



Australian Government  
Foreign Investment Review Board

FOREIGN  
INVESTMENT  
REVIEW BOARD

—  
ANNUAL REPORT  
14/15



# **Foreign Investment Review Board**

**Annual Report  
2014-15**

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8 April 2016

The Hon Scott Morrison MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer

I am pleased to present the annual report of the Foreign Investment Review Board for the year ended 30 June 2015. The report has been prepared in accordance with the Board's responsibility to advise the Government on foreign investment matters.

The 2014-15 year represented a significant period for foreign investment in Australia. The report outlines the activities of the Board and provides a summary of the year's foreign investment proposals.

On 1 December 2015, the Government's reforms to strengthen the foreign investment framework took effect. These reforms represent the largest change to the framework in around 40 years and the Board played a significant role in helping to design and implement the reform package. Discussions were held throughout 2014-15 at Board meetings on the options being put forward to reform the system with this advice being fed back to Government. The Board also reviewed the draft legislation and helped prepare the associated guidance material that has been released on the Foreign Investment Review Board website to assist investors.

As the Board noted in its submission to the Senate Standing Committee on Economics Inquiry into the provisions of the *Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015*, changes to the framework were needed to improve the integrity and community acceptance of the system. The Board supported strongly the reform package. It ensures the framework can keep up with the changing business landscape and community expectations, whilst also ensuring that Australia remains an attractive destination for much-needed foreign investment.

One of the key roles of the Board is to examine significant and sensitive foreign investment applications and advise on the national interest implications. The Board examined a range of high profile investment applications in 2014-15, including the acquisition of Toll Holdings by Japan Post and the acquisition of the John Holland Group by China Communications Construction Company.

Foreign investment into real estate continued its strong growth and was again the largest sector for foreign investment approvals at \$97 billion, accounting for around 50 per cent of the value of all approvals in 2014-15.

There were 36,841 residential real estate proposals approved in 2014-15, compared with 23,054 the year before. A large proportion of these approvals involved Chinese investors.

Investment by value in services, commercial real estate and mining were the next largest sectors accounting for 20, 19 and 14 per cent respectively. China was again the largest investor in 2014-15 in terms of the value of all approvals, with \$47 billion approved (around 33 per cent of the total value of approvals by foreign country), followed by the United States with \$25 billion approved (around 18 per cent of the total value of approvals by foreign country).

A key part of last year's reform package was increased compliance and enforcement around foreign investment in residential real estate. On 3 March 2015, the former Treasurer ordered the sale of a \$39 million Sydney property which had been purchased illegally by a foreign-owned company. This was the first divestment order issued in around ten years. Since the Australian Taxation Office (ATO) assumed responsibility for residential real estate in May 2015, a further 26 residential properties unlawfully held by foreign nationals will be sold as a result of the Government's initiatives. The Board actively monitors these compliance activities.

Another key role of the Board is to enhance awareness and understanding of Australia's foreign investment framework. We participated in a number of stakeholder information sessions that were run by Treasury and the ATO throughout the year to help investors and their advisors prepare for the reforms. These sessions were well received by stakeholders and have helped with the smooth transition to the new system.

In October 2015, the Executive Member of the Board and I visited China to further the Board's engagement with officials and potential investors. The visit focussed on the two-way investment relationship between Australia and China, as well as increasing understanding about the reforms to the foreign investment framework.

Finally, there have been a number of important changes to the size and composition of the Board since last year's annual report was published. Mr Hamish Douglass' and Ms Anna Buduls' terms expired after five years of service. On behalf of all members of the Board, I would like to take this opportunity to thank Hamish and Anna for the valuable contribution that they have made to the Board. I would also like to warmly welcome Ms Alice Williams, Mr David Irvine AO and Mr David Peever to the Board. They bring extensive corporate and national security expertise to the Board's consideration of foreign investment proposals.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Wilson', with a long, sweeping flourish extending to the right.

Brian Wilson  
Chairman

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# Main points

- In 2014-15, the number of foreign investment proposals continued to grow strongly. There were 37,953 proposals that received foreign investment approval,<sup>1</sup> compared with 24,102 in 2013-14.
  - The real estate sector had a significant increase in approvals with 37,347 approvals in 2014-15, compared with 23,428 approvals in 2013-14 and is more than triple the levels of 2012-13. The majority of this increase related to new dwellings approvals. This is consistent with the Government's policy to increase the housing stock by channelling foreign investment into new dwellings.
  - The number of approvals in other sectors was broadly unchanged with 592 approvals in 2014-15, compared with 585 approvals in 2013-14.
- Approvals in 2014-15 were given for \$194.6 billion of proposed investment, a 16.3 per cent increase on 2013-14.
  - This increase was largely due to continuing growth in residential real estate applications. Proposed investment in residential real estate increased from \$34.7 billion in 2013-14 to \$60.8 billion in 2014-15. There was also \$36.2 billion of proposed investment in the commercial real estate sector.
  - In other sectors, approved proposed investment in 2014-15 was \$97.7 billion, growing at a more moderate pace of around 5.3 per cent.
- Outside of real estate, the major industries for proposed investment in 2014-15 were services (\$38.8 billion), mineral exploration and development (\$26.7 billion), and manufacturing (\$19.5 billion). Investment by industry is subject to large variations year-by-year due to the impact of large one-off transactions.
- The United States remains Australia's dominant inward investor country, accounting for around 23.7 per cent<sup>2</sup> of the total stock of foreign direct investment as at the end of 2014. China (\$46.6 billion) remains the largest source country for approved proposed investment in 2014-15 although this growth remains from a low base. China is the fifth largest source country in respect of the stock of foreign direct investment, accounting for around 4.4 per cent<sup>3</sup> of the total stock.
- In 2014-15, no proposals were rejected (compared with three rejected proposals in 2013-14) but conditions were applied to around 40 per cent of all foreign investment approvals. One divestment order was made in March 2015. It related to a Sydney property which had been illegally purchased by a foreign-owned company. A significant reform package was announced to strengthen compliance with the foreign investment rules.

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1 The sectoral breakdown below excludes 85 reorganisations.

2 Source: Australian Bureau of Statistics, Catalogue 5352.0, Table 2.

3 Source: Australian Bureau of Statistics, Catalogue 5352.0, Table 2.





FOREIGN  
INVESTMENT  
REVIEW BOARD

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**CHAPTER 1**



# Foreign Investment Review Board

The Foreign Investment Review Board (the Board) is a non-statutory body established in 1976 to advise the Treasurer and the Government on foreign investment matters. The Board's annual reports, which are not statutorily mandated, outline the activities of the Board and provide data on foreign investment proposals. This chapter covers the role of the Board and its administration of the foreign investment framework.

The Board's functions are advisory only. Responsibility for making decisions rests with the Treasurer. The role of the Board, including through its secretariat, is to:

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

## Board membership

During 2014-15, the Board comprised five part-time members and a full-time Executive Member. The part-time Board members were Mr Brian Wilson (Chairman), Mr Hamish Douglass, Ms Anna Buduls, Mr Michael D'Ascenzo AO and Mr Patrick Secker. Mr Douglass and Ms Buduls' terms on the Board ended during 2014-15. Transitioning into 2015-16, the Board currently comprises six part-time members and a full-time Executive Member. We welcome Ms Alice Williams, Mr David Irvine AO and Mr David Peever to the Board.



**Mr Brian Wilson** was appointed to the Board on 10 December 2009 and appointed Chairman on 16 April 2012. He is also Chancellor of the University of Technology Sydney, a non-executive director of Bell Financial Group and a member of the Payments System Board of the Reserve Bank of Australia. He was a member of the Commonwealth Government Review of Australia's Superannuation System, the Specialist Reference Group on the Taxation of Multinational Enterprises in Australia and the Australian Taxation Office (ATO) Superannuation Reform Steering Committee. Mr Wilson retired in 2009 as a Managing Director of the global investment bank Lazard, after co-founding the firm in Australia in 2004 and was previously a Vice-Chairman of Citigroup Australia and its predecessor companies.



**Mr Hamish Douglass** was appointed to the Board on 10 December 2009. He has extensive experience in global investment management and in the origination and execution of corporate finance transactions and in particular, public company mergers and acquisitions. He is the Co-Founder, Chief Executive Officer and Chief Investment Officer of Magellan Financial Group, a specialist global fund management group that is listed on the Australian Securities Exchange. He was previously Co-Head of Global Banking for Deutsche Bank AG in Australia and New Zealand. He is a former member of: the Australian Government's Takeovers Panel; the forum of the Young Global Leaders (a forum of the World Economic Forum); and the Financial Literacy Board. Mr Douglass' term ended on 9 December 2014.



**Ms Anna Buduls** was appointed to the Board on 15 July 2010. Through her corporate advisory work and 21 years of non-executive company directorships, Ms Buduls has gained wide commercial experience across a broad range of companies and industries, including the agriculture sector. She is currently owner and Chairman of a travel software group and is a non-executive director of the listed company SAI Global Ltd (since October 2003). Ms Buduls was also one of the three Australian members on the APEC Business Advisory Council for three years to the end of 2014. Ms Buduls' term ended on 14 July 2015.



**Mr Michael D'Ascenzo AO** was appointed to the Board on 2 January 2013. Mr D'Ascenzo is recognised internationally for his leadership and expertise in taxation, administration, governance and policy. Mr D'Ascenzo was Commissioner of Taxation from January 2006 to December 2012. In January 2010 he was appointed an Officer of the Order of Australia for service to public administration and in 2012 he was awarded the Chartered Accountants' Federal Government Leader of the Year. Mr D'Ascenzo is currently also a non-executive director of Australia Post and a member of the Clean Energy Regulator, as well as an adjunct professor at the University of New South Wales and a professorial fellow at Melbourne University.



**Mr Patrick Secker** was appointed to the Board on 17 December 2013 and brings extensive agricultural sector experience to the Board. He was a primary producer, agricultural retailer and company director before entering politics as the member for the rural South Australian electorate of Barker. Mr Secker has a degree in economics and has participated in a number of parliamentary agricultural committees over many years. His parliamentary career included serving positions as Opposition Whip and Deputy Speaker of the House of Representatives. Mr Secker has also served as an elected member in local government for 11 years including deputy mayor, chairman of various committees including planning, library, development plan and works. He also chaired the Southern and Hills LGA and co-chaired the South Australian Government Mt Lofty Ranges Strategy Review.



**Mr Rob Donnelly** commenced as Executive Member of the Board on 15 September 2014. The position of Executive Member is held by the Division Head of Treasury's Foreign Investment and Trade Policy Division (the Division). The Executive Member provides the link between the Board and the Division, which provides secretariat support to the Board.

## Board members appointed since 2014-15



**Ms Alice Williams** was appointed to the Board on 16 July 2015. Ms Williams has over 25 years of senior management and Board level experience in corporate and Government sectors. Ms Williams was previously a Director at JP Morgan, NM Rothschild and Ansett Australia. She has been a consultant to listed corporations in Australia and the Gulf States and State and Federal regulatory bodies. She is a former director of the Australian Accounting Standards Board, State Trustees and a Commissioner of the Victorian Competition and Efficiency Commission. Ms Williams' current directorships include Cooper Energy Ltd, Equity Trustees Ltd, Djerriwarrh Investments Ltd, Defence Health, Guild Group, Barristers Chambers Limited and the Port of Melbourne Corporation.



**Mr David Irvine AO** was appointed to the Board on 3 December 2015. Mr Irvine has significant national security expertise as a former Director-General of both the Australian Security Intelligence Organisation and the Australian Secret Intelligence Service. He is also a former Australian Ambassador to China and former Australian High Commissioner to Papua New Guinea. In 2005, Mr Irvine was awarded an Officer of the General Division of the Order of Australia for services furthering Australian international interests. He is currently a visiting Fellow of the National Security College at the Australian National University.



**Mr David Peever** was appointed to the Board on 1 February 2016. Mr Peever retired as Managing Director of Rio Tinto Australia in October 2014 after 27 years with Rio Tinto. Mr Peever is also Chairman of Cricket Australia and a Director of the International Cricket Council, a Non-Executive Director of the Australian Foundation Investment Company and the Melbourne Business School. He is a member of the Prime Minister's Indigenous Advisory Council and the Chief of Defence's Gender Equality Advisory Board. He chaired the Minister of Defence's First Principles Review of Defence and following the acceptance of the Review by Government, now chairs the Oversight Board which helps guide implementation of the Review's recommendations. Mr Peever is also a non-executive director of the Stars Foundation.

## The role of Treasury's Foreign Investment and Trade Policy Division and the Australian Taxation Office

The Division provides advice to the Government on foreign investment issues and leads Treasury's work on trade policy. The Division provides secretariat support to the Board and is responsible for the day to day administration of the foreign investment framework in relation to business, agriculture and commercial land proposals. This involves engagement across government agencies, within Treasury and also as a contact point for foreign investors and their representatives or agents.

Since May 2015, the Board has also been supported by the ATO which administers foreign investment into residential real estate. Initially, the ATO focussed on residential real estate compliance activities but since 1 December 2015, the ATO has been responsible for the administration of all aspects of foreign investment in residential real estate. The ATO also has responsibility for the collection of foreign investment application fees and for administering the register of foreign ownership of agricultural land.

### **Box 1.1: Foreign investment reforms**

Following public consultation, on 2 May 2015, the Government announced a package of reforms to strengthen the foreign investment framework. These reforms commenced on 1 December 2015 and provide stronger enforcement of the rules, a better resourced system and clearer rules for foreign investors. The reforms included:

- increased enforcement of the residential real estate rules by establishing a dedicated unit (comprising 50 officers) within the ATO to review cases and strengthen compliance;
- stricter and more flexible penalties to make it easier to pursue foreign investors that breach the rules;
- application fees to ensure that Australian taxpayers no longer have to fund the cost of administering the system;
- increased scrutiny around agricultural investments by lowering the applicable thresholds;
- improved transparency through a comprehensive register of foreign ownership of agricultural land that commenced collecting data from 1 July 2015; and
- an overhaul of the legislation to make it clearer and more modern.

The Government has also negotiated with the states and territories to use land titles data to expand the agricultural land register to include all land, including residential real estate. As part of the parliamentary passage of the foreign investment reforms, the Government also agreed to pass legislation by 1 December 2016 to establish a register of foreign ownership of water entitlements.

The Board played a significant role in helping to design and implement the reform package. Discussions were held throughout 2014-15 at Board meetings on the options being put forward to reform the system with this advice fed back to Government. The Board also reviewed the draft legislation and helped prepare the associated guidance material that has been released on the Board's website to assist investors.

## **Administration of the foreign investment framework**

The Board provides advice on the application of the foreign investment framework across the range of proposals received by the Division and on foreign investment policy issues. It provides specific advice on the more significant applications received and also reviews the general handling of other applications. The Board performs this role with the benefit of weekly reports prepared by the Division on proposals received and through regular meetings and discussions with the Executive Member and Divisional officers. Formal Board meetings are generally held monthly, with telephone discussions taking place in the intervening weeks. The Board members draw on their considerable collective and individual professional and commercial experience in discharging their advisory role.

## **Examination and approval process**

The examination of foreign investment proposals is rigorous. The assessment process seeks to ensure that particular proposals are not contrary to Australia's national interest. In fulfilling this objective, the Division, and where appropriate the Board, examine proposals with a view to identifying any sensitivities regarding the national interest and determining whether these sensitivities can be mitigated or managed.

### **Consideration timeframe**

The Act requires that a decision be made within 30 calendar days of an application being lodged and provides up to a further 10 calendar days for the applicant to be advised of the decision. If a decision has not been made within this time and the applicant has not been advised, the application is deemed to be 'approved' since 'no objection' to the proposal has been made.

As it is sometimes not possible to make a decision on a particular proposal within the statutory time limit, the Treasurer can issue an Interim Order extending the timeframe up to a further 90 days. Interim Orders are normally only issued if a proposal is complicated or where insufficient information has been provided.

If the applicant considers the timeframe for assessing their case is insufficient, or they do not wish for an Interim Order to be made (which has to be published in the Commonwealth of Australia Gazette), they can voluntarily extend the period. There is no limit on the number of times the decision period can be extended.

### **Initial examination**

Proposals are initially examined by the Division in its role as Board Secretariat. The Board has direct and early involvement in significant or sensitive applications. The preliminary assessment seeks to determine whether an application meets the notification requirements for a proposal in so far as the Act applies, whether the application contains sufficient detail and that the correct application fee has been paid. Timing is also considered, including deadlines that are commercially important to the applicant.

The applicants or their representatives may be contacted to discuss their proposal at an early stage. This is particularly likely where a proposal is complex, information is inadequate, or the proposal raises potential national interest sensitivities. The examination process, including consultation on proposals, is assisted by applicants providing complete and accurate information about their proposal at the time of lodgement.

### **Consultation arrangements**

In examining significant proposals, consultations are undertaken by the Board's secretariat with Australian, state and territory government departments, national security agencies and authorities with responsibilities relevant to the proposals. Advice and comments provided by such agencies are important in assessing the implications of proposals and in particular, in determining whether they raise any national interest issues. Such consultations are undertaken on a strictly confidential basis to protect information provided by the applicants. The Board regards this liaison with key stakeholders as an integral part of the administration of the foreign investment framework. The Board may also receive unsolicited submissions from third parties.

### **National interest factors**

The Act empowers the Treasurer to prohibit an investment if satisfied it would be contrary to the national interest. However, the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy.

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest. However, to provide certainty for investors, the Government has provided general guidance on the national interest factors that the Board typically considers when assessing foreign investment proposals.

The foreign investment framework outlines the types of residential real estate that foreign persons may buy and whether they need foreign investment approval to do so, including whether an approval is generally subject to conditions. All residential real estate applications are considered in light of the overarching principle that foreign investment in residential real estate should increase Australia's housing stock.

### **Box 1.2: Reviewing the national interest — infrastructure privatisation**

The Board encourages early engagement from foreign investors with the FIRB Secretariat to ensure proposals are fully understood and that any national interest issues can be identified early in the process. This helps ensure that applications can be progressed in a timely fashion.

The various programs of asset sales by the state and territory governments present a particular challenge, as these often involve key infrastructure assets of national significance. During 2014-15, FIRB commenced a process of engagement with state and territory governments and bidders in the privatisation of public assets, including the first tranche of sales of NSW electricity assets. Consultations with State governments and their investment advisers, potential bidders, and relevant Commonwealth agencies, allowed potential national interest concerns to be considered and mitigations developed early in the privatisation process.

The FIRB Secretariat engaged with the NSW Government and relevant Commonwealth agencies for over 12 months before the finalisation of the 99 year lease of TransGrid, the NSW electricity transmission network. This preliminary work resulted in constructive engagement between the FIRB Secretariat, the NSW Government and its investment advisers, potential bidders and other Commonwealth agencies.

As a result of extensive consultation, the Treasurer imposed safeguards on TransGrid's new owners that mitigated potential national interest concerns in respect of continuity of electricity supply and of protection of data. The conditions included guarantees about Australia's involvement in the management of the network. The Treasurer's media release of 25 November 2015 provides further details about the proposal.

For business, agriculture and commercial land acquisitions, assessing the national interest allows the Government to balance potential sensitivities against the benefits of foreign investment. The Government typically considers the following factors when assessing foreign investment proposals:

- national security;
- competition;
- impact on other Government policies (including taxation);
- impact on the economy and the community; and
- the character of the investor.

The Policy provides guidance on the above factors, as well as guidance on additional factors considered when examining investments in the agricultural sector, or investment involving foreign government investors.

### **Decision making process**

The Treasurer has provided a delegation to the Executive Member and other senior Division staff to make decisions on foreign investment proposals that are consistent with the Government's framework or do not involve issues of special sensitivity. The majority of proposals, mostly real estate, were decided under this delegation in 2014-15. These arrangements streamline the approval process and facilitate a timely decision on applications.

When assessing more significant proposals, the Board's approach is to work closely with applicants. If a foreign investment proposal raises potential national interest concerns, these concerns are discussed with the applicant and the applicant is provided an opportunity to comment and have these considered. If the applicant proposes mitigating actions, these will also be taken into account.

Where the Treasurer considers that an application raises no national interest concerns or that any concerns are adequately addressed by conditions, the applicant is notified in writing of no objection or no objection subject to conditions. Once an applicant receives a no objection or no objection subject to condition notification, the applicant may proceed with the proposal. If national interest concerns remain and may not be able to be addressed, the proposal may be blocked by the Treasurer.

Decisions are advised in writing to the applicants or their representatives or agents. Applicants will generally have 12 months from notification to implement their proposal. Should a proposal materially change after a decision is made then a further notification would be required. Where the Treasurer makes a decision on a significant proposal, the Treasurer may also issue a media release.

### **Handling of commercially sensitive and personal information**

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

In the event that access to confidential information is sought for purposes other than the assessment of an application, the Act contains explicit provisions on the circumstances in which information may be used or disclosed. This can include the administration of specified Commonwealth statutes, information disclosed to certain law enforcement bodies and information provided with written consent. Unauthorised disclosure of protected information under the Act is an offence subject to a maximum of two years imprisonment, a \$21,600 fine, or both.

Under the *Freedom of Information Act 1982* (FOI Act), the Division received 22 freedom of information applications concerning foreign investment matters in 2014-15, (28 in 2013-14). The FOI Act provides criteria to determine whether particular documents or parts of documents are available or exempt from release. These include, for example, that the document contains commercially sensitive information where its release would cause harm to its provider. In line with the provisions of the FOI Act, the Division may consult with the parties to a proposal about documents they provided which are the subject of a freedom of information request, to seek their views on the possible release of documents to a freedom of information applicant.

## **Monitoring and compliance activity**

The Act provides wide-ranging powers to enforce the decisions made, including the ability to:

- order the unwinding or divestment (by requiring the parties to sell shares, assets or property) of transactions that have gone ahead, without prior foreign investment approval having been obtained, where that purchase was contrary to the national interest;
- prosecute a foreign person (including a natural person or a company) that failed to obtain prior approval;
- prosecute a foreign person that failed to comply with an order to sell shares, assets or property; and
- prosecute a foreign person that failed to comply with conditions attached to any approval granted under the Act.

In examining proposals, the applicant's compliance with any conditions relating to past proposals is taken into account. Instances of failure to comply with conditions may result in future proposals being rejected. It is general policy to report potential breaches of the Act to the Department of Immigration and Border Protection, the ATO, the Australian Federal Police, national security agencies and other government agencies as appropriate.

General compliance and monitoring work includes the following activities:

- educating and providing information to individuals and organisations affected directly and indirectly by the foreign investment framework. Activities include presenting at industry forums and seminars, providing information such as the Guidance Notes and the Investor Obligations – Fact Sheets (which are available on the Board's website); responding to written enquiries and providing information through the general enquiries helpline and the compliance hotline;

- monitoring to ensure that foreign persons are complying with the conditions of their approvals. This involves cooperation with relevant members of the business community, local government authorities, the legal profession and on occasions, the general public;
- systemic investigations of compliance performance, including through data analysis and interpretation of trends using internal as well as external information sources. These investigations include analysis of retrospective case histories, reviews of shareholding structures among listed Australian companies and regular monitoring of property market leasing activity;
- interagency cooperation and liaison with a range of government agencies including relevant national security agencies, the Department of Immigration and Border Protection, the ATO, the Australian Securities and Investments Commission and the Australian Federal Police; and
- case investigations triggered by information received from members of the public.

Since May 2015, the ATO has had responsibility for compliance activities around foreign investment and residential real estate. Compliance teams within the ATO receive intelligence from:

- self-reporters taking advantage of the reduced penalty period (that applied between 2 May 2015 and 30 November 2015);
- community information including media referrals; and
- cases identified through ATO data matching (the ATO matches its own taxpayer data with a variety of third party sources, including Treasury data on past foreign investment approvals, immigration, Australian Transaction Reports and Analysis Centre (AUSTRAC), banking data and state and territory land title offices).

Investigations typically involve a case officer checking the visa type of the foreign person using immigration data held within the ATO, checking the land titles data (also held within the ATO) then determining whether a breach has occurred. In some cases the source of funds is also investigated and liaison with the Australian Federal Police, AUSTRAC and the Australian Crime Commission may occur.

## **Information, advice and education**

In keeping with the Board's role of fostering awareness and understanding of Australia's foreign investment framework, the Division and the ATO regularly engage with potential foreign investors, their representatives or agents and Australian businesses to provide information on the operation of the framework and its application, including to specific proposals.

The Division and the ATO also provide dedicated telephone enquiry lines, compliance hotlines for people wanting to raise potential compliance issues, an email address and a website, [www.firb.gov.au](http://www.firb.gov.au), for people seeking information or advice.

## 2014-15 Outcomes

### Cost of the Board's operations

Total Board expenses in 2014-15 were \$339,586 (\$328,048 in 2013-14). Remuneration of Board members was around 90 per cent of total Board expenses, with the remainder expended on travel, car hire and incidentals. Board members' fees are determined by the Remuneration Tribunal.

Total expenses of the Division for 2014-15 were \$4.4 million (\$3.9 million in 2013-14). These expenses mainly comprised employee salary (including superannuation and accruing leave entitlements) and administrative costs. Over the course of 2014-15, the Division employed an average of 31 Treasury staff. As at the end of June 2015, the Division comprised 37 full time Treasury staff and a number of external contractors and consultants including lawyers from the Australian Government Solicitor.

The ATO also spent around \$0.168 million in 2014-15 preparing for the transfer of the new foreign investment functions and on compliance activities.

### Consideration of proposals and enquiries

In 2014-15, a total of 38,932 applications for foreign investment approval were considered, with 37,953 approved, zero rejected, 799 withdrawn and 180 exempt as not subject to the Policy or the Act. Of the 37,953 applications decided in 2014-15 (that is, those approved or rejected but not those withdrawn or exempt), 37,167 were decided within the Division under the Treasurer's delegation and 786 were decided by a Treasury minister.

In 2014-15, three non-residential real estate related Interim Orders were published in the Commonwealth of Australia Gazette.<sup>4</sup> No Final Orders were made. Final Orders are issued where a proposal is considered to be contrary to the national interest.

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

Divestiture Orders are issued where an acquisition has already occurred and is subsequently assessed as being contrary to the national interest. One Divestiture Order was made in 2014-15. It related to a \$39 million Sydney property which had been purchased illegally by a foreign-owned company. This was the first Divestiture Order issued in around ten years.

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

Of the 37,953 applications decided in 2014-15 (that is, those approved or rejected but not those withdrawn or exempt), over 99 per cent of proposals were decided within 30 days. Proposals that take more than 30 days to decide are generally delayed by a lack of sufficient information from the parties, or because the application involved significant complexity or sensitivity.

## Regulator Performance Framework

The Board, as a Commonwealth regulator, is subject to the Regulator Performance Framework that was established by the Australian Government in 2014. It encourages regulators to minimise the regulatory burden created through their administration.

The Regulator Performance Framework establishes a common set of six outcomes-based key performance indicators that allow for the comprehensive assessment of regulator performance and their engagement with stakeholders. The six key performance indicators are:

- regulators do not unnecessarily impede the efficient operation of regulated entities;
- communication with regulated entities is clear, targeted and effective;
- action undertaken by regulators is proportionate to the regulatory risk being managed;
- compliance and monitoring approaches are streamlined and coordinated;
- regulators are open and transparent in their dealings with regulated entities; and
- regulators actively contribute to the continuous improvement of regulatory frameworks.

Consistent with the Regulator Performance Framework, the Board has established a set of metrics that will be used from 2015-16 to make an annual assessment of the Board's performance. It is intended that these results will be published in future annual reports. Further information is available on the website, [www.firb.gov.au](http://www.firb.gov.au).





FOREIGN  
INVESTMENT  
PROPOSALS

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**CHAPTER 2**



# Foreign investment proposals

This chapter provides an overview of applications considered in 2014-15. It provides information on proposed investments that fall within the scope of Australia's Foreign Investment Policy (the Policy) and the *Foreign Acquisitions and Takeovers Act 1975* (the Act).<sup>5</sup> The Policy (including historical versions) and the Act can be accessed through the Board's website, [www.firb.gov.au](http://www.firb.gov.au).

The term 'proposed investment' is used widely throughout this report. The value of proposed investment is the aggregation of the following estimates at the time of the approval:

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

## Features of the Foreign Investment Review Board statistics

The data reported in this section are based on approvals for proposed rather than actual direct investments above certain notification thresholds that differ by country and type of investor. There are a number of caveats that need to be applied in interpreting this data and these are set out in Appendix A.

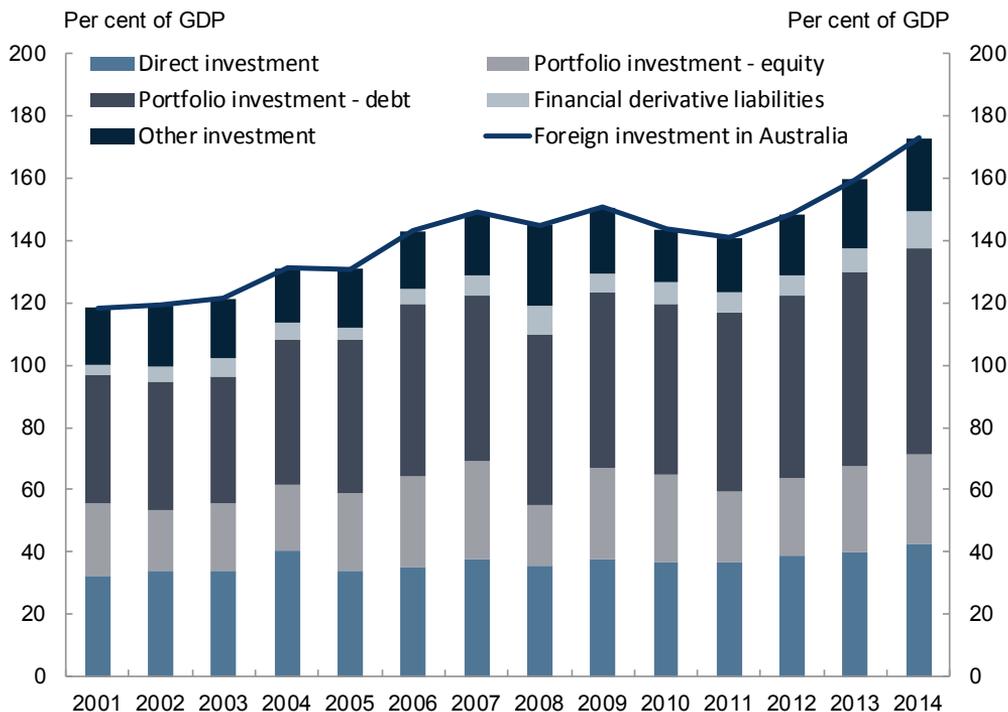
The approvals data do not measure total foreign investment made in any year or changes in net foreign ownership levels in Australia. Trends in actual investment are measured by the Australian Bureau of Statistics (ABS) and show a more stable trend over time than the approvals data.

Chart 2.1 shows that the foreign direct investment component of inward investment, which is the component that relates the most closely to foreign investment approvals, has made a steady contribution to the Australian economy over the past decade.

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<sup>5</sup> From 1 December 2015, the Government's reforms to strengthen the foreign investment framework took effect (including a rewrite of the Act). This report has been prepared in accordance with the provisions of the Act and the Policy that were in place in 2014-15. Reporting from 2015-16 onwards will reflect the new provisions in the Act.

**Chart 2.1: Forms of foreign investment into Australia (ABS data)**



Source: ABS catalogue 5352.0, Table 2 — International Investment Position, Australia: Supplementary Statistics, 2014.

## Applications considered

This section analyses all investment proposals that were finalised (approved, rejected, withdrawn or exempt) during 2014-15, irrespective of the date they were submitted. Corporate reorganisations are included here (85 in 2014-15), whereas they are excluded from the analysis of approved investment provided later in this chapter.<sup>6</sup> Corporate reorganisations occur across a range of sectors, including real estate.

<sup>6</sup> The proposed acquisition costs and development expenditure are not recorded for corporate reorganisations.

The number of applications considered during 2014-15 was 38,932. Table 2.1 provides a breakdown of the number of applications considered over the past six years, according to the outcome of proposals:

- Of the 37,953 applications **approved** in 2014-15, 16,446 were approved subject to conditions and 21,507 without conditions being imposed. All but 12 conditional approvals were in the real estate sector.
  - Real estate conditions ordinarily imposed at that time include those relating to the period during which development must commence, requiring temporary residents to reside in and then sell established dwellings when they cease to reside in them, and reporting requirements.
  - Conditions are only imposed on a small number of business proposals where specific national interest concerns must be mitigated or managed. Conditions imposed during 2014-15 related to national security, maintaining Australian representation on the boards of target companies, and regular reporting of certain activities.
- No proposals were **rejected** in 2014-15 (compared with three rejections in 2013-14).
- In 2014-15, 799 proposals were **withdrawn** by the applicants. Of these, around 88 per cent involved real estate proposals. Many of the real estate related withdrawals resulted from applicants submitting concurrent or a series of applications (often for properties that were to be auctioned and for which they intended to bid), and once one property had been purchased, subsequently withdrawing the remaining applications. In other cases, proposals were withdrawn because the investment was deferred or the applicant decided not to proceed for commercial reasons.
  - In some circumstances, business proposals may have been withdrawn and resubmitted in order to extend the statutory deadline, particularly if there were concerns about the issuing of an Interim Order, the details of which would be published in the Commonwealth of Australia *Gazette*.
- During 2014-15, 180 proposals were determined to be **exempt** compared with 181 in 2013-14. Some applications received were determined to be outside the scope of the Policy or the scope of the Act, because they were exempt under the *Foreign Acquisitions and Takeovers Regulations 1989*. The existence of these particular applications reflected advice in the Policy that foreign investors submit proposals if they have any doubt as to whether the proposals are notifiable.

**Table 2.1: Applications considered: 2009-10 to 2014-15  
(number of proposals)**

Outcome	2009-10 No.	2010-11 No.	2011-12 No.	2012-13 No.	2013-14 No.	2014-15 No.
Approved unconditionally	2,672	4,606	4,900	5,535	12,307	21,507
Approved with conditions	1,729	5,687	5,803	7,196	11,795	16,446
<b>Total approved</b>	<b>4,401</b>	<b>10,293</b>	<b>10,703</b>	<b>12,731</b>	<b>24,102</b>	<b>37,953</b>
Rejected	3	43	13	-	3	-
<b>Total decided</b>	<b>4,404</b>	<b>10,336</b>	<b>10,716</b>	<b>12,731</b>	<b>24,105</b>	<b>37,953</b>
Withdrawn	167	390	534	446	719	799
Exempt	132	139	170	145	181	180
<b>Total considered</b>	<b>4,703</b>	<b>10,865</b>	<b>11,420</b>	<b>13,322</b>	<b>25,005</b>	<b>38,932</b>

Note: Figures include corporate reorganisations (85 in 2014-15).  
The 2009-10 figures were impacted by changes to the screening arrangements for residential real estate, as announced in April 2010.

## Applications decided

This section analyses all proposals that were approved (either with or without conditions) or rejected during 2014-15, irrespective of the date they were submitted. Corporate reorganisations are included.

The introduction of changes in 2009 and 2010 to the screening arrangements for temporary residents purchasing residential real estate has impacted the comparability of the data across years in this section. Table 2.2 provides a breakdown of proposed investment according to the outcome of applications decided for the corresponding period provided in Table 2.1.

**Table 2.2: Applications decided: 2009-10 to 2014-15  
(value of proposed investment)**

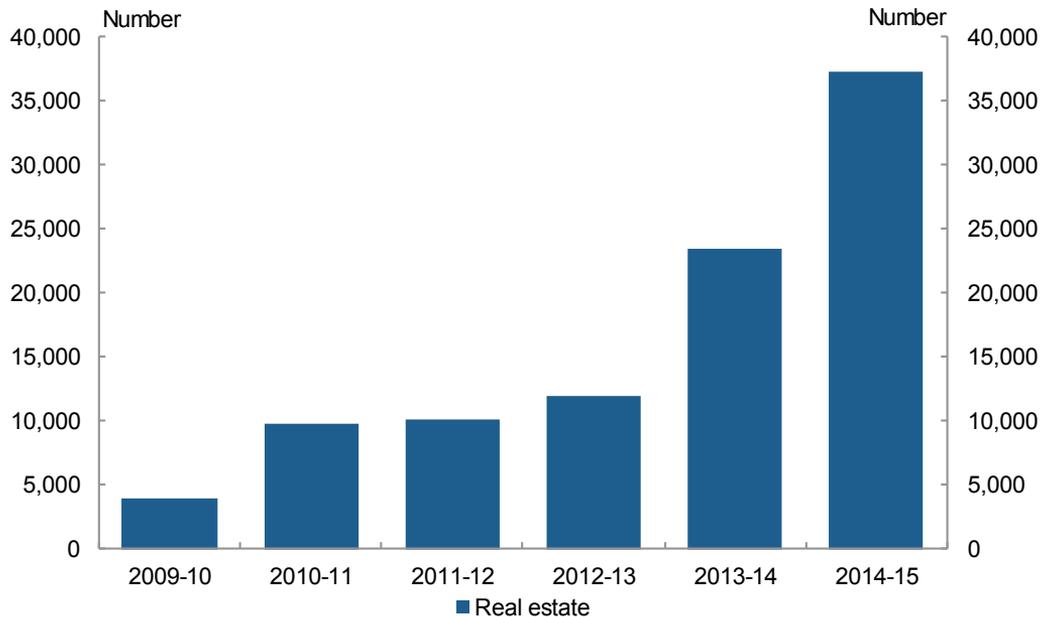
Outcome	2009-10 \$b	2010-11 \$b	2011-12 \$b	2012-13 \$b	2013-14 \$b	2014-15 \$b
Approved unconditionally	125.3	145.7	137.5	108.7	125.3	157.1
Approved with conditions	14.2	31.0	33.2	27.0	42.1	37.5
<b>Total approved</b>	<b>139.5</b>	<b>176.7</b>	<b>170.7</b>	<b>135.7</b>	<b>167.4</b>	<b>194.6</b>
Rejected	0.0	8.8	0.2	-	2.2	-
<b>Total decided</b>	<b>139.5</b>	<b>185.5</b>	<b>170.8</b>	<b>135.7</b>	<b>169.6</b>	<b>194.6</b>

Note: Totals may not add due to rounding.  
'0.0' indicates a figure of less than \$50 million.  
Including corporate reorganisations (85 in 2014-15, including 20 in the real estate sector).  
The 2009-10 figures were impacted by changes to the screening arrangements for residential real estate, as announced in April 2010.

Charts 2.2, 2.3 and 2.4 display the figures from Table 2.1 and Table 2.2 to show the difference over the past six years between applications decided within the real estate and non-real estate sectors (other sectors) by number of proposals and value of proposed investment.

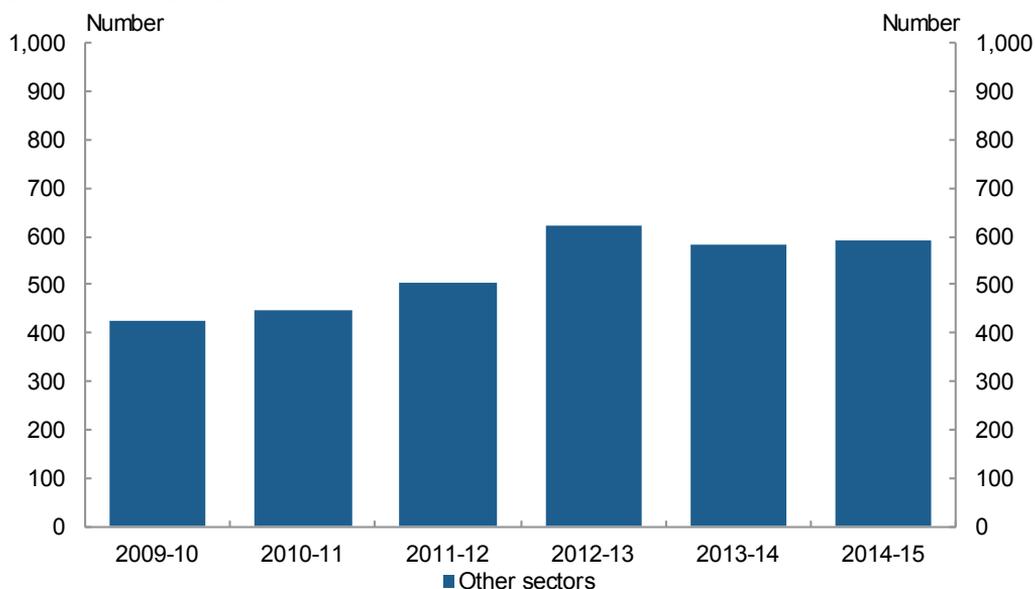
Charts 2.2 and 2.3 show that, by number, most of the applications decided were within the real estate sector. Chart 2.4 shows that, by value, slightly more of the proposed investment occurred in non-real estate sectors in 2014-15.

**Chart 2.2: Real estate applications decided 2009-10 to 2014-15 (number of proposals)**

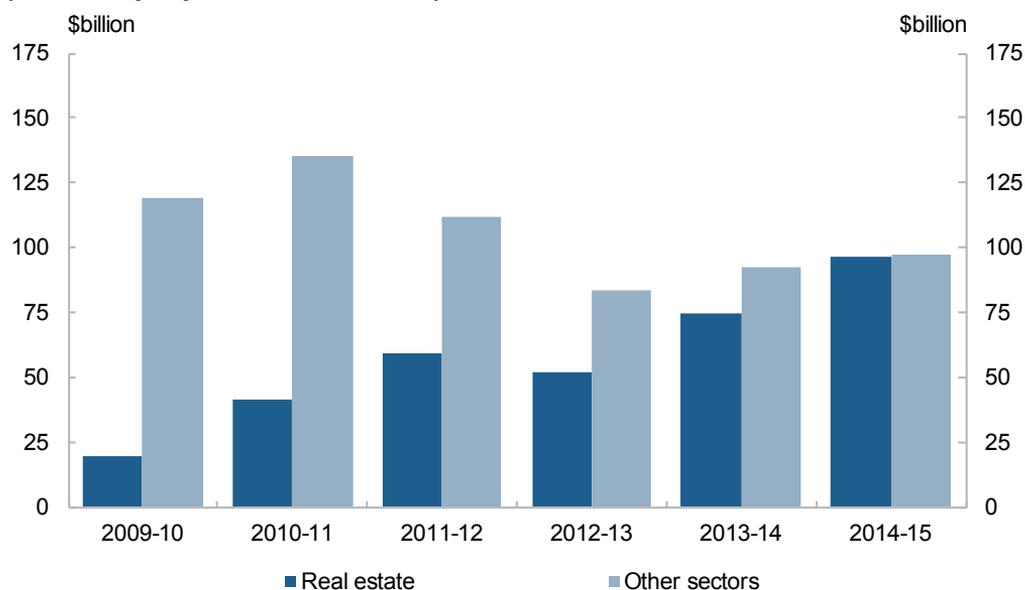


Note: Real estate includes number of proposals decided for commercial and residential real estate.

**Chart 2.3: Non-real estate applications decided 2009-10 to 2014-15 (number of proposals)**



**Chart 2.4: Applications decided 2009-10 to 2014-15 (value of proposed investment)**



Note: The 2009-10 real estate figures were impacted by changes to the screening arrangements for residential real estate, as announced in April 2010.

The value of approvals during 2014-15 has not increased as much as the number of approvals due to the increase in low value applications. In 2014-15, 30,462 proposals were approved with a value below \$1 million. These approvals were predominantly small real estate transactions and are shown in Table 2.3.

## Approvals by value

This section analyses applications approved during 2014-15 (excluding corporate reorganisations). Table 2.3 shows approvals over the past four years by the value of proposed investment.

The overwhelming majority of approvals in the categories below \$50 million relate to real estate (because of the monetary screening thresholds). There continued to be a significant increase in the number of residential real estate approvals in 2014-15, growing by 60 per cent. Real estate approvals in 2014-15 have more than tripled since 2012-13.

**Table 2.3: Total approvals by value: 2011-12 to 2014-15**

Value of proposal	2011-12		2012-13		2013-14		2014-15	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
< \$1 million	8,770	4.43	10,458	5.42	19,696	10.74	30,462	16.79
≥ \$1 million & < \$50 million	1,421	8.3	1,793	9.4	3,884	13.35	6,889	19.34
≥ \$50 million & < \$100 million	126	9.0	159	11.1	159	11.47	174	12.66
≥ \$100 million & < \$500 million	229	51.8	188	40.9	200	43.55	266	55.01
≥ \$500 million & < \$1 billion	44	28.3	31	22.2	38	24.45	46	30.80
≥ \$1 billion & < \$2 billion	24	34.3	12	18.7	23	26.28	24	30.78
≥ \$2 billion	8	35	6	28	13	37.55	7	29.24
<b>Total</b>	<b>10,622</b>	<b>170.7</b>	<b>12,647</b>	<b>135.7</b>	<b>24,013</b>	<b>167.39</b>	<b>37,868</b>	<b>194.62</b>

Note: Totals may not add due to rounding.  
Excludes corporate reorganisations (85 in 2014-15).

## Approvals by sector

Table 2.4 shows applications approved in 2014-15 by industry sector. Chart 2.5 shows the sectoral distribution of approved proposed investment in 2014-15. Corporate reorganisations are excluded (85 in 2014-15).

- The 2014-15 period was marked by a significant reduction in investments into the services sector (down by \$14.7 billion) driven by the effects of asset sales in the previous year. This was more than offset by increases in investments into the manufacturing sector (up by \$9.1 billion), finance and insurance sector (up by \$5 billion) and mineral exploration & development sector (up by \$4.2 billion).
- There was an increase in the value of investment in 2014-15 when compared with 2013-14 in agriculture, forestry and fishing; finance and insurance; manufacturing; mineral exploration and development; and real estate.
  - The increase in number and value of investment into the agriculture, forestry and fishing sector may be linked to the 1 March 2015 policy change that lowered the screening threshold for investment in agricultural land.
- In 2014-15, real estate remained the largest industry sector by number and value of approvals.

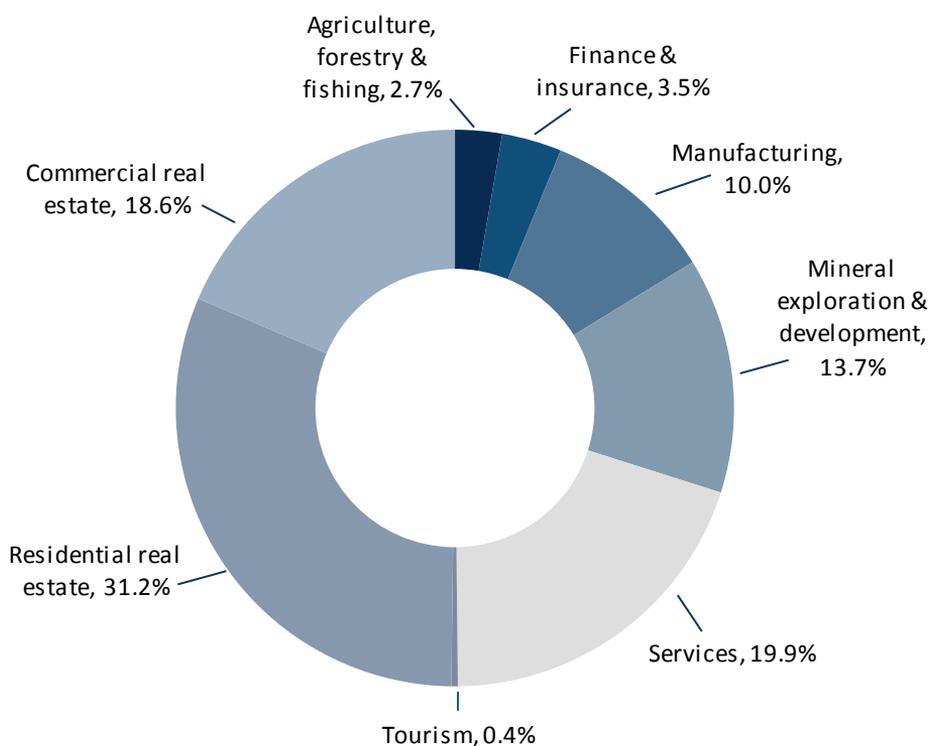
**Table 2.4: Total approvals by industry sector in 2014-15**

Industry	Number of approvals	Proposed investment \$b	Percentage change on 2013-14
Agriculture, forestry & fishing	77	5.29	54%
Finance & insurance	33	6.75	292%
Manufacturing	62	19.53	87%
Mineral exploration & development	182	26.65	19%
Services	232	38.77	-27%
Tourism	6	0.74	-42%
Real estate (a)	37,347	96.90	30%
<b>Total</b>	<b>37,939</b>	<b>194.62</b>	<b>16%</b>

(a) Proposed investment includes off-the-plan approvals provided to real estate developers and approvals for annual programs. Further details are provided in the section on real estate.

Note: Total number of approvals in Table 2.4 may be greater than or equal to the number of approvals in Tables 2.1 and 2.3 as the new case management system changes allows for better reporting by target, including industry sectors (for example, one proposal to acquire two targets that operate in separate sectors will appear as one approval per sector).  
Totals may not add due to rounding.  
Excludes corporate reorganisations (85 in 2014-15).

**Chart 2.5: Total approvals by industry sector in 2014-15 (value of proposed investment)**



Note: Totals may not add due to rounding.

## Agriculture, forestry and fishing

Proposed investment in the agriculture, forestry and fishing sector increased from \$3.4 billion in 2013-14 to \$5.3 billion in 2014-15. The number of approvals has also increased from 58 to 77 proposals. This represents around three per cent of the total value of approved investment in 2014-15. The two largest source countries of investment by value in this sector were China (\$2.5 billion), followed by the United States (\$1.0 billion). Over the last five years, the average level of foreign investment in the sector has been just over \$3.3 billion. Investment proposals in this sector can be skewed by large transactions with several competing bidders.

On 1 March 2015, the general agricultural screening threshold was lowered from \$252 million to \$15 million, to improve the transparency of investment in to this sector. Between 1 March 2015 and 30 June 2015, 17 proposals were approved for agricultural land which would not have been captured previously.

## Finance and insurance

During 2014-15, 33 proposals were approved in the finance and insurance sector compared with the 22 proposals approved in this sector in 2013-14. Proposed investment increased from \$1.7 billion to \$6.8 billion.

## Manufacturing

The manufacturing sector saw an increase in both the number and in the value of proposals approved in 2014-15. There were 62 proposals (56 proposals in 2013-14) and proposed investment of \$19.5 billion (\$10.5 billion in 2013-14).

**Table 2.5: Manufacturing sector approvals in 2014-15**

Industry	Number of approvals	Proposed investment \$b
Chemical, petroleum & coal products	6	1.57
Electricity & gas	27	10.36
Food, beverages & tobacco	8	3.80
Water, sewerage & waste disposal	5	1.25
Other (a)	16	2.54
<b>Total</b>	<b>62</b>	<b>19.53</b>

(a) Comprises: textile, leather, clothing and footwear; polymer product and rubber products; primary metal and metal product; fabricated metal products; transport equipment; machinery and equipment; and furniture manufacturing.

Note: Totals may not add due to rounding.

## Mineral exploration and development

Proposed investment in the mineral exploration and development sector increased from \$22.4 billion in 2013-14 to \$26.7 billion in 2014-15. However, the number of approved proposals decreased from 248 to 182 proposals.

A significant increase in the value of oil and gas proposals more than offset a significant fall in the value of iron ore proposals.

**Table 2.6: Mineral exploration and development sector approvals: 2011-12 to 2014-15**

Industry	2011-12		2012-13		2013-14		2014-15	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Coal	47	17.13	54	21.24	39	2.61*	24	3.25
Metallic minerals								
- Bauxite	2	0.65	1	0.45	1	0.22	3	0.06
- Copper-gold	61	9.25	68	5.08	48	3.39	26	3.50
- Iron ore	35	8.08	29	2.56	45	7.63	22	1.84
- Nickel	3	0.25	3	0.01	3	0.12	2	0.02
- Uranium	9	1.47	8	0.51	9	0.08	-	-
- Zinc-lead-silver	4	0.41	12	0.13	6	0.05	5	0.04
- Other	10	1.37	23	0.14	18	0.44	13	0.28
Oil & gas	45	11.21	67	11.08	55	6.34	41	12.49
Other (a)	25	1.83	24	3.95	24	1.51	46	5.17
<b>Total</b>	<b>241</b>	<b>51.65</b>	<b>289</b>	<b>45.14</b>	<b>248</b>	<b>22.41</b>	<b>182</b>	<b>26.65</b>

(a) Comprises: exploration and other mining support services; and other non-metallic minerals mining and quarrying.

Note: Totals may not add due to rounding.

\* Revised data

## Services

Proposed investment by number of approvals in the services sector increased from 2013-14 while the value of approvals decreased. The number of approvals increased from 195 to 232 and proposed investment decreased from \$53.4 billion to \$38.8 billion.

The services approvals data is particularly affected by large asset sales which often involve multiple bids for the same asset. Approvals data in 2013-14 was inflated by bidding processes for large transport-related infrastructure. Proposed investment in the transport sub-division of the services sector decreased by \$21.8 billion in 2014-15, compared with 2013-14.

**Table 2.7: Services (excluding Tourism) sector approvals: 2011-12 to 2014-15**

Industry	2011-12		2012-13		2013-14		2014-15	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Accommodation, food and beverage (a)	-	-	-	-	-	-	21	2.91
Construction (b)	5	0.31	19	0.74	13	2.83	31	4.43
Communications (c)	31	6.63	38	6.98	36	3.72	37	6.68
Health (d)	12	1.97	18	2.57	24	7.38	16	4.54
Property & business services (e)	15	4.38	14	0.78	22	1.87	60	7.76
Trade (f)	6	1.45	15	4.72	33	4.15	25	1.92
Transport (g)	31	5.46	44	9.36	58	32.11	35	10.29
Other (h)	9	0.83	6	0.77	9	1.38	7	0.24
<b>Total</b>	<b>109</b>	<b>21.02</b>	<b>154</b>	<b>25.91</b>	<b>195</b>	<b>53.44</b>	<b>232</b>	<b>38.77</b>

(a) Comprises: accommodation; food and beverage services.

(b) Comprises: building construction; heavy and civil engineering construction and services to construction.

(c) Comprises: publishing (including internet); motion picture and sound recording activities; broadcasting (including internet); and telecommunication services (including internet).

(d) Comprises: hospitals; medical and other health care services; residential and social assistance services.

(e) Comprises: property and real estate operators; professional, scientific and technical services; computer system design services; and administrative services.

(f) Comprises: wholesaling of basic material, machinery and equipment, grocery, liquor and tobacco products; and retailing of fuel, food and other store based retailing.

(g) Comprises: road, rail, water, air and space, postal and courier (pickup and delivery), warehousing and storage; and transport support services.

(h) Comprises: repair and maintenance; public administration; defence; and education related services.

Note: Totals may not add due to rounding.

## Tourism

Proposed investment in the tourism sector<sup>7</sup> in 2014-15 was \$0.7 billion, down from \$1.3 billion in 2013-14. The number of approved proposals increased from three to six.

## Real estate

### Proposals in real estate in 2014-15

Approved investment in real estate (comprising commercial and residential proposals) was \$96.9 billion in 2014-15 (compared with \$74.6 billion in 2013-14).

<sup>7</sup> As of 2009, hotels, motels, hostels and guesthouses have been treated as developed commercial property. For reporting, acquisitions of:

- direct interests in such accommodation facilities are included in acquisitions of existing commercial property at Table 2.9; and
- indirect interests in such accommodation facilities, for example through the acquisition of a substantial interest in an Australian hotel business, are classified as tourism sector.

## Residential real estate

### Developed

The category of **developed residential real estate** consists primarily of temporary residents in Australia acquiring one existing residential property for use as their residence in Australia.<sup>8</sup>

### For development

Acquisitions of **residential real estate for development** include a number of categories.

The *vacant land* category consists primarily of individual blocks of land purchased for single dwelling construction. These were normally approved subject to conditions (such as, that construction begins within 24 months). It also includes broad acre land for residential subdivision and multiple-dwelling residential developments (such as townhouses and units).

The *new dwellings* and *off-the-plan* category consists of applications by individuals to acquire newly constructed dwellings directly from developers and applications by developers to sell up to 100 per cent of new residences in a development to foreign interests (the developer is also required to market the dwellings locally). Applications from individuals are normally approved without conditions. If a developer is given approval, individuals need not apply for approval. Foreign persons may purchase new residences in such developments over a number of years.

The approved investment figures for off-the-plan approvals for developers and annual programs overstate the likely extent of actual foreign purchases. The value of investment reported against annual program approvals represents the maximum amount foreign persons may acquire under the program.

Developed property for *redevelopment* involves the acquisition of existing property for the purpose of demolition and construction of new residential dwellings. These are normally approved as long as the redevelopment increases Australia's housing stock (at least two dwellings built for the one demolished). Approvals were usually subject to conditions (such as, that construction begins within 24 months).

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<sup>8</sup> Also includes a small number of approvals relating to foreign persons that operate a substantial Australian business acquiring existing residential property to house their Australian based staff.

**Table 2.8: Investment in residential real estate by type of approval and number of proposals approved: 2011-12 to 2014-15**

	2011-12		2012-13		2013-14		2014-15	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
<b>Residential</b>								
Developed								
- existing residential property	3,952	2.87	5,091	5.42	7,915	7.17	9,236	10.09
- annual programs	5	1.30	10	0.94	5	0.35	11	1.41
<i>Sub-total 'Developed'</i>	<i>3,957</i>	<i>4.18</i>	<i>5,101</i>	<i>6.36</i>	<i>7,920</i>	<i>7.51</i>	<i>9,247</i>	<i>11.50</i>
For development								
- vacant land	1,518	0.68	1,821	1.39	3,150	1.74	5,908	2.51
- new dwellings								
- individual purchases	4,022	2.54	4,499	2.91	11,338	7.72	20,551	14.38
- developer 'off-the-plan'	70	10.92	50	5.73	103	16.38	152	28.69
<i>Sub-total 'new dwellings'</i>	<i>4,092</i>	<i>13.46</i>	<i>4,549</i>	<i>8.64</i>	<i>14,591</i>	<i>25.85</i>	<i>20,703</i>	<i>43.07</i>
- redevelopment	191	0.50	189	0.36	534	0.79	972	2.26
- annual programs	10	0.89	8	0.41	9	0.57	11	1.41
<i>Sub-total 'For development'</i>	<i>5,811</i>	<i>15.52</i>	<i>6,567</i>	<i>10.80</i>	<i>15,134</i>	<i>27.20</i>	<i>27,594</i>	<i>49.25</i>
<b>Total residential</b>	<b>9,768</b>	<b>19.70</b>	<b>11,668</b>	<b>17.16</b>	<b>23,054</b>	<b>34.72</b>	<b>36,841</b>	<b>60.75</b>

Note: Totals may not add due to rounding.

## Commercial real estate

### Developed

Foreign persons acquiring an interest in **developed commercial** real estate (for example, shopping centres, office buildings, warehouses, hotels and motels) that is valued at more than the applicable monetary threshold are required to notify and obtain prior approval before purchasing.<sup>9</sup>

### For development

Foreign persons need to apply to buy or take an interest in **commercial land for development**, regardless of the value of the land. Such proposed investment is normally approved subject to conditions (such as, that construction begins within five years).

9 As of 2009, hotels, motels, hostels and guesthouses have been treated as developed commercial property. For reporting, acquisitions of:

- direct interests in such accommodation facilities are included in acquisitions of existing commercial property at Table 2.9; and
- indirect interests in such accommodation facilities, for example through the acquisition of a substantial interest in an Australian hotel business, are classified as tourism sector.

## Annual programs<sup>10</sup>

The 'annual program' arrangements allowed foreign persons to apply for an annual approval for real estate acquisitions up to a specified global monetary limit. Such an approval relieves them of the requirement to seek separate approvals for individual real estate acquisitions within the approved value and the approval year. Approvals were subject to the condition that applicants subsequently report on the actual acquisitions completed and any associated development. Applicants were also required to comply with the standard requirements that would apply under the Policy for the type of property purchased. For example, for vacant land acquisitions, construction must begin within the required timeframe.

**Table 2.9: Investment in commercial real estate by type of approval and number of proposals approved: 2011-12 to 2014-15**

	2011-12		2012-13		2013-14		2014-15	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
<b>Commercial</b>								
Developed								
- existing commercial property	241	22.44	248	19.24	237	31.65	313	28.48
- annual programs	18	10.75	14	7.31	10	3.48	18	3.11
<i>Sub-total 'Developed'</i>	<i>259</i>	<i>33.19</i>	<i>262</i>	<i>26.55</i>	<i>247</i>	<i>35.13</i>	<i>331</i>	<i>31.60</i>
For development								
- vacant commercial property	80	4.96	85	7.04	119	2.86	155	2.36
- annual programs	11	1.27	10	1.16	8	1.89	20	2.19
<i>Sub-total 'For development'</i>	<i>91</i>	<i>6.23</i>	<i>95</i>	<i>8.20</i>	<i>127</i>	<i>4.75</i>	<i>175</i>	<i>4.55</i>
<b>Total commercial</b>	<b>350</b>	<b>39.42</b>	<b>357</b>	<b>34.75</b>	<b>374</b>	<b>39.88</b>	<b>506</b>	<b>36.15</b>

Note: Totals may not add due to rounding.

## Real estate by location of investment

Table 2.10 provides details of proposed investment in the real estate sector, according to the state and territory location of the proposed investment.

<sup>10</sup> From 1 December 2015, annual programs under the new provisions in the Act are known as exemption certificates.

**Table 2.10: State and Territory distribution of proposed investment in real estate in 2014-15**

Location	Number of approvals	Residential		Commercial		Total
		Developed	For development	Developed	For development	
		\$b	\$b	\$b	\$b	
ACT	332	0.17	0.41	0.99	0.22	1.79
NSW	12,349	3.99	16.24	13.84	0.87	34.94
NT	88	0.11	0.12	0.64	0.20	1.08
Qld	5,023	1.04	9.38	5.37	1.52	17.30
SA	1,024	0.43	0.38	1.26	0.29	2.35
Tas	131	0.14	0.14	0.58	0.19	1.06
Vic	16,775	4.97	20.61	4.83	0.86	31.27
WA	2,043	0.65	1.97	1.74	0.39	4.74
Various (a)	46	-	-	2.36	0.01	2.37
<b>Total</b>	<b>37,811</b>	<b>11.50</b>	<b>49.25</b>	<b>31.60</b>	<b>4.55</b>	<b>96.90</b>

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

Note: Totals may not add due to rounding.

- indicates a figure of zero or a figure less than \$10 million.

Table 2.11 provides details of proposed investment in the residential real estate sector, according to the state and territory location of the proposed investment.

**Table 2.11: State and Territory distribution of proposed investment in residential real estate by industry subtype in 2014-15**

Location	New Dwelling		Existing Property		Redevelopment		Vacant land		Developer <sup>^</sup>	
	Approvals	\$b	Approvals	\$b	Approvals	\$b	Approvals	\$b	Approvals	\$b
ACT	166	0.08	86	0.05	-	-	28	0.02	*	0.20
NSW	7,935	6.64	2,855	3.73	221	1.01	1,027	0.55	41	7.77
NT	15	0.01	19	0.01	-	-	*	-	-	-
QLD	2,914	1.61	1,026	0.79	77	0.31	784	0.45	39	6.76
SA	284	0.14	460	0.29	56	0.04	157	0.06	-	-
TAS	14	0.01	31	0.02	*	-	42	0.01	-	-
VIC	8,435	5.41	4,089	4.71	575	0.84	3,426	1.26	62	12.85
WA	788	0.48	662	0.49	36	0.04	422	0.17	*	1.11
Various (a)	-	-	*	-	*	-	13	-	-	-
<b>Total</b>	<b>20,551</b>	<b>14.38</b>	<b>9,236</b>	<b>10.09</b>	<b>972</b>	<b>2.26</b>	<b>5,908</b>	<b>2.51</b>	<b>152</b>	<b>28.69</b>

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

Note: Totals may not add due to rounding.

Excludes annual programs and corporate reorganisations.

<sup>^</sup> Developer includes off-the-plan approvals provided to real estate developers. Further details are provided in the section on real estate.

- indicates a figure of zero or a figure less than \$10 million.

\* indicates between 1 and 9 approvals.

## **Approvals by country of investor**

Proposed investment in 2014-15 by selected country, disaggregated by sector, is shown in Table 2.12. China remains the largest source of proposed foreign investment in Australia, mainly driven by a large increase in residential real estate approvals. The other major sources of proposed investment were the United States, Singapore, Japan and Canada.

The value of approvals for China has increased by around 68 per cent since 2013-14 and account for around 33 per cent of the total value of approvals by foreign country in 2014-15 (excluding the value attributed to advanced 'off-the-plan' developer certificates and Australia).

**Table 2.12: Approvals by country of investor by industry sector in 2014-15**

# Country (a)	Number of approvals (f)	Agriculture, forestry and fishing		Financial & insurance		Manufacturing		Mineral exploration & development		Real estate		Services		Tourism		Total	
		\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
1 China (b)	25,431	2,494	1,730	5,317	9,845	24,349	2,822	-	46,563								
2 United States	412	1,005	1,870	4,249	3,797	7,103	7,065	-	25,093								
3 Singapore	1,097	619	24	1,796	-	3,850	3,333	348	9,974								
4 Japan	152	-	17	135	766	774	6,965	-	8,658								
5 Canada	309	597	203	142	2,110	1,577	3,260	-	7,888								
6 United Kingdom	1,588	175	-	55	390	2,063	3,842	-	6,528								
7 Malaysia	2,236	-	500	676	113	3,430	415	-	5,137								
8 Thailand	80	-	121	60	612	911	1,734	-	3,437								
9 Korea, Republic Of	224	-	-	477	-	2,528	-	-	3,011								
10 Hong Kong	1,292	-	-	677	91	1,678	-	260	2,706								
11 Germany	174	-	45	418	111	761	992	-	2,328								
12 United Arab Emirates	38	-	184	547	-	427	667	-	1,826								
13 Switzerland	80	32	27	-	79	659	1,004	-	1,801								
14 Netherlands	91	21	288	123	-	977	281	-	1,691								
15 New Zealand	145	-	18	-	109	868	657	-	1,656								
16 Brazil	25	-	-	1,450	31	23	-	-	1,505								
17 France	120	-	-	149	30	770	265	-	1,214								
18 Spain	30	-	-	269	403	209	274	-	1,155								
Other Countries (c)	4,869	183	-	940	1,420	6,009	1,023	120	9,696								
Developer AOTP (d)	152	-	-	-	-	28,690	-	-	28,690								
<b>Subtotal</b>	<b>38,545</b>	<b>5,139</b>	<b>5,027</b>	<b>17,480</b>	<b>19,913</b>	<b>87,658</b>	<b>34,601</b>	<b>738</b>	<b>170,554</b>								
Australia (e)	696	150	1,722	2,049	6,735	9,244	4,169	-	24,069								
<b>Total</b>	<b>38,697</b>	<b>5,288</b>	<b>6,749</b>	<b>19,528</b>	<b>26,648</b>	<b>96,902</b>	<b>38,770</b>	<b>738</b>	<b>194,623</b>								

## Notes applying to Table 2.12

Note: Totals may not add due to rounding.

- indicates a figure of \$10 million or less.

- (a) Includes overseas territories.
- (b) China excludes Special Administrative Regions and Taiwan.
- (c) Other comprises all other countries not in the largest 18 countries based on total proposed investment approved, as well as proposed investment approved which cannot be attributed to a country.
- (d) One advanced 'off-the-plan' certificate equates to one approval in terms of the number of approvals but the entire value of the proposed development is included in the value columns. Further details are provided in the section on real estate.
- (e) Comprises proposals where an Australian controlled investment manager acting on behalf of an investor operates independently of the interest holders in the investor, or an Australian investor(s) jointly intends to make a proposed investment with a foreign investor, or jointly establish a new business with a foreign government investor.
- (f) These figures indicate the total number of proposals in which investors from the particular country have an interest. Those involving investment originating from more than one country count as one proposal for each of the countries concerned.



METHODOLOGICAL  
AND  
DATA CAVEATS

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APPENDIX A



# Appendix A – Methodological and data caveats

This appendix provides an overview of the main methodological and data caveats that apply to Chapter 2. While a useful source of data on proposed foreign direct investment in Australia, the Board urges particular caution in the use of these statistics, including when making comparisons with earlier years.

## Methodological and data caveats

- The statistics contained in this chapter do not measure total foreign investment made in any year, nor do they measure changes in net foreign ownership levels in Australia. They reflect investor intentions (not actual purchases) to acquire Australian assets. They can be skewed by very large investment proposals and multiple proposals for the same target.
- There are also substantial differences between these statistics on proposed investments and actual investment flows. The latter are more reliably captured by the Australian Bureau of Statistics, which seeks to reflect more comprehensively investment transactions between residents of Australia and non-residents.
- Data capture, systems and reporting methodologies change over time.
- Data presented for earlier years may also have been revised since last published.
- Proposed investment amounts for earlier years are not adjusted for inflation or currency movements.
- The figures are based on the assumption that investment funds will be sourced from overseas. The extent to which approved investment proposals will actually be funded from outside of Australia and result in foreign capital inflows depends not only upon whether they are implemented, but also upon the proportion that is financed from foreign sources. Some (and in some cases all) of the proposed funds to be invested may be contributed by Australians, for example, where they are in partnership with foreign interests, or where the investment is financed from existing Australian operations.
- The source of proposed investment identified in the Board's statistics does not necessarily reflect the country of control. For example, the source may be attributed to a company's single substantial shareholder, or if a company's shares are widely held, the country of domicile or incorporation may be recorded.

- The data do not necessarily reflect a change in foreign ownership as, in some cases, both the target and the purchaser are foreign persons.
- The proposed investment of an approved proposal is the amount advised by the applicants or the best estimate based on the available information. It represents an estimate of the expected proposed investment in the 12 months from the approval unless the approval is granted for a longer period (if the proposal is in fact implemented).
  - Where an approved acquisition is a part of an offshore acquisition, the proposed investment figure is calculated based on the share attributable to the approved acquisition.
  - Where amounts are in a foreign currency, this is converted to Australian dollars based on the exchange rate at the time of the decision.
  - There are some approved proposals for which proposed investment is treated as nil. Examples of this include corporate reorganisations, financing arrangements and where foreign government investor lenders take security interests, but do not have approval to retain ownership after any enforcement of such security interests.
- The statistics may include some transactions that do not actually proceed. They include:
  - Proposals that are approved in a given year but which are not actually implemented in that year or at all;
  - Approvals for multiple potential acquirers of the same target (including for potential consortium participants that are yet to determine their final maximum percentage interest); and
  - Approvals for shares or units where only a portion of the intended shares or units may be acquired.

- Acquisitions of diversified company groups are classified into a single industry sector according to the major activity of the group, such as in a diversified mining company with interests in various minerals. Acquisitions of real estate to be used for purposes incidental to the main business activity of the purchaser are classified according to that activity.<sup>11</sup>

## Policy scope and changes

The breadth of the data reflects the requirements of the Government's policy at the time. The data do not cover foreign investments below the various monetary and percentage thresholds that apply under the Act. Nor does the data cover follow-on investments to expand the capital stock of existing foreign-owned businesses (both in existing areas and into related areas). See the Board's website ([www.firb.gov.au](http://www.firb.gov.au)) for the current thresholds.

Furthermore, policy and legislative change can have a considerable impact on the continuity of data. For instance, changes in the Policy that have occurred since the mid-1980s have affected the number of some types of proposals, limiting comparability over time. These changes include:

- the increase in the general asset threshold in 1999 from \$5 million to \$50 million, and, again, in December 2006 from \$50 million to \$100 million;
- the increase in the offshore takeovers threshold in December 2006 from the general asset threshold (then at \$50 million) to \$200 million;
- the introduction of the higher \$800 million threshold (indexed on 1 January each year) for United States investors from 1 January 2005;
- the harmonisation in 2009 of the four lowest thresholds for private business investment to a single threshold of \$219 million (indexed on 1 January each year);
- the abolition in 2009 of the requirement for private investors to notify when establishing a new business valued above \$10 million;

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11 Data to end of 2013-14 has been compiled by reference to the *Australian and New Zealand Standard Industrial Classification* (ANZSIC 1993), except: newspaper printing and publishing are allocated to the services industry sector (ANZSIC 1993 classifies these under manufacturing); some manufacturing activities have been grouped together as the resource processing sector (Resource processing included activities that, through processing, value add to natural resources. For example, cotton ginning, flour and sugar milling, smelting and refining of mineral resources, abattoirs and wood chipping); and tourism is recorded as a separate industry sector rather than being included with the other service industries. Data from 2014-15 will be compiled by reference to the *Australian and New Zealand Standard Industrial Classification* (ANZSIC 2006) and the Board will no longer be reporting on resource processing.

- the introduction of indexation in 2012 for the general monetary threshold for commercial developed real estate that is not heritage listed;
- the extension of the higher monetary thresholds available to United States (US) investors to New Zealand (NZ) investors as of 1 March 2013;
- the revised definition of foreign government investor introduced in March 2013;
- the introduction of changes in 2009 and 2010 to the screening arrangements for temporary residents purchasing residential real estate;
- the reclassification in 2009 for screening purposes of accommodation facilities from residential real estate to commercial developed real estate;
- changes in immigration policies that control the number of temporary resident visa holders, which largely determines the level of foreign investment in established (second-hand) residential dwellings;
- the extension of the higher monetary thresholds available to US and NZ investors to Korea (from 12 December 2014), Chile (from 1 January 2015) and Japan (from 15 January 2015); and
- the lowering of the general agricultural land screening threshold from \$252 million to \$15 million (cumulative) from 1 March 2015, for non-FTA partner countries.

## Administrative practices

Changes in administrative practice (for example, data collection and recording practices) and foreign investment application requirements have also impacted on year to year data comparability. Examples of this include the following:

- The implementation of a new case management system and a user based web portal for lodging foreign investment applications in November 2013 significantly improved data collection capabilities and processing efficiency for proposals in residential real estate.
  - data capture and reporting procedures for non-residential real estate proposals transitioned to the new case management system from 1 July 2014.
  - the most recent *Australian and New Zealand Standard Industrial Classification* (ANZSIC 2006) was adopted for data recording and reporting purposes as part of the new case management system. Year to year comparability of pre 2014-15 data may be limited.



GLOSSARY



APPENDIX B



# Appendix B — Glossary

Act	The <i>Foreign Acquisitions and Takeovers Act 1975</i> (as in force during 2014-15).
Aggregate substantial interest in a corporation	Where two or more persons, together with any associate(s), are in a position to control not less than 40 per cent of the voting power or potential voting power, or hold interests in not less than 40 per cent of the issued shares or rights to issued shares, of a corporation (section 9 of the Act).
Applications approved (/approvals)	Comprise all foreign investment proposals approved either with or without conditions.
Applications considered	Comprise all foreign investment proposals finalised (that is, approved, rejected, withdrawn or exempt).
Applications decided	Comprise all foreign investment proposals approved or rejected (that is, excluding proposals withdrawn or exempt).
Applications rejected	Comprise all foreign investment proposals that are either rejected under the Policy or subject to a Final Order or a Divestiture Order under the Act.
Australian rural land	Refers to land that is used wholly and exclusively for carrying on a primary production business.
Australian urban land	Refers to all other land in Australia that is not Australian rural land. It includes all seabed within Australia's Exclusive Economic Zone.
Australian urban land corporations and trusts	A corporation or trust that has interests in Australian urban land which make up more than 50 per cent of the value of its total assets (sections 13C and 13D of the Act).
Corporate reorganisations	Corporate reorganisations encompass a wide range of transactions including corporate restructures and transfers of assets or shares within a corporate group.
Divestiture Order	An Order that requires an interest already acquired to be disposed of.
Final Order	An Order that prohibits a proposed acquisition.

Foreign government investors	<p>Foreign government investors include:</p> <ul style="list-style-type: none"><li>• a body politic of a foreign country;</li><li>• entities<sup>12</sup> 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;</li><li>• 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</li><li>• 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.</li></ul>
Foreign Investment Review Board (the Board)	<p>A non-statutory body established in 1976 to advise the Treasurer on the Policy and its administration.</p>
Foreign person	<ul style="list-style-type: none"><li>(a) a natural person not ordinarily resident in Australia;</li><li>(b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;</li><li>(c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;</li><li>(d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or</li><li>(e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.</li></ul> <p>(Section 5 of the Act)</p>
Interim Order	<p>An Order that extends the available statutory examination period and prohibits a proposed acquisition for up to 90 days.</p>

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12 Entities include companies, trusts and limited partnerships.

Offshore takeover	Where an offshore company (or a foreign person) that holds Australian assets or conducts a business in Australia is acquired by another foreign person, and the Australian assets or businesses of the target company are valued above the relevant thresholds.
Off-the-plan	An acquisition of a dwelling under construction or completed that has not been lived in for 12 months or more, or previously sold (that is, the dwelling is purchased from the developer).
Policy	Australia's Foreign Investment Policy.
Proposed investment	Proposed investment associated with foreign investment proposals comprises the aggregate of acquisition costs and development expenditure in the case of existing businesses, and the aggregate of establishment costs and development expenditure in the case of new businesses.
Secretariat (or the Division)	Treasury's Foreign Investment and Trade Policy Division.
Substantial interest in a corporation	Where a person, alone or together with any associate(s), is in a position to control not less than 15 per cent of the voting power or potential voting power, or holds interests in not less than 15 per cent of the issued shares or rights to issued shares, of a corporation (section 9 of the Act).
Regulations	The <i>Foreign Acquisitions and Takeovers Regulations 1989</i> .
Threshold	Monetary figure under either the Policy or the Act at or above which foreign persons are expected or required to notify an investment proposal to the Treasurer.

