

**APPENDIX A:
AUSTRALIA'S FOREIGN INVESTMENT POLICY**

Australia's Foreign Investment Policy[#]

Our approach

The Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, it encourages innovation, it introduces new technologies and skills, it brings access to overseas markets and it promotes competition amongst our industries.

The Government reviews foreign investment proposals against the national interest case by case. We prefer this flexible approach to hard and fast rules. Rigid laws that prohibit a class of investments too often also stop valuable investments. The case by case approach maximises investment flows, while protecting Australia's interests. Our Foreign Investment Review Board (FIRB) will work with an applicant to ensure the national interest is protected. But, if we ultimately determine that a proposal is contrary to the national interest, we will not approve it.

The Government also recognises community concerns about foreign ownership of certain Australian assets. The review system allows the Government to consider these concerns when assessing Australia's national interest.

The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces rather than external strategic or non-commercial considerations.

[^] This version of Australia's Foreign Investment Policy was first released in June 2010.

[#] The Policy is also available in Bahasa, Japanese and Mandarin. In the event of any inconsistency between the English version and a foreign language version, the English version prevails.

Foreign Investment Review Framework

The foreign investment policy and the legislation

The *Foreign Acquisitions and Takeovers Act 1975* (the Act) provides the legislative framework for our screening regime. The Act allows the Treasurer or his delegate to review investment proposals to decide if they are contrary to Australia's national interest.

The Treasurer can block proposals that are contrary to the national interest or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest. When making such decisions, the Treasurer relies on advice from FIRB.

Australia's Foreign Investment Policy (the Policy) provides guidance to foreign investors to assist understanding of the Government's approach to administering the Act. The Policy also identifies investment categories that need to be notified to the Government for prior approval, even if the Act does not appear to apply.

Who needs to apply?

1. Foreign Government Investors

All foreign government investors¹ must notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment.

Foreign government investors also must notify the Government and get prior approval to start a new business or to acquire an interest in land, including any interest in a prospecting, exploration, mining or production tenement (except when buying land for diplomatic or consular requirements). This is consistent with the Government's longstanding practice.

¹ Definitions are provided in Annex 1.

Foreign government investors should also notify for review, if they have any doubt as to whether an investment is notifiable.²

Further guidance for foreign government investors is provided under Further Information for Business Acquisitions and, in particular, the section titled Foreign Government Investors.

2. Privately-owned foreign investors — business acquisitions

Foreign persons should notify the Government and get prior approval before acquiring a substantial interest in a corporation or control of an Australian business that is valued above \$248 million.³ They also need to notify for prior approval if they wish to acquire a substantial interest in an offshore company whose Australian subsidiaries or gross assets are valued above \$248 million.⁴

The exception is for New Zealand investors and United States investors,⁵ where the \$248 million threshold applies only for investments in prescribed sensitive sectors. A \$1,078 million⁶ threshold applies to New Zealand and United States investment in other sectors.

To calculate the value of a business or corporation, for share acquisitions you need to consider the value of the total issued shares of the corporation or its total gross assets, whichever is higher.⁷

All foreign persons, including New Zealand investors and United States investors, need to notify the Government and get prior approval to make investments of 5 per cent or more in the media sector, regardless of the value of the investment.

2 Foreign government investors that are regulated by the Australian Prudential Regulation Authority as Authorised Deposit taking Institutions do not need to notify the Government when they take security over an asset(s) as part of a lending agreement. Notification and prior approval is not required if the security is enforced and the asset(s) is sold. However, the investor must notify the Government and get approval if the security is enforced, and the investor gains control over the asset(s) and retains it for more than 12 months.

A lending agreement is an agreement entered into in good faith in the ordinary course of carrying on a business of lending money. It does not include an agreement dealing with any matter unrelated to the carrying on of a lending business, such as one that allows a degree of influence or control over the borrower, their business activities or assets (other than the usual terms for such a security). Such an agreement may include separate contracts.

3 The threshold is indexed annually on 1 January.

4 The threshold is indexed annually on 1 January.

5 The *Foreign Acquisitions and Takeovers Act 1975* does not apply to investments by New Zealand investors and United States investors in financial sector companies. Financial sector companies have the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

6 The threshold is indexed annually on 1 January.

7 For arrangements and other non-real estate acquisitions, see section 13B of the *Foreign Acquisitions and Takeovers Act 1975*.

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- foreign ownership in the banking sector must be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy;
- aggregate foreign ownership in an Australian international airline (including Qantas)⁸ is limited to 49 per cent;
- the *Airports Act 1996* limits foreign ownership of some airports to 49 per cent, with a 5 per cent airline ownership limit; and cross ownership limits⁹ between Sydney airport (together with Sydney West) and either Melbourne, Brisbane, or Perth airports;
- the *Shipping Registration Act 1981* requires a ship to be majority Australian-owned if it is to be registered in Australia, unless it is designated as chartered by an Australian operator; and
- aggregate foreign ownership of Telstra is limited to 35 per cent and individual foreign investors are only allowed to own up to 5 per cent.

Foreign persons should also notify for review, if they have any doubt as to whether an investment is notifiable.

Further guidance is provided under Further Information for Business Acquisitions.

3. Privately-owned foreign investors — real estate

Foreign persons should notify the Government and get prior approval to acquire an interest in certain types of real estate. An 'interest' includes buying real estate, obtaining or agreeing to enter into a lease or licence, or financing or profit sharing arrangements.

Regardless of value, foreign persons generally need to notify the Government and get prior approval to take an interest in residential real estate, vacant land or to buy shares or units in Australian urban land corporations or trusts.

Foreign persons also need to notify for prior approval if they want to take an interest in developed commercial real estate that is valued at \$54 million¹⁰ or more — unless

8 Individual holdings in Qantas are also limited to 25 per cent and aggregate ownership by foreign airlines is limited to 35 per cent.

9 The cross ownership provisions in the *Airports Act 1996* apply when a foreign person has more than a 15 per cent stake in the Sydney airport (together with Sydney West) airport operator company and one of the Perth, Brisbane, or Melbourne airport operator companies. Also for stakes of 15 per cent or less, the Minister may declare practical control.

10 The threshold is indexed annually on 1 January.

the real estate is heritage listed, then a \$5 million threshold applies. An exception for developed commercial real estate applies to New Zealand investors and United States investors, where a \$1,078 million¹¹ threshold applies instead.

Foreign persons should also notify for review if they have any doubt as to whether an investment is notifiable.

The specific real estate rules are explained in further detail under 'Further Information About Buying Real Estate'.

When should you apply?

You should lodge an application in advance of any transaction, or you should make your purchase contract conditional on foreign investment approval. A transaction should not proceed until the Government advises you of the outcome of its review.

The Government encourages potential investors to engage with FIRB prior to lodging applications on significant proposals to allow timely consideration of the proposal. The Government will treat proposals in-confidence (as outlined further in the section titled Confidentiality/Privacy).

Applications will be accepted as proposals under the Act when they contain sufficient detail. This includes information about the parties, the proposed investment (including its nature, methods of acquisition, the value of the investment, timetables and whether the investment is public), a statement of the investor's intentions (immediate and ongoing) and how the proposed investment may impact on the national interest.¹²

Applications should also include applicable statutory notices (although please note that there is no statutory form for applications made under the Policy only). Applications to acquire interests that will not be substantially completed within 12 months will generally not be accepted.

Please refer to FIRB's website www.firb.gov.au for further information and forms.

No fees or charges apply to applications.

What is the Government looking for?

The Government is making sure investments are not contrary to the national interest. If an investment is contrary to the national interest, the Government will intervene. This occurs infrequently.

¹¹ The threshold is indexed annually on 1 January.

¹² See National Interest Considerations under Further Information for Business Acquisitions.

What is contrary to the national interest cannot be answered with hard and fast rules. Attempting to do so can prohibit beneficial investments and that is not the intention of our regime. Australia's case by case approach maximises investment flows while protecting Australia's national interest.

To assist applicants, we provide more guidance on what we are looking for under Further Information for Business Acquisitions.

How long before a decision is made?

Under the Act, the Treasurer has 30 days to consider your application and make a decision. However, the Treasurer may extend this period by up to a further 90 days by publishing an interim order. An interim order is normally issued if a proposal is very complicated or where further information is required.

You will be informed of the Treasurer's decision within 10 days of it being made. That decision will either raise no objections, allowing the proposal to go ahead; impose conditions, which will need to be met; or block the proposal. If the Treasurer has no objections, you will receive an email or letter to this effect from the FIRB Secretariat on the Treasurer's behalf.

There is no time limit for applications made under the Policy only. However, the Government also aims to consider these proposals within 30 days, where possible.

Confidentiality/privacy

The Government may share your application with government departments and agencies for consultation purposes, including Australian State and Territories. However, the Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government will not provide your application to third parties outside of the Government unless it has your permission or it is ordered to do so by a court of competent jurisdiction. The Government will defend this policy through the judicial system if needed.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

Further enquiries

Further information on the Policy may be found at FIRB's website www.firb.gov.au. Should you have any further enquiries please contact FIRB on:

General enquiries:	From overseas:
Phone: 02 6263 3795	+61 2 6263 3795
Fax: 02 6263 2940	+61 2 6263 2940
Email: firbenquiries@treasury.gov.au	firbenquiries@treasury.gov.au

Compliance hotline:	From overseas:
Phone: 1800 050 377	+61 2 6263 3795
Email: FIRBCompliance@treasury.gov.au	FIRBCompliance@treasury.gov.au

Further information for business acquisitions

National interest considerations

Assessing the national interest allows the Government to balance potential sensitivities against the benefits of foreign investment.

The Government determines national interest concerns case by case. We look at a range of factors and the relative importance of these can vary depending upon the nature of the target enterprise. Investments in enterprises that are large employers or that have significant market share may raise more sensitivities than investments in smaller enterprises. However, investments in small enterprises with unique assets or in sensitive industries may also raise concerns.

The impact of the investment is also a consideration. An investment that enhances economic activity – such as by developing additional productive capacity or new technology – is less likely to be contrary to the national interest.

The Government typically considers the following factors when assessing foreign investment proposals in any sector. Further guidance on how these apply to agriculture related proposals is provided in Annex 2.

National Security

The Government considers the extent to which investments affect Australia's ability to protect its strategic and security interests. The Government relies on advice from the relevant national security agencies for assessments as to whether an investment raises national security issues.

Competition

The Government favours diversity of ownership within Australian industries and sectors to promote healthy competition. The Government considers whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia. For example, the Government will carefully consider a proposal that involves a customer of a product gaining control over an existing Australian producer of the product, particularly if it involves a significant producer.

The Government may also consider the impact that a proposed investment has on the makeup of the relevant global industry, particularly where concentration could lead to distortions to competitive market outcomes. A particular concern is the extent to which an investment may allow an investor to control the global supply of a product or service.

The Australian Competition and Consumer Commission also examines competition issues in accordance with Australia's competition policy regime. Any such examination is independent of Australia's foreign investment regime.

Other Australian Government Policies (Including Tax)

The Government considers the impact of a foreign investment proposal on Australian tax revenues. Investments must also be consistent with the Government's objectives in relation to matters such as environmental impact.

Impact on the Economy and the Community

The Government considers the impact of the investment on the general economy. The Government will consider the impact of any plans to restructure an Australian enterprise following an acquisition. It also considers the nature of the funding of the acquisition and what level of Australian participation in the enterprise will remain after the foreign investment occurs, as well as the interests of employees, creditors and other stakeholders.

The Government considers the extent to which the investor will develop the project and ensure a fair return for the Australian people. The investment should also be consistent with the Government's aim of ensuring that Australia remains a reliable supplier to all customers in the future.

Character of the Investor

The Government considers the extent to which the investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision. The Government also considers the corporate governance practices of foreign investors. In the case of investors who are fund managers, including sovereign wealth funds, the Government considers the fund's investment policy and how it proposes to exercise voting power in relation to Australian enterprises in which the fund proposes to take an interest.

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

Foreign Government Investors

Where a proposal involves a foreign government investor, the Australian Government also considers if the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest. This includes assessing whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government (including through the investor's funding arrangements). Proposals from foreign government investors operating on a fully arm's length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Where the potential investor is not wholly foreign government owned, the Government considers the size, nature and composition of any non-government interests, including any restrictions on the exercise of their rights as interest holders.

The Government looks carefully at proposals from foreign government investors that are not operating on a fully arm's length and commercial basis. The Government does not have a policy of prohibiting such investments but it looks at the overall proposal carefully to determine whether such investments may be contrary to the national interest.

Mitigating factors that assist in determining that such proposals are not contrary to the national interest may include: the existence of external partners or shareholders in the investment; the level of non-associated ownership interests; the governance arrangements for the investment; ongoing arrangements to protect Australian interests from non-commercial dealings; and whether the target will be, or remain, listed on the Australian Securities Exchange or another recognised exchange. The Government will also consider the size, importance and potential impact of such investments in considering whether or not the proposal is contrary to the national interest.

Further information about buying real estate

General

The Government has decided that some types of investment in real estate are contrary to the national interest. This section outlines these prohibitions as well as the types of real estate that foreign investors may buy and whether they need Government approval to do so.

If you are intending to buy real estate in Australia, you should make your purchase contracts conditional on foreign investment approval, unless you already have approval or you are exempt from the *Foreign Acquisitions and Takeovers Act 1975*. Significant penalties may apply to ineligible owners of real estate.

Rules for buying residential real estate

It is the Government's policy that foreign investment in residential real estate should increase Australia's housing stock. All applications are considered in light of this overarching principle.

Residential real estate means all land and housing that is not commercial property or rural land. In that regard, 'hobby farms' and 'rural residential' blocks are residential real estate.

Temporary residents

Established (second-hand) dwellings

Temporary residents need to apply if they wish to buy an established dwelling. Only one established dwelling may be purchased by a temporary resident and it must be used as their residence in Australia. Such proposals are normally approved subject to

conditions (such as, that the temporary resident sells the property when it ceases to be their residence).

Temporary residents cannot buy established dwellings as investment properties, but can buy established dwellings for redevelopment (see below).

New dwellings

Temporary residents need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

Vacant land

Temporary residents need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

All other foreign persons

Established (second-hand) dwellings

Non-resident foreign persons cannot buy established dwellings as investment properties or as homes, except as below.

Foreign persons that operate a substantial Australian business need to apply to buy established dwellings to house their Australian based staff. Such proposals are normally approved subject to conditions (such as, that the foreign person sells the property if it is expected to remain vacant for six months or more).

Non-resident foreign persons need to apply to buy established dwellings for redevelopment (that is, to demolish the existing dwelling and build new dwellings). Proposals for redevelopment are normally approved as long as the redevelopment increases Australia's housing stock (at least two dwellings built for the one demolished) or where it can be shown that the existing dwelling is derelict or uninhabitable. Approvals are usually subject to conditions.

New dwellings

Non-resident foreign persons need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

Vacant land

Non-resident foreign persons need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

Who is Exempt?

You **do not** need Government approval to buy residential real estate if you are:

- an Australian citizen (living at home or overseas) or you are ordinarily resident in Australia;
- a New Zealand citizen;
- a foreign national who holds an Australian permanent resident visa; or
- a foreign national buying a property as joint tenants with their Australian citizen spouse.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- new dwellings bought from a developer that has pre-approval to sell them to foreign persons;
- an interest in a time share scheme that allows you (and any associates)¹³ to use it for up to four weeks per year;
- certain residential real estate in Integrated Tourism Resorts – see below;
- an interest acquired by will or devolution by operation of law; or
- an interest acquired from a Government in Australia (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose.

Other exemptions may apply¹⁴ if you are:

- a company, trust or managed investment scheme (primarily) for the benefit of individuals ordinarily resident in Australia;
- an Australian corporation that is owned by individuals who are exempt¹⁵ or an Australian trust for the benefit of such individuals;
- a corporation that is providing custodian services; or
- buying shares in certain Australian urban land corporations that are publicly listed on an Australian Stock Exchange, or units in certain Australian urban land trusts.

¹³ See section 6 of the *Foreign Acquisitions and Takeovers Act 1975* for the list of 'associates'.

¹⁴ See regulation 3 of the *Foreign Acquisitions and Takeovers Regulations 1989*.

¹⁵ You are an exempt individual if you are an Australian citizen (living at home or abroad), a New Zealand citizen, or a foreign national who holds an Australian permanent resident visa.

Residential real estate in Integrated Tourism Resorts

You **do not** need the Government's approval to buy residential property that is within the bounds of a resort designated as an Integrated Tourism Resort prior to September 1999.

For resorts designated from September 1999, the exemption only applies to developed residential property that is subject to a lease of 10 years or more to the resort operator and that is available as tourist accommodation when it is not occupied by the owner. The normal foreign investment rules apply to all other property within the resort, including vacant land for development. Conditions must be met to qualify for designation.

Rules for buying commercial real estate

Commercial real estate includes vacant and developed property that is not for residential purposes, such as offices, factories, warehouses, hotels and shops. It may also include land that does not meet the definition of rural land, such as mining operations.

All Foreign Persons

Vacant Land

Foreign persons need to apply to buy or take an interest in land for commercial development (including to start a forestry business), regardless of the value of the land. However, if the land is currently being used as rural land, then other rules apply (see Rural Land). Such proposals are normally approved subject to development conditions.

Developed Commercial Property

Foreign persons need to apply to buy or take an interest in developed commercial real estate valued at \$54 million or more – unless the real estate is heritage listed, then a \$5 million threshold applies. New Zealand investors and United States investors only need to apply for developed commercial real estate valued at \$1,078 million or more. Such proposals are normally approved without conditions.

Developed commercial property includes hotels, motels, hostels and guesthouses, as well as individual dwellings that are a part of these properties. A unit in a hotel that is owner occupied or rented out privately (that is, it is not part of the hotel business) is considered to be residential property.

Mining Tenements

Foreign persons need to apply to buy or take an interest in prospecting, exploration, mining or production tenements where:

- they provide the right to occupy Australian urban land and the term of the lease or licence (including extensions) is likely to exceed five years; or
- they provide an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land.

If the mining tenement applies to land currently being used as rural land, then other rules apply (see Rural Land).

Where a mining tenement is developed to an operational mine, it will then be considered developed commercial property (see above).

Forestry

Established forestry businesses are treated as rural land.

Who is exempt?

You **do not** need Government approval to buy or take an interest in commercial real estate if you are an Australian citizen (living at home or abroad) or you are ordinarily resident in Australia.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- an interest acquired by will or devolution by operation of law;
- an interest acquired from the Government (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose;
- an interest in developed commercial property (regardless of value) where the property is to be used immediately and in its present state for industrial or non-residential commercial purposes (the acquisition must be wholly incidental to the purchaser's proposed or existing business activities); or
- an interest in developed commercial property valued below \$54 million generally or \$5 million for heritage listed properties (or \$1,078 million for New Zealand investors and United States investors).

Other exemptions **may** apply¹⁶ if you are:

- a company, trust or managed investment scheme (primarily) for the benefit of individuals ordinarily resident in Australia;
- a corporation that is providing custodian services; or
- buying shares in certain Australian urban land corporations that are publicly listed on an Australian Stock Exchange, or units in certain Australian urban land trusts.

Rural land¹⁷

Rural land is land used wholly and exclusively for carrying on a business of primary production. To be a business of primary production, the business must be substantial and have a commercial purpose or character.¹⁸

A foreign person needs approval to buy an interest in a primary production business where the total assets of the business exceed \$248 million (or \$1,078 million for New Zealand investors and United States investors).

All foreign government investors must notify the Government and get prior approval before acquiring any interest in rural land.

16 See regulation 3 of the *Foreign Acquisitions and Takeovers Regulations 1989*.

17 See also Annex 2.

18 The definition of a primary production business is taken from the *Income Tax Assessment Act 1997*. It refers to production resulting from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming. Primary production for the purpose of the rural land definition does not include hobby farms, 'rural residential' blocks or land used for stock agistment or mining.

Annex 1: Definitions

Australian urban land

Australian urban land is any land in Australia that is not rural land. It includes all seabed within Australia's Exclusive Economic Zone (EEZ).

Australian urban land corporation or trust

A corporation or trust that has interests in Australian urban land which makes up more than 50 per cent of the value of its total assets.

Direct investment

Direct investment in Australia by foreign government investors must be notified regardless of the value of the investment.

Australia's foreign investment regime is concerned with investments that provide the investor with potential influence or control over the target (entity or asset(s)), including any offshore acquisition providing this over an Australian business or asset(s).

Any investment of an interest of 10 per cent or more is considered to be a direct investment.

Investments that involve interests below 10 per cent may also be considered direct investments if the acquiring foreign government investor is building a strategic stake in the target, or can use that investment to influence or control the target. In particular, an investment of less than 10 per cent which includes any of the following is considered to be a direct investment and must be notified:

- preferential, special or veto voting rights;
- the ability to appoint directors or asset managers;
- contractual agreements including, but not restricted to, agreements for loans, provision of services and off take agreements; or
- building or maintaining a strategic or long-term relationship with a target entity.

Retaining an interest of 10 per cent or more following the enforcement of a security interest¹⁹ is also considered a direct investment.

Foreign Government Investors

Foreign government investors include:

- a body politic of a foreign country;
- entities²⁰ in which governments, their agencies or related entities from a single foreign country have an aggregate interest (direct or indirect) of 15 per cent or more;
- entities in which governments, their agencies or related entities from more than one foreign country have an aggregate interest (direct or indirect) of 40 per cent or more; or
- entities that are otherwise controlled by foreign governments, their agencies or related entities, and any associates, or could be controlled by them including as part of a controlling group.

Foreign person

A foreign person is:

- a natural person not ordinarily resident in Australia;²¹
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate 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 two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

19 If a foreign government investor that is regulated by the Australian Prudential Regulation Authority as an Authorised Deposit taking Institution, see footnote 2.

20 Entities include companies, trusts and limited partnerships.

21 This may include some Australian citizens living abroad, except when they are acquiring Australian urban land.

Heritage listed

Commercial developed property is heritage listed where the property, or part of the property, is listed for its heritage value by a Government (Commonwealth, State or Territory, or local), or is subject to a heritage overlay or similar designation.

Joint tenants

Two or more persons that hold property jointly so that each owns an undivided share of the whole. Should one person die, their interest would pass to the surviving co-owner or co-owners.

Media sector

The media sector refers to daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media).

New Business

A new business includes:

- starting a business in Australia; or
- if already operating a business in Australia, commencing a new primary activity that is not incidental to an existing primary activity(s) and that falls within a different Division under the Australian and New Zealand Standard Industrial Classification as published by the Australian Bureau of Statistics.

New dwellings

A dwelling that has not been previously sold by the developer and has not been previously occupied (such as, by tenants) for more than 12 months.

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

New Zealand Investor

A New Zealand national; a New Zealand enterprise; or a branch of an entity located in New Zealand and carrying on business activities there.

New Zealand National

An individual who is a citizen, national or permanent resident of New Zealand. It does not include a person who is a national of the Cook Islands, Niue or Tokelau and is not permanently residing in New Zealand.

New Zealand Enterprise

A New Zealand enterprise is an entity constituted or organised under a law of New Zealand. The form in which the entity may be constituted or organised may be, but is not limited to, a corporation, a trust, a partnership, a sole proprietorship or a joint venture.

Branch of an Entity Located in New Zealand

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

Ordinarily resident

A person is ordinarily resident if:

- their continued presence in Australia is not subject to any limitation as to time imposed by law (that is, they are permitted to stay in Australia indefinitely, such as Australian permanent residents and New Zealand citizens); and
- the person has actually been in Australia for 200 or more days in the previous 12 months.

Prescribed sensitive sectors

The prescribed sensitive sectors are:

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

- the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of nuclear facilities.

Spouse

Spouse includes a de facto partner (whether of the same sex or a different sex) – that is, although they may not be legally married, they have a relationship as a couple and live together on a genuine domestic basis (sections 22A and 22B of the *Interpretation Act 1901*).

Substantial Interest (in a corporation)

A substantial interest occurs when a single foreign person (and any associates)²² has 15 per cent or more, or several foreign persons (and any associates) have 40 per cent or more, of the issued shares, issued shares if all rights were converted, voting power, or potential voting power, of a corporation.

When a person(s) has a substantial interest, they are taken to hold a *controlling interest*, unless the Treasurer is satisfied that, having regard to all the circumstances, the person(s) is not in a position to determine the policy of the corporation.

Substantial Interest (in a trust)

A substantial interest occurs when a single foreign person (and any associates)²³ has 15 per cent or more, or several foreign persons (and any associates) have 40 per cent or more, beneficial interest in the income or capital of the trust estate. Where the trustee has the power or discretion as to the distribution of the income or capital of the trust estate, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or capital that could be distributed to them.

Temporary resident

A person that is residing in Australia and:

- holds a temporary visa which permits them to stay in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or
- has submitted an application for permanent residency and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

United States Investor

A United States national; a United States enterprise; or a branch of an entity located in the United States and carrying on business activities there.

²² See section 6 of the *Foreign Acquisitions and Takeovers Act 1975* for the list of 'associates'.

²³ See section 6 of the *Foreign Acquisitions and Takeovers Act 1975* for the list of 'associates'.

United States National

A national of the United States of America, as defined in Title III of the Immigration and Nationality Act of the United States of America, or a permanent resident of the United States of America.

United States Enterprise

A United States enterprise is an entity constituted or organised under a law of the United States of America. The form in which the entity may be constituted or organised may be, but is not limited to, a corporation, a trust, a partnership, a sole proprietorship or a joint venture.

Branch of an Entity Located in the United States

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

Annex 2: Policy statement: foreign investment in agriculture

Australia is a capital hungry country that has always relied on foreign investment as a driver of employment and prosperity, including in our agricultural sector. Foreign investment plays an important role in maximising food production and supporting Australia's position as a major net exporter of agricultural produce, by financing investment, and delivering productivity gains and technological innovations.

Without foreign capital inflows, investment in Australia would be limited, resulting in lower food production with potentially higher food prices, as well as lower employment, lower incomes in the sector and lower government revenue. Foreign investment in agriculture supports agricultural production, job creation and contributes to the prosperity of rural communities and the broader Australian economy.

Australia's Foreign Investment Policy strikes the right balance between attracting foreign investment into Australia to support our economy, and ensuring that investments are not contrary to the national interest. This applies to investments in all sectors of the economy, including agriculture.

Under the Government's foreign investment screening arrangements, all proposed direct investments by foreign government investors, including in agriculture, must be reviewed.

Proposed investments by private investors in agribusinesses (including those involving agricultural land) are subject to the same thresholds that apply to other foreign acquisitions of Australian companies or business assets.

In assessing any application under the Government's foreign investment screening arrangements, the Government applies a rigorous national interest test. National interest considerations include the effect of investments on national security, competition, the economy, the community and other government policies. The Government also considers the type of investor and the extent to which an investor operates independently of foreign governments.

Consistent with these principles, the Government is committed to ensuring on a case by case basis that investments do not adversely affect the sustainability of Australia's national agricultural resources, including their economic, social and environmental contribution to Australia.

In assessing foreign investment applications in agriculture, the Government typically considers the effect of the proposal on:

- the quality and availability of Australia's agricultural resources, including water;
- land access and use;
- agricultural production and productivity;
- Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
- biodiversity; and
- employment and prosperity in Australia's local and regional communities.

In addition, all investors – both foreign and domestic – must comply with Australian law, irrespective of the value of the investment. An important example of this is the requirement for all investments to be consistent with Australia's national competition policy. The Australian Competition and Consumer Commission rigorously assesses all proposals that have the potential to raise competition concerns, including any potential competitive effects of agribusiness supply chain acquisitions by foreign investors. All potential investors must also obtain any other approvals, such as environmental approvals, that are required under Australian laws.

