note: Totals may not add due to rounding.
'..' indicates an investment figure of less than $50 million.

(a) Data have been compiled by reference to the Australian and New Zealand Standard Industrial Classification published by the ABS, except proposals involving newspaper printing and publishing which have been allocated to service industries (the ABS classifies these under manufacturing). Acquisitions of diversified company groups are classified according to the industry of the major activity of the group. Acquisitions of real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.

(b) Excludes 83 proposals involving financing arrangements and corporate restructures.

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

Chart 2.3: Approvals by Industry Sector 1999-2000 ($billion)



Agriculture, forestry and fishing

The number of proposals to invest in the agriculture, forestry and fishing sector decreased from 26 in 1998-99 to 18 in 1999-2000. Total proposed investment decreased from $1.3 billion in 1998-99 to $800 million in 1999-2000. The proposed acquisition by Carter Holt Harvey Limited of the business and assets of CSR Limited's wood based panels business in New South Wales, South Australia and Queensland and sawmill in New South Wales for a consideration of around $300 million, was the largest proposal by value in this sector.

The statistics on aggregate acquisitions of rural properties need to be interpreted with caution. From 10 September 1999, acquisitions of rural businesses valued at less than $50 million where a proponent proposes to continue to operate the rural business were exempt under the Act. The corresponding exemption threshold for 1998-99 was $3 million. Acquisitions of 'hobby farms' continue to be treated as acquisitions of residential real estate and are not included in the statistics for rural property.

Finance and insurance

Total proposed investment in the finance and insurance sector decreased from $5.6 billion in 1998-99 to $3 billion in 1999-2000. There were 27 proposals approved, comprising five new business proposal and 22 acquisitions. Of these, 3 involved expected investment in excess of $100 million.

The most significant proposal by value was the acquisition of BT Investments (Australia) Ltd by Principal Financial Services Inc for a consideration of around $2 billion.

Manufacturing

Proposed investment associated with the manufacturing sector increased from $16.5 billion in 1998-99 to $21.7 billion in 1999-2000.

The outcome for particular industry sectors within manufacturing was mixed. Total proposed investment associated with power companies was higher at $7.7 billion, up from $6.8 billion in 1998-99, with a 30 per cent increase in the number of proposals. Proposed investment in the food, beverage and tobacco sector was $1.6 billion in 1999-2000 up from $700 million in 1998-99. Proposed investment was higher in the chemicals and the non-metallic mineral products sectors, but lower in the fabricated metals sector. Foreign investment proposals associated with the manufacturing of textiles, clothing and footwear, wood, paper products and water sewerage and drainage remained at low levels.

As has been the case for a number of years, proposed investment included a number of large acquisitions in the electricity and gas generation sector. A significant proposal was by InterGen (Australia) Limited to acquire a 50 per cent interest in the Callide Power Project in Queensland for a consideration of over $500 million.

Elsewhere in the manufacturing sector, the largest transaction by value was the takeover by the United Kingdom company, Hanson Plc, of Pioneer International Limited. The consideration was around $3.9 billion.

Mineral exploration and development

There was a decrease in the number of approved investment proposals in the minerals sector in 1999-2000 (75 down from 115 in 1998-99). However, total proposed investment increased from $5.8 billion to $10.1 billion. This increase

was due mainly to increases in foreign investment expenditure in Australia's gold, coal and bauxite industries.

Some of the most significant acquisitions of Australian assets in the minerals sector during 1999-2000 involved Rio Tinto Limited and Anglo American Plc. Rio Tinto acquired the remaining 28 per cent of Comalco Limited it did not already own for around $1.5 billion. Anglo American Plc acquired Shell Coal Holdings Limited for an amount in excess of $1 billion.

The level of total proposed investment in the gold industry increased substantially from $398 million in 1998-99 to about $1.4 billion in 1999-2000. Foreign investment approval was provided to Anglogold Limited to acquire Acacia Resources Limited for around $800 million.

There was a substantial increase in proposed foreign investment in Australia's nickel industry from $787 million in 1998-99 to over $1.8 billion in 1999-2000. One of the significant nickel cases was Anaconda Nickel Limited and Glencore International AG's announced expansion of the Murrin Murrin nickel and cobalt mine in Western Australia.

Table 2.3: Minerals Sector approvals by number and total proposed investment: 1998-99 and 1999-2000

Industry	Acquisitions				New Businesses			
	No of approvals		$million		No of approvals		$million	
	1998-99	1999-00	1998-99	1999-00	1998-99	1999-00	1998-99	1999-00
Gold	35	18	338	1,408	1	-	60	-
Oil and gas	10	9	568	564	1	2	131	363
Coal	29	16	1,602	1,888	1	2	545	998
Base metals	11	6	913	432	-	1	-	1,466
Other	24	19	859	1,926	3	2	820	1,083
Total	**109**	**68**	**4,280**	**6,219**	**6**	**7**	**1,556**	**3,910**

Resource processing

There were 14 approvals in the resource-processing sector during 1999-2000, with a total proposed investment of $5.5 billion. In 1998-99 there were 16 approvals with a value of $3 billion. The largest of the approved proposals was the merger of Exxon Corporation and Mobil Corporation whereby it was proposed Mobil Corporation would become a wholly owned subsidiary of Exxon Corporation. The total value of the Australian net assets of the Mobil Group involved in the proposed merger was about $3 billion.

Service industries (excluding tourism)

During 1999-2000, there were 172 proposals approved for investment in the service industries sector (excluding tourism), comprising 18 proposals to establish new businesses and 154 proposed acquisitions of interests in existing businesses. The total proposed investment for the establishment of new businesses and existing businesses was $656 million and $24.3 billion, respectively.

There were 39 proposals involving investment of over $100 million, 3 of which were for more than $1 billion.

Tourism

There was an increase, from $1.1 billion in 1998-99 to $2.4 billion in 1999-2000, in proposed investment in the tourism sector. Of these, four involved proposed investment in excess of $100 million.

The most significant proposal by value was the acquisition of 12 hotel properties by Tourism Asset Holdings Limited and the long term leasing of those properties and a further 28 hotel properties. The total value of the hotel portfolio was estimated to be $700 million.

Urban real estate

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

A number of changes to foreign investment policy announced in September 1999 have acted to reduce the number of foreign investment applications associated with urban land in 1999-2000. These changes involved an increase in the notification threshold applying to the acquisition of developed commercial real estate from $5 million to $50 million, Australian citizens and foreign spouses no longer requiring foreign investment approval when purchasing

residential real estate as joint tenants and a similar exemption being provided for holders of special category visas and permanent resident visas when purchasing residential real estate through an Australian company or trust. Additionally, an exemption was provided (in certain instances) for the acquisition of interests in Australian urban land by foreign owned responsible entities of managed investment funds.

Table 2.4 gives a breakdown of approved investments in urban real estate. The number of approvals of proposals was slightly less than those approved in 1998-99 falling from 3742 in 1998-99 to 3344 in 1999-2000 and total proposed investment associated with proposals reflected this decrease falling from $11.1 billion in 1998-99 to $9.5 billion in 1999-2000.

Table 2.4: Investment in urban real estate by type and number of proposals approved in 1999-2000 ($ billion)

	Number of Approvals	Consideration	Proposed Development Expenditure	Total Proposed Investment
For development				
Residential				
ordinary approvals	879	0.6	0.8	1.3
off-the-plan				
individual	471	0.2	-	0.2
developer	280	3.5	-	3.5
annual programs	12	0.5	..	0.6
Total Residential	1,642	4.8	0.8	5.6
Commercial				
ordinary Approvals	87	0.3	0.8	1.1
annual programs	2	0.1	-	0.1
Total for development	*1,731*	*5.2*	*1.6*	*6.9*
Developed				
Residential	1,540	0.6	-	0.6
Commercial	73	1.9	0.1	2.0
Total developed	*1613*	*2.6*	*0.1*	*2.7*
Total	**3,344**	**7.7**	**1.8**	**9.5**

Note: Totals may not add due to rounding.
'..' indicates an investment figure of less than $50 million.
'-' indicates an investment figure of zero.

Real estate for development

During 1999-2000, there were 1,731 proposals approved for the acquisition of residential real estate for development (including eligible redevelopment), a decrease from the 1856 proposals approved in 1998-99. Proposed development expenditure was $1.6 billion compared to $2 billion in 1998-99. As a consequence of changes in the Government's foreign investment policy applying from 10 September 1999, the acquisition of house and land packages, where construction has not commenced, are treated as vacant land for development rather than 'off the plan' arrangements.

Ordinary approvals comprise the purchase of broadacres for residential subdivision and vacant building blocks for single dwelling construction and for integrated residential developments (such as townhouse and high rise units). Some 879 proposals (940 in 1998-99) by foreign interests to acquire residential real estate for development were approved, with a total proposed investment of $1.3 billion ($1.3 billion in 1998-99). Such approvals have a condition that continuous development must commence on the land/site within 12 months of approval having been granted. In addition, the parties are required to report on the completion of development to demonstrate compliance with the development condition. The Government views seriously any breaches of these development conditions (see later section on compliance).

In 1999-2000, 471 proposals from individuals were approved under the **'off the plan arrangements'**, involving proposed investment of around $200 million, to acquire residential property 'off the plan'. In addition, there were 280 applications approved from real estate developers seeking 'advance approval' to sell property 'off the plan' to foreign persons. The number of 'off the plan' approvals for developers fell by some 19 per cent on the previous year while the value of such developments increased slightly from $3.4 billion to $3.5 billion.

Certain points should be noted in relation to the Board's statistics dealing with 'off the plan' applications. First, the Board's figures overstate the likely extent of foreign purchases as few of the developers with 'off the plan' approvals will actually sell a full 50 per cent of their developments to foreign purchasers. (There is necessarily a significant lag between the granting of approvals and receipt of reports due to construction time and completion of sales.)

Secondly, 'off the plan' and annual program categories have zero proposed development expenditure recorded against them. In the case of 'individual off the plan' the consideration relates to the proposed amount payable by foreign interests for newly completed dwellings. Information on development expenditure in relation to annual programs is collected on an ex-post basis, with developers required to report annually on actual acquisitions, development expenditures and details of any properties that are sold following development.

The **annual program** arrangements are designed to avoid the need for established developers to notify individual acquisitions of property. Such developers may be granted annual approvals to buy land up to specified limits on condition that they report to the Board at the end of the year on their acquisitions and the developments undertaken. The granting of an annual program for acquisitions of land for development does not relieve the developer of responsibility for complying with the general requirements of foreign investment policy. For example, additional investment in relation to acquisitions of existing businesses, or for the establishment of new businesses with total investment of $10 million or more would require an additional application, separately submitted to the Board for examination. In 1999-2000, the number of applications doubled and 14 annual programs were approved. These arrangements involved residential and commercial real estate for development totalling broadly $600 million in proposed acquisition costs.

Approval was given to 87 proposals to purchase land for **commercial development** involving total proposed investment of $1.1 billion. This was an increase on the number of proposals on 1998-99 when approval was given to 74 proposals although the total estimated value in 1998-99 was higher amounting to $1.4 billion.

There was a decrease from 44 rejections in 1998-99 to 31 rejections in 1999-2000 in relation to the proposed acquisition of residential real estate for development (including 'off the plan' dwellings), with proposed development expenditure valued at $20.3 million. Of these, 17 involved vacant land for development and 3 involved the redevelopment of developed real estate. Eleven proposals were rejected as they did not meet the 'off the plan' criteria. Usually there were one or more of the following reasons for these rejections:

- the planned development expenditures were not considered significant in relation to the acquisition price for the property (there is a normal

expectation that proposed development expenditure should be equivalent to at least 50 per cent of the acquisition price);

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

Acquisitions of developed real estate

Generally, foreign investment policy enables the purchase of **developed commercial real estate** by foreign persons. Conversely, it restricts the purchase by foreign persons of **developed residential real estate**. However, certain categories of foreigners are able to purchase developed residential real estate under particular conditions (see Appendix A). In 1999-2000, 1540 proposals were approved for *developed residential real estate* compared to 1754 in 1998-99.

Reflecting the comparatively restrictive nature of the policy, there were 57 rejections in 1999-2000 (67 in 1998-99) of proposed acquisitions of developed residential property. The total potential acquisition costs involved in these rejected proposals was $15.0 million. These proposals were rejected because the prospective buyers did not fall into one of the eligible categories and, in some cases, involved the prior unapproved acquisition of property which resulted in the purchaser being required to sell that property.

In 1999-2000 there were 73 approvals to purchase interests in *developed commercial property* (eg, shopping centres, offices, warehouses, etc) involving total proposed investment of $2 billion. This was a significant decrease on the 132 approvals valued at $3.8 billion in 1998-99. Of course, the significant fall in the number of approvals and to a lesser extent in the value can be attributed to the increase in the exemption threshold for commercial real estate from $5 million to $50 million.

Real estate by state

Table 2.5 provides details of approved investment in all categories of urban real estate for each State and Territory. New South Wales was the main location for proposed foreign investment in urban real estate by value, with 44 per cent of the total in 1999-2000 (46 per cent in 1998-99). Queensland was second with 18 per cent; a decrease on the 20 per cent recorded in 1998-99.

Table 2.5: Total proposed investment in urban real estate by category of real estate and location of investment, approved in 1999-2000 ($ million)

	For Development		Developed		
Location	Residential	Commercial	Residential	Commercial	Total
New South Wales	2,300	492	298	1,091	4,181
Victoria	1,221	182	109	64	1,576
Queensland	1,030	215	118	338	1,701
Western Australia	411	68	73	8	560
Other (a)	587	317	32	517	1,454
Total	5,551	1,274	630	2,019	9,474
Number of proposals	1,642	89	1,540	73	3,344

Note: Totals may not add due to rounding.
(a) 'Other' includes acquisitions of companies/trusts with real estate holdings in more than one State or Territory and proposals in the ACT, NT, Tasmania and South Australia.

Residential real estate compliance

Under policy, the purchase of developed residential real estate by foreign interests purely for the earning of rental income, for speculative purposes or where it may involve land banking is not permitted. Therefore the Government seeks to ensure that where foreign interests acquire residential real estate for development, any stated development is carried out within a reasonable time (that is, usually a requirement to commence continuous construction within 12 months).

The policy is directed at maintaining greater stability of house prices and the affordability of housing for the benefit of Australian residents (see Appendix A). Any failure by foreign interests to pursue stated development plans is considered to be a breach of policy. A foreign interest found to be in breach of the residential real estate policy may be ordered to sell the subject property and this may result in a significant capital loss for the purchaser and/or penalties by way of a prosecution for an offence under

Section 26A of the Act. Section 26A provides for financial penalties or imprisonment on conviction.

- During 1999-2000 there were 8 divestiture orders.

There are a number of processes that assist in ensuring compliance with the residential real estate policy.

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

The Treasurer has the power under Section 36 to serve a notice in writing requiring a person capable of giving information or producing documents relevant to the exercise of the Act to supply the information within a specified time.

Approvals by country of investor

Data on proposed investment associated with approvals in 1999-2000 are shown by country, disaggregated by States in Table 2.6 and by industry sector in Table 2.7.

The United States was the most important single source of proposed foreign investment in Australia during 1999-2000. The other major source of foreign

investment was the United Kingdom, while in order, Singapore, Hong Kong, South Africa and Canada were the next most significant sources contributing generally around the same level of investment.

- Approved proposed investment from the United States remained at $29.4 billion. This represented around 38 per cent of all total approved foreign investment compared to 44 per cent in 1998-99. This proposed investment was concentrated in the services and manufacturing sectors.
- Approved proposed investment from the UK decreased from $12.7 billion in 1998-99 to $11.5 billion in 1999-2000.
- Singapore and Hong Kong emerged as major foreign investors contributing $5.2 billion ($0.9 billion in 1998-99) and $4.1 billion ($0.7 billion) respectively in 1999-2000.
- South Africa continued as a major foreign investor in 1999-2000 with approved investment proposals of $3.1 billion, an increase on the level of $1.8 billion approved in 1998-99.
- Approved proposed investment from Canada increased from $1.6 billion in 1998-99 to $2.7 billion in 1999-2000.
- Japanese investment proposals approved totalled around $1.5 billion in 1999-2000 up from $1.2 billion in 1998-99.

Table 2.6: Proposed investments by country by state 1999-2000 ($billion)

	USA	UK	Singapore	Hong Kong	South Africa	Canada	Other/ Aust(a)	Total
NSW	2.8	1.4	0.9	0.1	-	0.2	5.1	10.5
Victoria	2.3	0.1	2.3	-	-	-	2.0	6.7
WA	1.2	0.2	0.2	-	0.3	0.2	3.5	5.6
Queensland	2.3	1.0	0.4	-	0.1	0.2	2.5	6.5
Other(b)	20.8	8.8	1.4	4.0	2.7	2.1	8.9	48.7
Total	29.4	11.5	5.2	4.1	3.1	2.7	22.0	78.0

Totals may not add due to rounding

(a) Includes proposed investment from Australian controlled companies.

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

Table 2.7: Total proposed investment associated with approved proposals, by country of investors and industry sector 1999-2000 ($million)

	Number of Proposals(c)	Agriculture Forestry & Fishing	Finance & Insurance	Manufacturing	Mineral Exploration & Development	Real Estate	Resource Processing	Services (excluding Tourism)	Tourism	Total
USA	394	639	2,184	7,320	1,130	830	2,916	13,968	395	29,381
UK	976	-	549	5,912	2,043	859	250	1,652	251	11,516
Singapore	329	-	-	2,545	1	1,523	-	740	384	5,193
Hong Kong	46	-	-	19	-	70	-	3,963	38	4,089
South Africa	280	-	13	759	2,203	153	-	20	1	3,149
Canada	91	-	25	583	304	182	1,586	31	18	2,730
France	74	3	9	332	-	78	-	1,011	753	2,185
Switzerland	71	1	17	133	1,828	60	-	106	-	2,146
Netherlands	81	-	130	524	383	74	-	541	64	1,715
Japan	150	99	40	3	726	173	41	379	47	1,508
Norway	7	-	-	1,500	-	2	-	-	-	1,502
Germany	137	25	45	273	61	221	490	358	5	1,478
New Zealand	40	-	-	159	-	37	25	825	235	1,281
Sweden	15	-	20	833	200	7	-	15	-	1,075
Not Allocated(a)	268	-	-	-	-	3,454	-	-	-	3,454
World Other	1096	13	1	690	436	958	170	653	95	3,017
Sub-total	4,055	780	3,033	21,585	9,315	8,681	5,478	24,262	2,286	75,419
Australia(b)	118	11	-	83	814	793	-	698	141	2,540
Total	**4,173**	**791**	**3,033**	**21,668**	**10,129**	**9,474**	**5,478**	**24,960**	**2,427**	**77,960**

Totals may not add due to rounding.

(a) 'Off the plan' approvals to real estate developers have been recorded as not allocated to country because the country of investors is not known in advance.

(b) The investment identified as originating from Australia represents the contribution by Australian-controlled companies and Australian residents to the total investment associated with foreign investment proposals in which they are in partnership with foreign interests, but does not generally include the contribution attributable to minority Australian shareholders in companies with majority or controlling foreign shareholders.

(c) These figures indicate the total number of proposals in which investors from the particular country have an interest. Proposals involving investment from more than one country count as one proposal for each of the countries concerned.

CHAPTER 3

Aggregate Foreign Investment

This chapter summarises trends in foreign investment in Australia and Australian investment abroad using Australian Bureau of Statistics (ABS) data.

Foreign investment in Australia refers to the stock of financial assets in Australia owned by non-residents and financial transactions that increase or decrease this stock. Conversely, Australian investment abroad refers to the stock of foreign financial assets owned by Australian residents and financial transactions that increase or decrease that stock.

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

Foreign investment flows

Foreign investment transactions involve changes in the levels of Australian foreign assets and liabilities (including the creation or extinction of foreign assets and liabilities). A current account deficit in Australia's balance of payments is balanced by a surplus on the capital and financial account, after allowing for errors and omissions. The balance on the financial account represents net financial transactions with the rest of the world, that is, the inflow of foreign investment into Australia, minus the outflow of Australian investment abroad.

International investment statistics are divided into 'direct', 'portfolio', 'derivatives', 'other investment' and 'reserve assets'. Under the international standards used to compile ABS foreign investment statistics, *direct investment*

represents capital invested in an enterprise by an investor in another country which gives the investor a 'significant influence' (either potentially or actually exercised) over the key policies of the enterprise. Ownership of 10 per cent or more of the ordinary shares or voting stock of an enterprise is considered, under the ABS framework, to indicate 'significant influence' by an investor. *Portfolio investment* is the cross-border investment in equity and debt securities (other than direct investment). *Other investment* is a residual group that comprises many different kinds of investment. *Reserve assets* are those external financial assets available to and controlled by the Reserve Bank of Australia or the Commonwealth Treasury for use in financing payment imbalances or intervention in foreign exchange markets.

Table 3.1: Foreign investment flows ($billion)[(a)]

	1995-96	1996-97	1997-98	1998-99	1999-00
Foreign Investment in Australia					
Direct Investment					
Equity & Reinvested Earnings	12.2	11.2	9.1	12.5	8.9
Other Capital	0.3	0.2	1.2	-1.0	3.1
Portfolio Investment					
Equity	4.7	3.6	16.7	15.7	-1.4
Debt	21.4	15.7	2.3	-2.3	19.8
Other Investment(c)	-1.5	6.6	10.0	15.9	13.3
Total Foreign Investment in Australia	37.1	37.2	39.2	40.8	43.7
Australian Investment Abroad					
Direct Investment					
Equity & Reinvested Earnings	-6.0	-5.8	-7.2	-2.4	-5.6
Other Capital	-2.3	-0.4	-0.2	1.3	2.7
Portfolio Investment					
Equity	-3.1	-3.6	0.7	-3.0	-5.2
Debt	-1.6	-0.6	-0.1	-3.1	0.0
Other Investment(c)	-5.4	-4.0	-9.8	-4.1	-1.0
Reserve Assets	-0.8	-5.2	0.5	-0.4	-2.6
Total Australian Investment Abroad	-19.2	-19.7	-16.1	-11.8	-11.8
Net Foreign Investment(b)	**17.9**	**17.5**	**23.1**	**29.0**	**31.9**

Note: Figures may not add due to rounding.

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

(b) The net foreign investment figure has been derived from determining the difference between foreign investment in Australia and Australian investment abroad.

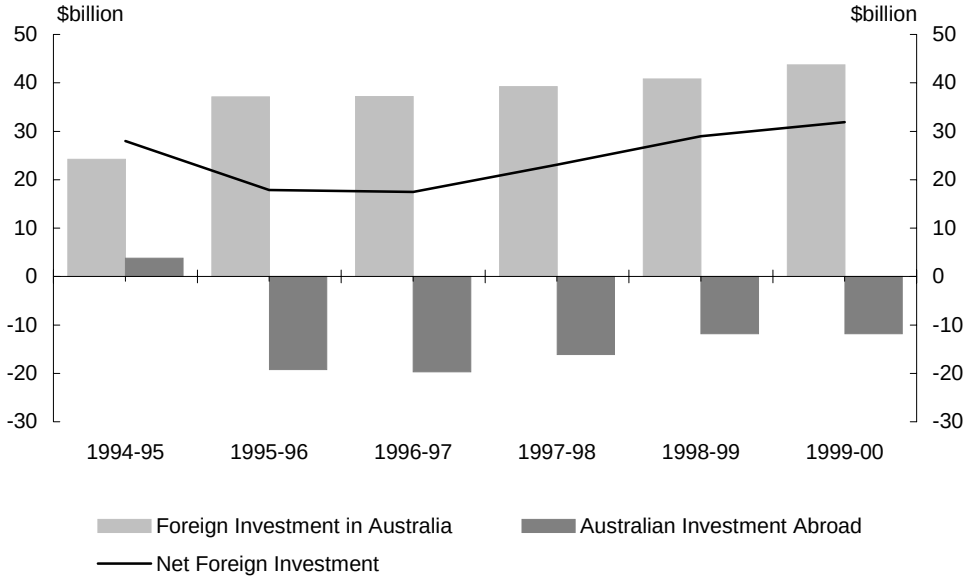
(c) Other Investment includes financial derivatives.

Source: ABS 5302.0 Balance of Payments and International Investment Position, Australia, September Qtr 2000.

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

Chart 3.1 highlights the annual fluctuations of foreign investment flows into and out of Australia over the past six financial years. Since 1996-97 there has been an upward trend in net foreign investment flows.

Chart 3.1: Foreign investment flows



Foreign investment levels

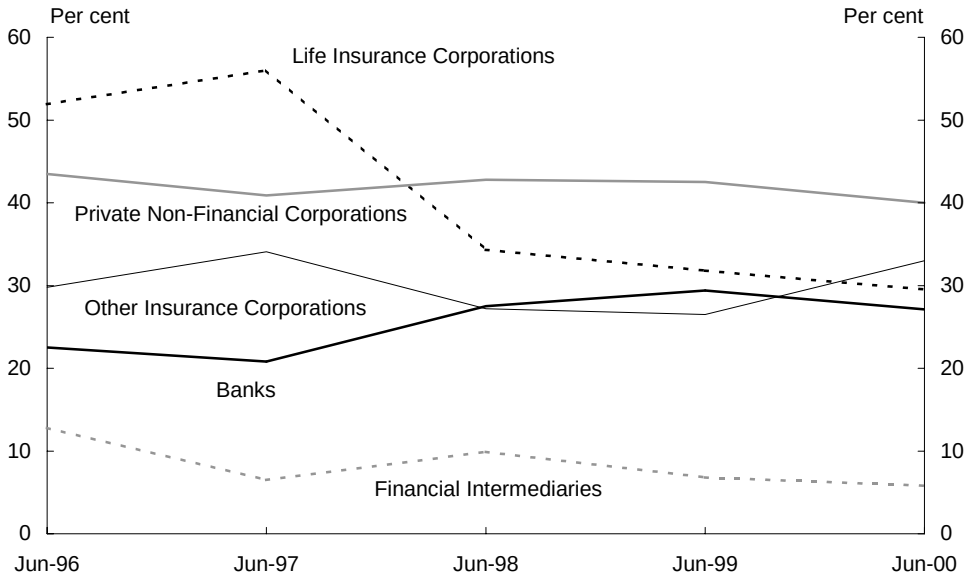
The ABS estimated level, or stock, of foreign investment in Australia as at 30 June 2000 was $714 billion. This represented an increase of $91 billion, or 14.6 per cent, over the level at 30 June 1999.

In comparison, the level of Australian investment abroad as at 30 June 2000 was $318 billion. This represented an increase of $49 billion or 18.0 per cent, over the level at 30 June 1999.

Chart 3.2 shows over the period 30 June 1999 to 30 June 2000, the percentage of foreign ownership of Australian equity decreased for all sectors except other insurance corporations.

Foreign ownership of other insurance corporations increased from 26.5 per cent at 30 June 1999 to 33.0 percent at 30 June 2000, while private non-financial corporations, banks, life insurance corporations and financial intermediaries decreased 2.5 percent, 2.3 percent, 2.3 percent and 1.0 percent respectively over the same period.

Chart 3.2: Foreign ownership of Australian equity by sector[(a)]



Source: ABS 5232.0 Financial Accounts, Australia, June Qtr 2000.

Of the total equity on issue at 30 June 2000, non-residents held equity valued at $326 billion (29 per cent) while residents held equity valued at $806 billion (71 per cent). Although the proportion of equity held by non-residents has remained stable at around 29 percent over the period 30 June 1999 to 30 June 2000, the total value of equity on issue has increased by 14.3 per cent from $991 billion to $1,133 billion.

APPENDIX A

Summary of Australia's Foreign Investment Policy as at May 2000

General

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

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

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

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

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

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

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

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

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

Prior approval

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

- acquisitions of substantial interests in existing Australian businesses with total assets over $50 million or where the proposal values the business at over $50 million;
- proposals to establish new businesses involving a total investment of $10 million or more;
- portfolio investments in the media of 5 per cent or more and all non-portfolio investments irrespective of size;
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at $50 million or more, or account for more than 50 per cent of the target company's global assets;
- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of interests in urban land (including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts) that involve the:
  - acquisition of developed non-residential commercial real estate, where the property is subject to heritage listing, valued at $5 million or more;
  - acquisition of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at $50 million or more;
  - acquisition of accommodation facilities irrespective of value;
  - acquisition of vacant urban real estate irrespective of value;
  - acquisition of residential real estate irrespective of value; or
- proposals where any doubt exists as to whether they are notifiable. (Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.)

10. A foreign interest is defined as:

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

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

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

Examination by sector

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

> *Rural Businesses and Rural Land, Agriculture, Forestry, Fishing, Resource Processing, Oil & Gas, Mining, Manufacturing, Non-Bank Financial Institutions, Insurance, Sharebroking, Tourism, Most Other Services.*
>
> *(Rural Land is defined as land that is used wholly and exclusively for carrying on a substantial business of primary production. Acquisitions of vacant land that has a rural zoning, 'hobby farms' and 'rural residential' blocks by foreign interests are included within the urban land category.)*

13. In relation to investments by foreign interests in these sectors, all proposals above certain thresholds need prior approval and therefore need to be notified. Notification thresholds are over $50 million for acquisitions of substantial interests in all existing businesses, $10 million or more for the establishment of new businesses and $50 million or more for offshore takeovers.

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

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

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

17. Approvals of proposals may be made subject to the parties meeting certain conditions. In practice, such conditions relate almost entirely to the time period for real estate development or to environmental requirements.

Urban land[1]

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

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

1 This is a brief summary of the urban land policy. Further details of the urban land policy are provided in the document *Foreign Investment Policy — Urban Land*.

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

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

20. Foreign interests are normally given approval to buy:

- vacant residential land, including house and land packages where construction has not commenced, (on condition that continuous construction of a dwelling is commenced within 12 months): and
- house and land packages where construction has commenced, home units, townhouses, etc 'off the plan', under construction or newly constructed but never occupied or previously sold. 'Off the plan' sales to foreigners are only permitted for new development projects or extensively refurbished commercial structures, which have been converted to residential, on condition that no more than half the dwellings in any one development are sold to foreign interests.

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

22. Certain categories of foreign nationals, temporarily resident in Australia continuously for more than 12 months, may be given approval to purchase developed residential real estate for use as their principal place of residence (ie not for rental purposes) while in Australia. This category includes long-stay retirees. A condition of such purchases is that the residence must be sold when

the foreign nationals' temporary resident visas expire, they leave Australia, or the property is no longer used as their principal place of residence.

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

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

25. Proposed acquisitions of hotels and motels operating under one title are normally approved (unless considered contrary to the national interest) under the tourism sector policy. Proposed acquisitions of strata titled hotel accommodation may be approved in certain designated hotels. Full details of the requirements for designated hotels are contained in the Australian urban land policy summary. Other accommodation facilities such as guesthouses, holiday flats and undesignated strata titled hotels and motels are examined under policy applying to the residential real estate sector.

Banking

26. Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy, including prudential requirements. Any proposed foreign takeover or acquisition of an Australian bank will be considered on a case-by-case basis and judged on its merits.

27. The Government will permit the issue of new banking authorities to foreign owned banks where the Australian Prudential Regulation Authority (APRA) is satisfied the bank and its home supervisor are of sufficient standing,

and where the bank agrees to comply with APRA's prudential supervision arrangements.

Civil aviation

Domestic services

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

International services

29. Foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

Airports

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

Shipping

31. The *Shipping Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (ie owned by an Australian citizen, a body corporate established by or under law of the Commonwealth or

of a State or Territory of Australia), unless the ship is designated as chartered by an Australian operator.

Media

32. All direct (ie, non-portfolio) proposals by foreign interests to invest in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy. Proposals involving portfolio share holdings of 5 per cent or more must also be submitted for examination.

Broadcasting

33. While proposals for a foreign person to acquire an interest in an existing broadcasting service or to establish a new broadcasting service are subject to case-by-case examination under foreign investment policy, the following criteria also must be satisfied. A broadcasting regulatory regime, enacted through the *Broadcasting Services Act 1992* (BSA), stipulates that:

- Foreign interests in commercial television broadcasting services continue to be limited to a 15 per cent company interest for individuals and a 20 per cent company interest in aggregate. A foreign person may not be in a position to exercise control of a commercial television broadcasting licence. No more than 20 per cent of directors may be foreign persons.
- For all subscription television broadcasting services licences, foreign interests are limited to a 20 per cent company interest for an individual and a 35 per cent company interest in aggregate.

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

Newspapers

35. Foreign investment in mass circulation national, metropolitan, suburban and provincial newspapers is restricted. All proposals by foreign interests to acquire an interest of 5 per cent or more in an existing newspaper or to establish a new newspaper in Australia are subject to case-by-case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan

newspapers is 30 per cent with any single foreign shareholder limited to a maximum interest of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further five per cent). Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50 per cent for non-portfolio shareholdings.

Telecommunications

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

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

Approval period

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

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

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

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

Applications

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

43. All applications should be addressed in writing to:

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

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

45. In addition, the Government is obligated to respect the privacy of personal information that is provided by applicants to the Foreign Investment Review Board in accordance with the requirements of the *Privacy Act 1988*. In accordance with that Act, the Government advises that in situations where the applicant has breached, or is strongly suspected of having breached the *Foreign Acquisitions and Takeovers Act 1975* (FATA), the Board may seek the

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

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

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

A. Parties to the proposal

For both the purchaser and target business

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

B. Type of proposal

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

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

C. Consideration

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

D. Reason(s) for the proposal

- ❖ from viewpoints of the vendor, target and purchaser

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

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

A. Parties to the proposal

For both the purchaser and target business

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

B. Type of proposal

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

C. Consideration and proposed expenditure

- amounts involved including proposed development expenditure, if any

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

A. Parties to the proposal

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

B. The proposal

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

C. Ownership of the proposed business

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

D. Industry information

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

E. Other considerations

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

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

A. Parties to the proposal

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

B. The proposal

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

C. Ownership of the proposed business

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

Urban real estate acquisitions

Please refer to the separate summary of the policy applying to the acquisition of interests in Australian urban land.

Further enquiries

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

General enquiries	(02) 6263 3795
Fax	(02) 6263 2940
From overseas	
General enquiries	61 - 2 - 6263 3795
Fax	61 - 2 - 6263 2940
E-mail	firb@treasury.gov.au

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

APPENDIX B

Legislation, Policy Statements and Publications

Legislation

1. *Companies (Foreign Take-overs) Act 1972*, No 134 of 1972 — November 1972.

2. *Companies (Foreign Take-overs) Act 1973*, No 199 of 1973 — December 1973.

3. *Foreign Takeovers Act 1975*, No 92 of 1975 — August 1975 (now known as the *Foreign Acquisitions and Takeovers Act 1975* as amended).

4. *Foreign Takeovers Amendment Act 1976*, No 93 of 1976 — September 1976.

5. Statutory Rules 1*975*, No 226 — December 1975.

6. Statutory Rules 1976, No 203 — September 1976.

7. *Commonwealth Functions (Statutes Review) Act 1981*, No 74 of 1981 — June 1981.

8. *Foreign Takeovers Amendment Act 1989*, No 14 of 1989 — August 1989.

9. Foreign Acquisitions and Takeovers Regulations (Amendment), No 302 — 24 September 1991.

10. Foreign Acquisitions and Takeovers Regulations (Amendment), No 295 — 31 August 1994.

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

12. Foreign Acquisitions and Takeovers Regulations (Amendment), No 199 — 10 September 1999.

Appendix B

Policy statements

1. Statement by the Treasurer, the Hon. Paul Keating, MP — Review of Foreign Investment Policy — 20 December 1983.

2. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy and Stockbroking — 18 April 1984.

3. Statement by the Treasurer, the Hon. Paul Keating, MP — Participation in Banking in Australia and Other Issues of Financial Deregulation — 10 September 1984.

4. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy and Stockbroking — 18 December 1984.

5. Statement by the Treasurer, the Hon. Paul Keating, MP — New Banking Authorities — 27 February 1985.

6. Statement by the Acting Treasurer, the Hon. Chris Hurford, MP — Review of Foreign Investment Policy — 29 October 1985.

7. Statement by the Acting Treasurer, the Hon. Chris Hurford, MP — Economic and Rural Policy Statement — 15 April 1986.

8. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy Relaxations — 28 July 1986.

9. Statement by the Treasurer, the Hon. Paul Keating, MP — Further Liberalisation of Foreign Investment Policy — 30 April 1987.

10. Statement by the Treasurer, the Hon. Paul Keating, MP — Thin Capitalisation and Corporate Restructures in relation to Foreign Investment Policy — 30 April 1987.

11. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy: Developed Residential Real Estate — 29 September 1987.

12. Statement by the Treasurer, the Hon. Paul Keating, MP — Foreign Investment Policy: New Oil and Gas Developments — 20 January 1988.

13. Statement by the Treasurer, the Hon. Paul Keating, MP — Proclamation of Foreign Takeovers Amendment Act 1989 and Gazettal of Foreign Acquisitions and Takeovers Regulations — 6 July 1989.

14. Statement by the Treasurer, the Hon. J. Kerin, MP — Foreign Investment Policy: Integrated Tourism Resorts — 25 July 1991.

15. Statement by the Treasurer, the Hon. J. Kerin, MP — Foreign Investment in the Print Media — 10 October 1991.

16. Statement by the Treasurer, the Hon. J. Dawkins, MP — Economic Statement: Foreign Investment Policy Changes — 26 February 1992.

17. Statement by the Treasurer, the Hon. J. Dawkins, MP — Modification to Foreign Investment Policy. Residential Real Estate and Developed Non-Commercial Real Estate — 1 April 1993.

18. Statement by the Treasurer, the Hon. J. Dawkins, MP — Foreign Investment Policy: Mass Circulation Newspapers — 20 April 1993.

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

20. Statement by the Treasurer, the Hon. P. Costello, MP — Rationalisation of Notification Thresholds for Portfolio Investments in the Media Sector — 18 September 1996.

21. Statement by the Treasurer, the Hon. P. Costello, MP — Uranium Sector — 19 November 1996.

22. Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp, — Foreign Investment Policy: Forced Divestiture of Residential Real Estate involving Australian Trustee — 11 December 1996.

23. Statement by the Treasurer, the Hon. P. Costello, MP — Release of the Report of the Financial System Inquiry and Initial Government Response on Mergers Policy — 9 April 1997.

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

25 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Case: Tyndall Australia Ltd's Portfolio Investment in John Fairfax Holdings Ltd — 4 August 1998.

26 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Policy Changes — 3 September 1999.

27 Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp — Virgin receives Foreign Investment Approval — 7 December 1999.

28 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Case: Acquisition by Air New Zealand Limited of the News Corporation's 50 per cent interest in Ansett Holdings Limited — 13 June 2000.

Publications

- Foreign Investment Review Board Reports: 1977 to 2000.
- Australia's Foreign Investment Policy — A Guide for Investors, Revised September 1992.
- Foreign Investment Policy and Administration — Outline for Conference of Australian Institute of Company Directors held in Adelaide 13-14 May 1999.
- Guidelines relating to Australia's Foreign Investment Policy:
  - General Summary; and
  - Urban Land.

(updated regularly)

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

APPENDIX C

Press Releases — 1999-2000

No. 1999/055 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Policy Changes — 3 September 1999.

No. 1999/061 Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp — Virgin receives Foreign Investment Approval — 7 December 1999.

No. 1999/066 Statement by the Assistant Treasurer, Senator the Hon. Rod Kemp — Foreign Investment Review Board: 1998-99 Annual Report — 23 December 1999.

No. 2000/018 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Review Board: Re-Appointment of Ms Lynn Wood — 4 April 2000.

No. 2000/049 Statement by the Treasurer, the Hon. P. Costello, MP — Foreign Investment Case: Acquisition by Air New Zealand Limited of the News Corporation's 50 per cent interest in Ansett Holdings Limited — 13 June 2000.

No. 2000/064 Statement by the Treasurer, the Hon. P. Costello, MP — OECD Ministerial Meeting: The 'New Economy'; WTO Trade Round and Guidelines for Multinational Enterprises — 27 June 2000.

APPENDIX D

Chronology of Policy Measures

3 May 2000

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

Note: In the case of Qantas, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

10 September 1999

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

- increases in the notification threshold for foreign investment in existing businesses from $5 million ($3 million for rural businesses) to $50 million;
- an increase in the notification threshold from $20 million to $50 million for the Australian assets of an offshore company where it is to be acquired by another offshore company;
- an increase in the notification threshold applying to the acquisition of developed non-residential commercial real estate (including certain lease arrangements) from $5 million to $50 million except where such properties are subject to heritage listing (in that case the threshold remains at $5 million).

Other amendments to regulations specify:

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

1 April 1999

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

every six months) until all the dwellings in the development have been sold or occupied.

14 August 1997

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

9 April 1997

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

19 December 1996

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

19 November 1996

The Treasurer announced the Government's decision that foreign investment policy in relation to the uranium sector will be the policy that currently applies to the mining sector generally. This means that foreign investment above the notification thresholds in the uranium sector, such as the establishment of a

new mine, will be subjected to the well established 'contrary to the national interest' test and that no specific investment restrictions will apply.

9 October 1996

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

18 September 1996

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

26 September 1995

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

20 April 1993

The Treasurer announced the Government's decision to increase the maximum permitted aggregate foreign interest direct investment (that is, non portfolio) involvement in national and metropolitan newspapers to 30 per cent with any single foreign shareholder limited to a maximum of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further 5 per cent).

1 April 1993

The Treasurer announced two changes to foreign investment policy:

- 'off the plan' acquisitions to include acquisitions that are part of extensively refurbished buildings subject to the building's use changing from non-residential to residential and the costs of refurbishment to be at least 50 per cent of total acquisition costs; and

- proposals by foreign interests to acquire developed non-residential commercial real estate were no longer required to have 50 per cent Australian equity. Prior to this change, acquisitions by foreign interests of developed non-residential commercial real estate were normally approved, unless judged contrary to the national interest, on the condition that the acquisition was being made with 50 per cent Australian equity participation. Where it could be demonstrated that 50 per cent Australian equity was not available on reasonable terms and conditions, proposals providing up to 100 per cent were approved.

26 February 1992

As part of the Government's One Nation Economic Statement, further policy liberalisations were announced, namely:

- the Government would register, but normally raise no objections to proposals above the notification thresholds where the relevant total assets / total investment falls below $50 million. Notification thresholds are $3 million for purchases of rural properties, $5 million for acquisitions of substantial interests in other existing businesses, $10 million for the establishment of new businesses and $20 million for offshore takeovers;
- the 50 per cent Australian equity and control guideline for participation in new mining projects, and the economic benefits test for takeovers of existing mining businesses, were abolished; and
- that new banking authorities would be issued to foreign owned banks where the Reserve Bank is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with Reserve Bank prudential supervision and arrangements. Moreover, foreign owned banks will be allowed to bid for the smaller banks (if available for sale), that is, for banks other than the four majors.

25 July 1991

The Government decided that foreign investors may acquire any residential real estate (vacant land for development, units off the plan, or established properties) within a designated Integrated Tourism Resort (ITR) without the need to seek approval under the Foreign Acquisitions and Takeovers Act. The

ITR exemption would only apply to residential real estate within resorts that have applied for and been designated exempt by the Treasurer.

6 July 1989

The Treasurer announced the proclamation, on 1 August 1989, of the *Foreign Takeovers Amendment Act 1975* and the gazettal of the *Foreign Acquisitions and Takeovers Regulations*. The amended legislation, to be known as the Foreign Acquisitions and Takeovers Act, gave legislative effect to the changes to residential real estate policy announced in September 1987.

20 January 1988

The Government announced that the Australian participation guidelines for foreign investment in respect of new mining projects over $10 million would no longer apply to new oil and gas developments which could now be approved with 100 per cent foreign equity, provided they were not considered contrary to the national interest.

29 September 1987

The Government decided to restrict substantially foreign acquisitions of developed residential real estate and to introduce legislation to require compliance with the amended policy. The $600,000 examination threshold was abolished and approvals of developed residential real estate were to be restricted to Australian citizens resident abroad, intending migrants and foreign companies buying for their senior executives resident in Australia.

30 April 1987

The Treasurer announced a number of further liberalisations including:

- passing amendments to the *Foreign Takeovers Act 1975* providing for the exemption from notification of takeovers below $5 million ($3 million for rural businesses);
- extending the national interest based test (applied to manufacturing, tourism and non-bank finance sectors since July 1986) to other sectors namely resource processing, services, insurance, sharebroking and rural properties; and

- improvements to the benefits associated with naturalised or naturalising status, namely, that all takeovers or new businesses involving naturalised or naturalising companies (including new mines where at least 50 per cent is owned by the naturalised or naturalising company) would be approved unless contrary to the national interest.

The Government also announced that it would introduce legislation to replace the thin capitalisation and corporate restructuring conditions of approval that had been imposed on foreign investors under foreign investment policy.

28 July 1986

The Treasurer announced a number of significant relaxations to policy including:

- the net economic benefits test and Australian equity requirements for takeovers and new businesses in the manufacturing, tourism and non-bank finance sectors were suspended and proposals were to be automatically approved unless contrary to the national interest;
- the minimum Australian equity requirements for real estate for development (both for retention or resale), and service industry real estate (hotels and motels, tourism resorts) were abolished;
- acquisitions of developed commercial real estate were to be allowed provided there was 50 per cent Australian equity (previously there was a virtual prohibition); and
- the policy test on rural property acquisitions over $3 million was relaxed such that approval would now be granted where it could be demonstrated by the intending investor that proposed on-farm development expenditure would be at least one — third of the acquisition price.

15 April 1986

As part of the Government's Economic and Rural Policy Statement, it announced the relaxation of the rules applying to foreign investment in rural land such that only proposals over $3 million (previously $1 million) would be subject to the stricter test of providing effective Australian participation or benefits of national or regional significance to gain approval.

29 October 1985

The Acting Treasurer announced a number of modifications to policy aimed at streamlining existing procedures, the most significant of which were:

- the practice of requiring the demonstration of specific opportunities for Australians to purchase interests available for sale (the 'opportunities test') was discontinued;
- the administrative threshold below which takeovers were normally approved, in the absence of special circumstances, was increased from $2 million to $5 million;
- the notification threshold for new businesses (except in the media or civil aviation) was increased from $5 million to $10 million;
- the notification threshold for foreign investment in real estate was increased from $350,000 to $600,000;
- the liberalised stance in relation to merchant banks was extended to other non-bank financial intermediaries;
- the need for 50 per cent Australian equity for land bought for development and subsequent resale was to be applied only to developments costing $10 million or more; and
- the exemption threshold for offshore takeovers was increased from $3 million to $20 million.

22 May 1985

The *Banks (Shareholdings) Act 1972* (which limits the size of shareholdings in banks authorised under the *Banking Act 1959*) was amended in order to facilitate the establishment of new banks in Australia. The major amendments were an increase in the size of individual shareholdings in a bank which might be held without the Governor-General's approval from 10 to 15 per cent, and allowing the Governor-General to grant exemptions from the new higher limit in the national interest.

27 February 1985

The Treasurer announced that the Government had selected 16 new banks which would be invited to establish operations in Australia. Each would be

required to proceed with discussions with the Reserve Bank and the Treasury with a view to developing their proposals.

18 December 1984

The Treasurer announced the Government's decision to increase to 50 per cent the maximum permitted shareholding in Australian stockbroking businesses that might be held by foreign interests. This revised the previous limitations announced on 18 April 1984.

10 September 1984

The Government invited applications from domestic or foreign interests for a limited number of banking authorities and decided to initiate proceedings to enable the Bank of China to open a branch in Australia.

The Treasurer also announced the temporary waiving (for one year) of some sections of its foreign investment policy relating to the merchant banking sector. The 'Australian opportunities test' (that is, the requirement that Australians be given the opportunity to bid on market terms for interests available for sale) and the 'substantial economic benefits' test of foreign investment policy were to be set aside for a period of 12 months in respect of merchant bank restructuring proposals.

18 April 1984

Following a Trade Practices Commission (TPC) ruling that allowed stockbroking firms to incorporate, the Treasurer announced the results of a review of foreign investment policy as applied to the stockbroking industry (prior to the TPC ruling, non-residents were precluded from having an interest in unincorporated stockbroking firms). Under the revised policy, proposals by foreign interests to acquire shareholdings in stockbroking businesses would only be allowed to proceed, where they involved the acquisition of less than 15 per cent of shares by a single foreign interest or of less than 40 per cent by two or more foreign interests.

APPENDIX E

OECD Guidelines for Multinational Enterprises

Preface

1. The *OECD Guidelines for Multinational Enterprises* (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;

(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;

(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;

(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;

(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;

(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.

APPENDIX F

The Executive — Contact Names

Applications

Applications for foreign investment approval should be addressed to:

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

Executive Member — Mr Peter Biggs (Acting) Tel: (02) 6263 3763

General enquiries

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

Special enquiries

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

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

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

Mr Warwick Walpole *Acting Manager* *Tel: (02) 6263 3125*

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

Mr Grahame Crough *Manager* *Tel: (02) 6263 2741*