

**Foreign Investment  
Review Board**

Annual Report

2016–17

© Commonwealth of Australia 2018

ISSN 0155-0802 (print)

ISSN 2204-0927 (web)

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Manager  
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The Treasury  
Langton Crescent  
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Email: [medialiaison@treasury.gov.au](mailto:medialiaison@treasury.gov.au)

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8 May 2018

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 (the FIRB) for the year ended 30 June 2017. The report has been prepared in accordance with the FIRB's responsibility to advise the Government on foreign investment matters.

The FIRB assessed a significant volume of high profile investment applications in 2016–17, continuing the trend of recent years. Proposals considered by the FIRB included the acquisition of the fifty year lease for the Port of Melbourne, the Asciano ports and rail group transaction and the leases of majority stakes in Ausgrid and Endeavour Energy.

The foreign investment environment in which the FIRB operates continues to evolve. The FIRB devotes considerable effort to understanding the national interest risks from potential acquisitions and assessing potential mitigations. In this regard, an important development has been the establishment of the Critical Infrastructure Centre (the Centre) in 2017. The Centre has provided the FIRB with consolidated whole-of-government input on the national security implications of major critical infrastructure transactions. Over time, the Centre will undertake more proactive assessments of critical infrastructure assets in advance of transactions occurring. Another emerging focus for the FIRB has been data protection and the important role that data centres play in the digital economy.

The FIRB has continued to be active in engaging with the foreign investment community and their advisers. As Chair, I have also given some speeches about Australia's foreign investment policy and the FIRB's role in the foreign investment process. Our engagement and communication are designed to promote a better understanding of foreign investment policy and encourage active and early engagement by potential investors with the FIRB.

An important component of the foreign investment framework is compliance. Strengthened residential real estate compliance has been in place for a number of years. During 2016–17, the Treasury commenced an enhanced compliance program for business cases.

There was a significant reduction in the number and value of residential real estate applications processed in 2016–17. The most significant factor explaining this drop is the introduction of application fees in December 2015, which has resulted in investors only applying for properties they intend to purchase. This implies a reduction in the number of applications rather than necessarily a reduction in actual investment. Other factors that may also have contributed to a reduction in applications include tighter Chinese capital controls, weaker market conditions and additional taxes in some jurisdictions. Business related investment proposals totalled \$168 billion in 2016–17, only slightly lower than 2015–16.

During 2017, the terms of the previous Chair, Mr Brian Wilson, and member Mr Michael D'Ascenzo AO concluded. I would like to thank Brian and Michael for the leadership and contribution they made to the FIRB. I would also like to warmly welcome the Hon Cheryl Edwardes AM and Ms Teresa Dyson — who both bring valuable private sector experience and perspectives to the FIRB's considerations.

The report is delayed this year due to additional time required to reconcile the approvals data. Significant improvements to the foreign investment case management system and online application portal to be implemented by mid 2018 will address this issue, improving the quality of the data and process for compiling the annual report.

Yours sincerely

A handwritten signature in black ink that reads "David Irvine". The signature is written in a cursive style with a horizontal line under the name.

David Irvine AO  
Chairman

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## Executive Summary

- Foreign investment plays an important and beneficial role in the Australian economy because it helps drive economic growth, creates skilled jobs, improves access to overseas markets, and enhances productivity.
- Australia continues to be an attractive destination for foreign investment. In 2016–17, there was \$168 billion of business related approvals approved, only four per cent below the 2015–16 level.
- In 2016–17, China and the United States continued to be the top two sources of approved investment, although the total value approved fell in comparison to 2015–16 levels by \$8.4 billion and \$4.5 billion respectively. Canada continues to grow as a key source of investment with \$23.2 billion worth of approvals, an increase of \$7.5 billion from 2015–16.
- Major business related investment was focused on ports and electricity network assets, continuing the trend of acquisitions in these sectors in recent years. Data centres are also an emerging area of interest for investors.
- A continuing challenge is the complexity and sensitivity of potential acquisitions. This has led to an increasing proportion of applications being approved subject to conditions.
- Another key development to better manage risks to critical infrastructure assets, was the establishment of the Critical Infrastructure Centre in 2017. One objective of the Centre is to facilitate early and comprehensive advice on national security risks and potential mitigations to support foreign investment decision making.
- Following the significant reforms introduced in 2015–16, further minor refinements were made to the foreign investment framework to ease the compliance burden on business. In the 2017–18 Budget the Government announced stronger rules for foreign investors owning Australian housing, including the use of residential dwellings and capping the level of foreign investment in new residential developments.
- Residential real estate approvals fell substantially from 40,149 approvals in 2015–16 to 13,198 in 2016–17. The most significant factor explaining this drop is the introduction of application fees in December 2015, which resulted in investors only applying for properties they intended to purchase (that is, a reduction in the number of applications rather than necessarily a reduction in actual investment). Other factors that may also have contributed to a reduction in applications include tighter Chinese capital controls, weaker market conditions and additional taxes imposed on foreign investor purchases in some Australian states.
- Compliance with the foreign investment regulatory framework continues to be a priority, with an emphasis on encouraging voluntary compliance. The ATO has been active in identifying residential real estate related breaches and data matching is an increasingly important source of investigations. The number of residential real estate related breaches identified by the ATO more than doubled in 2016–17 to 549 (from 260 in 2015–16). The Treasury has expanded its work to ensure compliance in relation to foreign investment in business assets, and subsequent to 2016–17 has initiated its first round of compliance audits.





The Foreign Investment Review Board (FIRB) is a non-statutory body established in 1976 to advise the Treasurer and the Government on foreign investment matters. The FIRB's functions are advisory only. Responsibility for making decisions on foreign investment policy and investment proposals rests with the Treasurer.

During 2016–17, the FIRB comprised six part-time members and a fulltime Executive Member — the Head of Treasury's Foreign Investment Division. The Government seeks to attract members of the FIRB with deep knowledge and experience in a range of sectors that can actively contribute to the FIRB's responsibilities. Strong probity procedures are in place to ensure any conflicts of interest that may occur are managed appropriately.

The FIRB considers all applications decided by the Treasurer. To facilitate its advice, the FIRB meets face-to-face monthly, weekly by telephone, and out-of-session via email. A record of FIRB members' attendance for each monthly face-to-face meeting during the reporting period is at Appendix A.

## **FIRB membership during 2016–17**

- Mr Brian Wilson (Chairman and member to 15 April 2017)
- Mr David Irvine AO (current Chairman)
- Mr Michael D’Ascenzo AO
- Mr Patrick Secker
- Ms Alice Williams
- Mr David Peever
- Mr Robert Donnelly (Executive Member to 5 March 2017)
- Mr Roger Brake (current Executive Member)

## **FIRB Responsibilities**

- 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.
- Provide advice 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 framework.
- Foster awareness and understanding, both in Australia and abroad, of Australia’s policy on foreign investment.

## FIRB membership as of May 2018

### Mr David Irvine AO

*Chairman since 16 April 2017*  
*FIRB member since 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. He is currently an Adjunct Professor in the Australian Graduate School of Policy and Security at Charles Stuart University and a member of the National Archives of Australia Advisory Council.



### Mr Patrick Secker

*FIRB member since 17 December 2013*

Mr Secker brings extensive agricultural sector experience to the FIRB. 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 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 Local Government Area and co-chaired the South Australian Government Mt Lofty Ranges Strategy Review.



### Ms Alice Williams

*FIRB member since 16 July 2015*

Ms Williams has over 25 years of senior management and Board level experience in the 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, 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, Racing Victoria and Barristers Chambers Limited.



**Mr David Peever**

*FIRB member since 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 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 Hon Cheryl Edwardes AM**

*FIRB member since 14 August 2017*

Mrs Edwardes brings extensive legal and regulatory experience to the FIRB. Mrs Edwardes, a solicitor by profession, is a former Minister in the Court Government and was the member for Kingsley for 17 years. In 1993, she became the first woman to be appointed Attorney General in Western Australia. She is also a Company Director on a number of ASX Boards, private companies and not-for-profit associations, including Director on the Board of Atlas Iron and a Commissioner on the WA Football Commission. Mrs Edwardes was awarded an Order of Australia in the Queen’s Birthday Honours 2016 for significant service to the people and Parliament of Western Australia.



**Ms Teresa Dyson**

*FIRB member since 2 January 2018*

Ms Dyson is a senior tax adviser with over 25 years’ experience, including as a partner at Ashurst and Deloitte, advising on infrastructure, financing, corporate tax issues, mergers and acquisitions activities, the not-for-profit sector, and tax controversy. She brings corporate and governance experience from a range of sectors. Ms Dyson currently sits on a number of ASX, government and non-for-profit boards including Seven West Media Ltd, Genex Power Ltd, Energy Qld Ltd, Energy Super, Power & Water Corporation, UN Women National Committee Australia and Opera QLD. Ms Dyson is a member of the Takeovers Panel and is a former member and Chair of the Board of Taxation. She has a Bachelor of Arts, Bachelor of Laws (Hons) and a Master of Taxation (all from the University of Queensland) and a Master of Applied Finance from Macquarie University.



**Mr Roger Brake**

*Executive Member of the FIRB since 6 March 2017*

The position of Executive Member is held by the Head of Treasury's Foreign Investment Division. The Executive Member provides the link between the FIRB and the Treasury, which provides secretariat support to the FIRB.



**FIRB members during 2016–17 whose terms have expired**

**Mr Brian Wilson**

*Chairman from 16 April 2012 to 15 April 2017*

*FIRB member from 10 December 2009 to 15 April 2017*

**Mr Michael D'Ascenzo AO**

*FIRB member from 2 January 2013 to 1 January 2018*

**Treasury and Australian Taxation Office support for the Foreign Investment Review Board**

The Foreign Investment Review Board is supported in its responsibilities by Treasury's Foreign Investment Division and the International Programs Division of the Australian Taxation Office (ATO).

**Treasury**

The Foreign Investment Division is responsible for the day-to-day administration of the foreign investment framework in relation to business, agriculture and sensitive or complex commercial land proposals. The Division also provides advice to the FIRB and the Government on foreign investment issues and policy matters.

**The Australian Taxation Office**

Since 1 December 2015 the ATO has administered all aspects of foreign investment in residential real estate. From 1 April 2017, non-sensitive commercial real estate and commercial reorganisation cases have been processed by the ATO. The ATO also has responsibility for the collection of all foreign investment application fees and for administering the registers of foreign ownership of agricultural land, water entitlements and residential land.

## Operational costs in 2016–17

### The FIRB

**\$0.5 million**

Remuneration of FIRB members was around 90 per cent of total FIRB expenses, with the remainder expended on travel, car hire and incidentals. FIRB members' fees are determined by the Remuneration Tribunal.

### Treasury

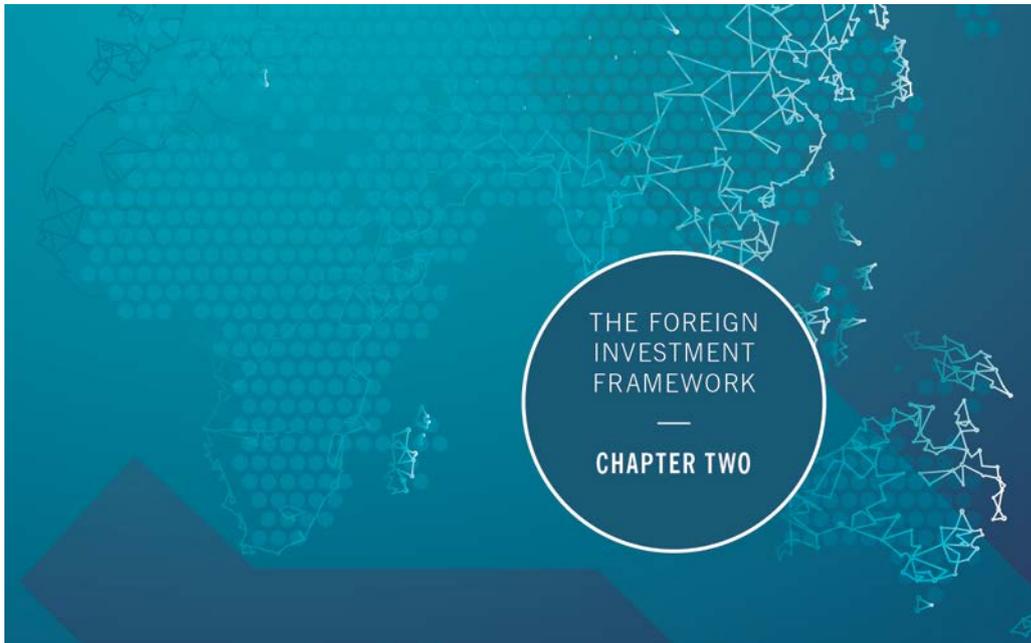
**\$7.7 million**

These expenses mainly reflect employee salary and administrative costs. Over the course of 2016–17, the Division employed an average of 48 full-time equivalent Treasury staff and a number of external contractors and consultants including lawyers from the Australian Government Solicitor. Treasury also made capital expenditure of \$1.875 million in 2016–17 towards improved internal and external IT infrastructure for the management of foreign investment applications. This system is expected to be operational from early 2018–19.

### The Australian Taxation Office

**\$9.6 million**

Over the course of 2016–17, 57 full-time equivalent staff were employed across the residential real estate application screening process, data matching and compliance activities, litigation, application screening and compliance for non-sensitive commercial land and internal reorganisation applications, tax consultation and the development and maintenance of foreign ownership registers with total expenditure of \$6.5 million. A further \$3.1 million was allocated for IT operating costs and corporate overheads.



The Australian Government seeks to maintain an open and non-discriminatory foreign investment regime that balances encouraging foreign investment flows while ensuring foreign investment is not contrary to the national interest.

The regime is designed to ensure that foreign investment is appropriately monitored and assures the Australian public that national interest factors are properly considered. This Government, like previous Australian Governments, supports a case-by-case approach to considering foreign investment proposals. Under the *Foreign Acquisitions and Takeovers Act 1975*, the Treasurer can block proposals found to be contrary to the national interest, or can impose conditions on an investment to address national interest concerns.

During 2016–17, the Government announced a number of changes related to Australia’s foreign investment framework, reflecting the evolving nature of opportunities and risks presented by foreign investment. These changes included the creation of the Critical Infrastructure Centre (the Centre) to more proactively manage the national security risks that may arise from foreign involvement in sensitive critical infrastructure assets. A key role is to provide coordinated and early advice on national security risks to inform foreign investment decision making in a limited number of foreign investment proposals. Other changes include a package of legislative reforms to improve the operation of the framework and measures to improve housing affordability. There has also been ongoing work on a number of registers of foreign interests in certain Australian assets.

## Critical Infrastructure and National Security

National security has become an increasingly important consideration when assessing foreign investment proposals as part of the national interest test. This reflects a number of factors including the recent privatisation or long-term leases of critical infrastructure, technological changes, including threats posed by cyber-attacks, and a changing geopolitical environment. There are also an increasing number of proposals in sectors which pose sensitivities around data security, such as in the health sector.

The Government has recognised the importance of addressing risks to critical infrastructure in a comprehensive and proactive manner. On 23 January 2017, the Attorney-General and the Treasurer announced the establishment of the Critical Infrastructure Centre within the Attorney-General's Department<sup>1</sup> and proposed legislative measures to manage these complex and evolving national security risks to Australia's critical infrastructure. The Centre's initial focus is on the risks of sabotage, espionage and coercion in the highest risk sectors of telecommunications, electricity, water and ports.

The *Security of Critical Infrastructure Act* received Royal Assent on 11 April 2018 and takes effect from Wednesday 11 July 2018, enhancing the capability of the Centre. It aims to strengthen Australia's ability to manage challenges in the electricity, gas, ports and water sectors and provide greater visibility of who owns and operates Australia's highest risk critical infrastructure assets.

A function of the Centre is to develop coordinated, whole-of-government national security risk assessments on critical infrastructure assets to support Government decision-making, such as foreign investment decisions. The Centre complements the existing FIRB process, providing early and comprehensive advice on national security risks. The Centre's assessments include detailed consideration of the nature of assets themselves.

Treasury works closely with the Centre and other security agencies to consider foreign investment proposals that may raise national security concerns. The changes in the geo-political environment for Australia have led to increasing complexity and usage of conditions to ensure that an investment can proceed, in line with Australia's position of welcoming of foreign investment, while ensuring risks to the national interest are mitigated. For example, data conditions may be applied to manage risks associated with potential access to large holdings of personal, operational and network data for malicious purposes.

Treasury recognises the regulatory burden of such conditions, and endeavours to ensure that investors have an opportunity to comment on proposed conditions to ensure workability and acknowledges that this is an area requiring ongoing attention. The case study below on Endeavour Energy explains how the Centre supports the effective operation of the FIRB.

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1 Since late 2017, the Department of Home Affairs has been responsible for the Centre.

## Case Study: Endeavour Energy

During 2016–17 the FIRB reviewed foreign investment applications to purchase a 50.4 per cent stake in the 99-year lease over the assets of Endeavour Energy, the third largest electricity distributor in NSW and the last of the ‘poles and wires’ assets offered for sale by the NSW Government, following the sale of TransGrid and Ausgrid. The opportunity to tap into the growth corridor of south-western Sydney spurred what the NSW Premier described as an ‘outstanding’ \$7.6 billion deal for the sale.

Ultimately, the successful bidder was a consortium including the Macquarie Group, REST Industry Super, Canada’s British Columbia Investment Management Corporation and Qatar’s sovereign wealth fund. Approval for the bidders followed a thorough consultation process, with the FIRB engaging constructively with various government agencies including the Critical Infrastructure Centre, which provided a coordinated national security assessment. Due to the importance of the asset and national security advice, working closely with NSW Government, the sale was structured to prevent any one foreign bidder acquiring a 100 per cent interest in the lease. Technical mitigations, in the form of the FIRB and licence conditions, were also imposed on the successful bidder to manage operational risks.

Endeavour supplies electricity to 2.4 million people across greater Sydney and the Illawarra. The sale process raised close to \$20 billion in net terms, with \$2.2 billion of incentive payments also coming from the Australian Government. As part of the asset-recycling strategy, proceeds are to be reinvested into new schools, hospitals, roads, rail and cultural institutions across NSW.



## Legislative reform package

In 2017 the Government introduced a package of amendments to enhance the foreign investment framework to facilitate business investment, reduce red tape and simplify the fee framework.

- The amendments reduced the requirement for the same investors to seek multiple approvals for similar low risk transactions by:
  - allowing developers to re-sell ‘as new’ off-the-plan dwellings that failed to settle, and therefore may be considered ‘established’, to foreign persons;
  - introducing an exemption certificate so that only one approval is required for individuals considering a number of residential properties with the intention to only purchase one; and
  - introducing a new business exemption certificate for interests in assets and securities to enable broad pre-approval for routine transactions.
- Changes made to fees improved transparency and consistency, reduced complexity and achieved more equitable fee outcomes across different categories of transactions.
- Improving the treatment of low risk commercial transactions has enabled the system to operate more efficiently and reduce regulatory burden, for example:
  - residential dwellings used for a commercial purpose, such as student accommodation and aged care facilities, are now treated in line with other commercial premises; and
  - the scope of non-vacant commercial land treated as sensitive and subject to the lower \$55 million screening threshold has been narrowed to remove, for example, land that falls within ‘prescribed airspace’, which previously covered most commercial properties in the central business districts of Australia’s major cities.

Business and key stakeholders played a pivotal role, including throughout the public consultation process, in informing these changes and other technical improvements. These changes to the Regulations and Act came into effect on 1 July 2017.

The formal public consultation process included the release of a discussion paper presenting options to enhance the operation of the foreign investment framework. There were 32 submissions received in response to the discussion paper and the amendments reflect preferred options, including increasing transparency and implementing a simplified flatter fee structure.

## Residential real estate measures

In the 2017–18 Budget, the Government announced stronger rules for foreign investors who own Australian housing, which took effect on Budget night (7:30pm on 9 May 2017). The housing measures form part of a package of measures designed to increase housing supply and affordability for Australians.

The changes complement the Government's foreign investment policy which aims to increase Australia's housing stock by encouraging the use of residential dwellings and capping the level of foreign investment in new residential developments.

To discourage foreign owners of residential properties from leaving these properties vacant, an annual vacancy charge will be payable if the property is not occupied or available to rent for at least six months in a 12 month period. The annual vacancy charge applies to foreign persons who make a foreign investment application for residential property from 7.30pm on 9 May 2017.

The Government has ensured that dwellings in new developments in Australia are kept available for Australians by introducing a 50 per cent cap on pre-approvals of foreign ownership in new developments. The new 50 per cent cap builds on the existing rules to ensure Australian buyers have access to a greater pool of homes to buy in these new developments.

## Foreign ownership registers

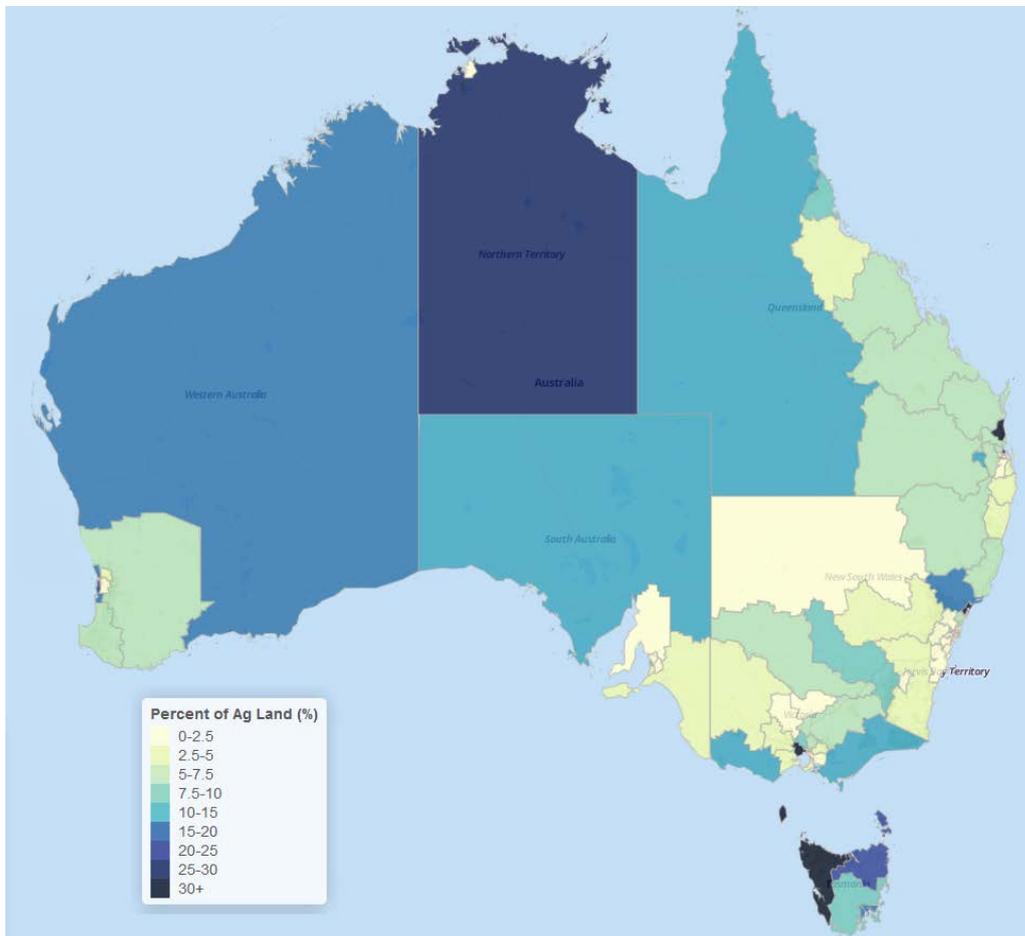
To provide greater transparency on foreign ownership on certain assets in Australia, the Government has established agricultural land and water entitlement registers and is in the process of establishing a residential land register. The registers are used to create publicly available reports that contain aggregated data on the level of foreign ownership in these sectors in Australia.

### Agricultural Land Register

Foreign persons with an interest in agricultural land are required to register that interest on the Agricultural Land Register, regardless of the value of the land. On 29 September 2017, the second report from the register was released (the 2016–17 Agricultural Land Report).

As at 30 June 2017, based on the registered properties, foreign investors held 13.6 per cent of Australian agricultural land. This is a slight reduction from 14.1 per cent at 30 June 2016. The United Kingdom remains the largest foreign agricultural land holder (2.6 per cent of agricultural land), followed by China (2.5 per cent of agricultural land) and the United States of America (0.7 per cent of agricultural land).

**Chart 2.1: Proportion of agricultural land with a level of foreign ownership**



Source: ATO, 2017.

### Water Entitlement Register

On 1 July 2017, the Government introduced a Water Entitlement Register to increase transparency around foreign ownership of water entitlements.

The Water Entitlement Register will operate in much the same way as the existing Agricultural Land Register and will be administered by the ATO. Foreign persons are required to register their interests in registrable water entitlements and contractual water rights, and certain changes in those interests, regardless of value, with the ATO. A stocktake period took place between 1 July 2017 and 30 November 2017.

The first report of registrations on the Water Entitlement Register is to be released in the second half of 2018.

### Residential Land Register

The Australian Government provided \$16 million to the states and territories under a National Partnership Payment to enable them to undertake systems changes to transfer the data on sales and transfers of real property involving foreign persons to the ATO. Many states have had to implement legislative change to support this reporting which has delayed the establishment of the Register.

Aggregated data collected through the Residential Land Register of foreign owned properties is expected to be publically released towards the end of 2018.

### Stakeholder engagement

An effective and robust foreign investment framework requires an informed and engaged investment community. The FIRB, Treasury and the ATO prioritise regular and meaningful engagement with stakeholders. This 'two-way flow' of information enables the FIRB, Treasury and the ATO to provide information on the framework as well as obtaining valuable feedback on its operation and the broader investment environment.

The comprehensive stakeholder engagement strategy focuses on:

- providing information and seeking feedback on foreign investment policy, processes and reforms;
- building and maintaining relationships to understand perspectives from the investment community;
- educating investors and their advisers about the operation of the foreign investment rules;
- exploring specific trends and issues, to ensure the FIRB remains informed of emerging issues; and
- working effectively with Commonwealth, State, and Territory consultation partners to assess foreign investment applications.

During 2016–17, Treasury conducted over 270 meetings with stakeholders across Australia, including investors, lawyers, financial advisory firms, industry associations, think tanks and other members of the investment community. As part of efforts to improve awareness and understanding of Australia's foreign investment regime, Treasury and FIRB Members also met with a number of investors and government agencies of key investor countries. The location of some members of the Foreign Investment Division in Treasury's Sydney Office has been integral to the FIRB's efforts to better engage with the broader community.

Following the announcement in the 2017–18 Budget of a package of amendments to enhance the foreign investment framework, Treasury held a series of face-to-face meetings to inform stakeholders about the amendments and seek feedback on their implementation. The meetings also provided opportunities to discuss the foreign investment framework more broadly and to provide a brief summary of current investment trends. The FIRB website played a key role in keeping stakeholders informed of the changes to the framework and provides guidance to assist applicants to understand their obligations.

As part of screening cases, Treasury and the ATO also consult with other Australian Government agencies to seek their expert advice on matters considered under the national interest test. For example, national security agencies and the newly created Critical Infrastructure Centre are consulted on national security matters and the Australian Competition and Consumer Commission is consulted on competition matters.

The ATO also undertook consultation throughout 2016–17 with foreign investors and intermediaries in relation to residential real estate and the agricultural land and water entitlement registers. This included developing targeted communications to raise investor awareness of the rules and further meetings of the Foreign Investment Reforms Working Group which meets regularly with key agents, accounting and law firms. During 2016–17, the ATO engaged with over 2000 stakeholders, including foreign investors and advisors, at face-to-face, web-based and telephone-based events held across Australia.

Further detail on the ongoing stakeholder engagement being undertaken by and on behalf of the FIRB is included in the Regulator Performance Framework Report 2016–17 which is available on the FIRB website.



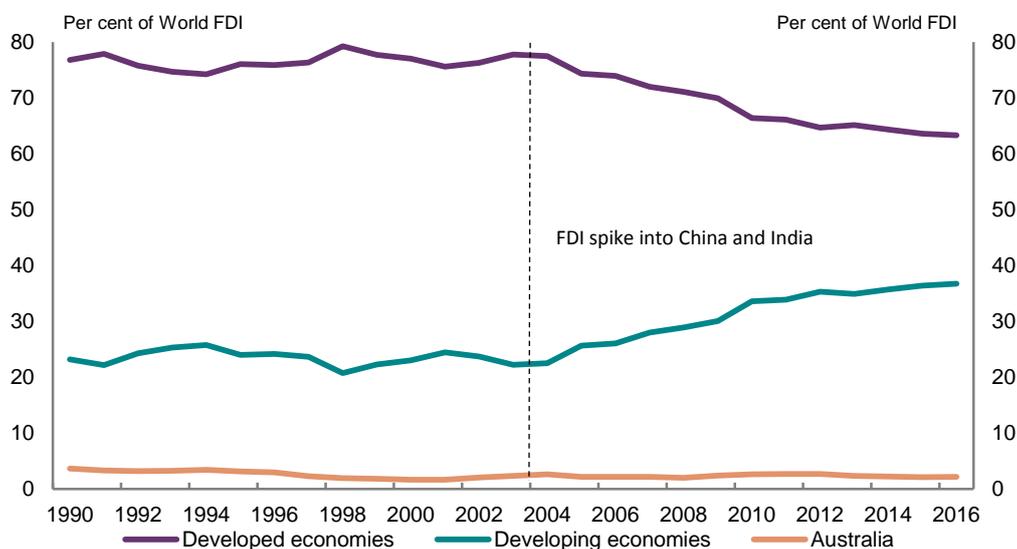
Australia has traditionally relied on inward foreign investment to meet the shortfall between domestic saving and domestic investment. Foreign investment plays an important and beneficial role in the Australian economy because it helps drive economic growth, creates skilled jobs, improves access to overseas markets and enhances productivity.

### **The global foreign direct investment environment**

Global growth in Foreign Direct Investment (FDI), defined as foreign ownership of 10 per cent or more of a business, has been strong over the last decade. Over the last 10 years, the global stock of FDI has increased from US \$14 trillion in 2006 to US \$26.7 trillion in 2016 – an increase of nearly 90 per cent over the period.

With the emergence of China and India, investors have directed more FDI to these economies, which has resulted in a declining share of global FDI stock held in Developed Economies. However, Australia has continued to hold a stable share of the stock of global FDI since the mid-1990s - around 2 to 2.5 per cent as shown in Chart 3.1. This reflects the strength in Australia's underlying economic fundamentals and the attractiveness of Australia as a destination for foreign investment.

**Chart 3.1: Distribution of Global Stock of FDI**



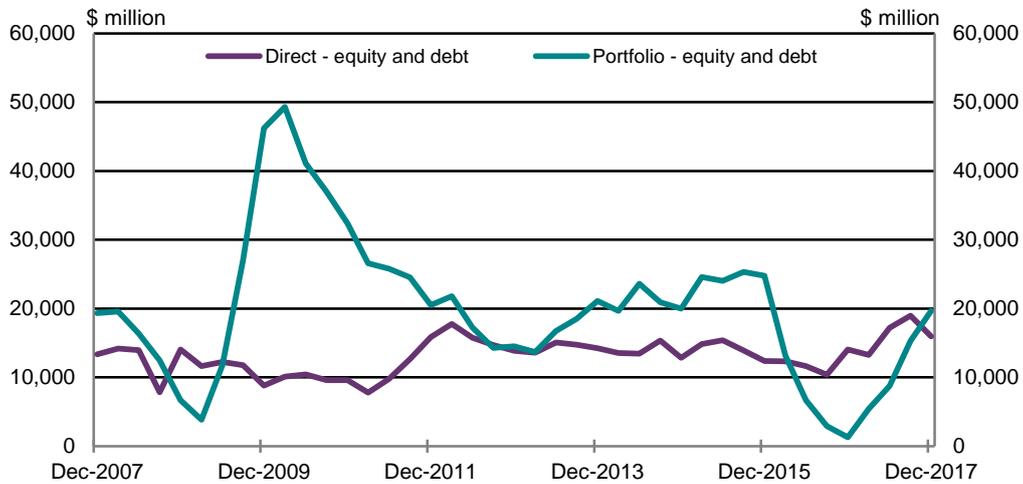
Source: UNCTAD.

## Foreign investment in Australia

The level of FDI stock has risen every year since 2009, reaching \$796 billion in 2016 - an increase of 8.5 per cent or \$62.5 billion compared to 2015. FDI, which usually takes the form of equity or reinvested earnings, has averaged around 25 per cent of total foreign investment over recent years.

Portfolio investment, which refers to the purchase of equity such as shares and debt securities where the foreign investor has an interest of less than 10 per cent of a business, has consistently accounted for over half of Australia’s total foreign investment stock.

Within portfolio investment, the bulk (68 per cent in 2016) is sourced from debt securities such as bonds, notes and money market instruments. As shown in Chart 3.2, FDI is considered one of the more stable forms of capital inflows because it involves a substantial commitment from the investor, whereas debt finance and some portfolio investment can be reversed relatively easily.

**Chart 3.2: Forms of Foreign Investment**

Source: ABS Cat. No. 5302.0.

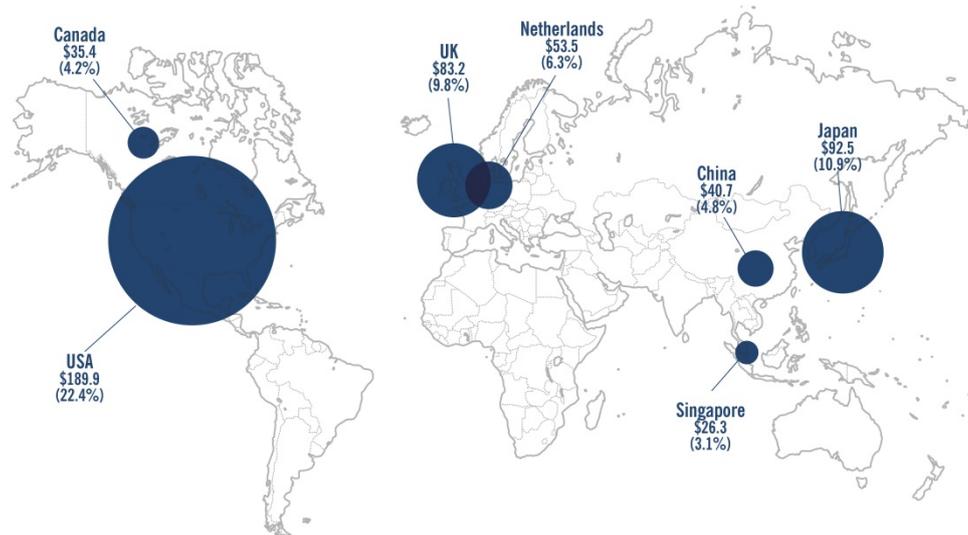
Note: Four quarter moving average has been applied to smooth the series.

The FIRB approvals data does not provide an accurate and complete overview of the actual foreign direct investment in Australia. The limitations are discussed in detail in the next Chapter. Chart 3.3, which uses ABS data, provides a better overview of the stock of FDI in Australia from the top investing countries. The United States remains the largest source of FDI into Australia with over \$195 billion of investment at the end 2016, or around a quarter of the stock of inbound direct investment in Australia.

At the end of 2016, the total stock of FDI from Japan and the United Kingdom was \$90.9 billion and \$67.9 billion, respectively. At the end of 2015, Japan overtook the United Kingdom for the first time to be Australia's second largest investor country. China was the fifth largest source country of the FDI stock in Australia at the end of 2016, accounting for 5.3 per cent of all FDI in Australia.

Collectively, these trends show that historically important economies such as the United States, Japan, and the United Kingdom continue to dominate the share of FDI into Australia. Emerging investor countries, especially China, are also becoming significant source countries.

**Chart 3.3: Stock of FDI in Australia by country as at December 2017 (\$b)**



Source: ABS Cat. No. 5352.0, Table 2, 2017.

## Chinese Capital Controls

Australia is an attractive destination for Chinese investment due to our stable political climate, robust regulatory environment, reliable returns and advanced management know-how.

In 2016-17, China ranked first in terms of foreign investment approvals by country of investor, with a majority of those approvals in residential real estate. For business investment, there has been a shifting focus of Chinese investment toward emerging sectors such as renewable energy and health care, along with established sectors such as services, mineral exploration and development and agriculture.

Since 2000 the Chinese government has adopted a 'Going Out' strategy to encourage domestic firms to invest overseas. Chinese Overseas Direct Investment (ODI) has risen rapidly since around 2007. Chinese Ministry of Commerce data shows that China's annual ODI rose from US \$21 billion in 2006 to US \$170 billion in 2016. However, there has been a dramatic fall following implementation of capital controls at the end of 2016 – ODI figures for the first 7 months of 2017 dropped to only US \$57.2 billion.

The 2016-17 FIRB approvals data also reveal a decline in the total number and value of approvals for Chinese applications – largely driven by reductions in residential real estate approvals. This likely reflects a range of factors, including the introduction FIRB application fees, Chinese ODI capital controls and changing macroeconomic conditions.

## The US remains our largest foreign direct investor

Investment from the US represents over 20 per cent stock of foreign direct investment into Australia, and has done so for over 30 years. The US also remains the largest overall investor in Australia, with a total investment stock of \$860.9 billion as at 31 December 2016. A recent study from the United States Studies Centre at the University of Sydney notes more of the US FDI stock is directed to Australia than to either South America, Africa or the Middle East; and Australia receives well over twice the amount of US FDI directed to China.

During 2016-17, the FIRB's foreign investment approvals for US investors totalled 323 applications worth \$26.5 billion. Approvals spanned agriculture, broadcasting and publishing, commercial and residential real estate, manufacturing, mining, education, transport and finance. Forms of investment included the purchase of land, the acquisition of equity in existing companies and the creation of new companies. See 'Chapter 4: Foreign Investment Proposals Data' for further details of US investment approvals during 2016-17.

Established US businesses invest in plant, equipment, research and development and human capital. For example, Boeing's investment of over \$1 billion in its Australian operations is the company's largest presence outside the US. A number of factors were behind Boeing's decision to make substantial investments in Australia, including our highly skilled workforce, collaboration opportunities with our universities, and strong research and development capacity. In 2016, Boeing Australia's advanced manufacturing and research and development operations made a \$47 million investment in research and development and contributed \$450 million in exports from Australia.

Boeing's investments in Australia have also been important in helping Australian companies to grow into globally competitive businesses. For instance, companies like Lovitt Technologies from Melbourne have worked with Boeing for over 20 years.

*"This has given Lovitt the opportunity to grow from an automotive tooling supplier into a globally competitive aerospace component manufacturer."* Bruce Ramsay, Manufacturing Director, Lovitt Technologies Australia.

Lovitt Technologies has grown to over 100 employees, and has evolved to become an exporter in its own right, with product now being exported directly to the US for Boeing F-15, F/A-18, V-22, Chinook and P-8 platforms.





This chapter provides an overview of all investment applications that were finalised (approved, rejected, withdrawn or exempt) during 2016–17, irrespective of the date the application was submitted. The term ‘proposed investment’ is used widely throughout this report. The value of proposed investment is an estimate of the following at the time of the approval:

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

There are a number of caveats that need to be applied in interpreting the FIRB data, which are set out in detail at Appendix B. Importantly, approvals data does not measure total foreign direct investment made in any year or changes in net foreign ownership levels in Australia. This is because, while a foreign investor may be approved to make an acquisition, the approval itself is not a clear indicator of actual investment. 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. Chapter 3: Foreign Investment Trends of this report provides the actual investment data.

In addition, policy or legislative changes and changes to reporting methodologies over time can limit the comparability of data.

## Overall applications considered

In 2016–17 the total number of applications approved was 14,357 for \$192.9 billion of proposed investment. This represents a drop from the 41,445 approvals for proposed investment of \$247.9 billion in 2015–16. See Tables 4.1 and 4.2 for details.

The most significant factor that contributed to the drop in application numbers and value is the introduction of application fees in December 2015. This, in particular, substantially lowered the number of approvals for residential real estate (as explained further on page 35). The drop in application number occurred from 1 December 2015, but is masked in the annual data for 2015–16 as application numbers prior to that date were significantly elevated by applicants who anticipated the changes.

### Conditional approvals

Where a proposal raises national interest issues, such as tax risks, conditions can be imposed via the approval to mitigate the risks and ensure the proposal is not contrary to the national interest. In 2016–17 the number of approvals made subject to conditions increased five percentage points to around 40 per cent of the total number. Approvals with conditions imposed represent just over 70 per cent of the total value of approvals (an increase of ten percentage points from 2015–16). This highlights the increasing use of conditions to manage national interest factors arising in large and complex acquisitions.

### Variations

The Act allows investors to apply for variations relating to approvals, to conditions that are imposed in an approval and to exemption certificates. The Treasurer may vary the content of an approval or exemption certificate if the Treasurer is satisfied that it is not contrary to the national interest. Variation applications are considered on a case-by-case basis and are usually limited to more technical changes. A significant departure from the original application or approval will generally require a further application.

In 2016–17 there were 631 variations approved, compared to 373 in 2015–16. In part, the increase reflects that prior to 1 December 2015, an alteration to an existing approval was recorded as a new approval. Variations are not included in the approvals data in this report.

### Rejected applications

There were three applications prohibited from proceeding in 2016–17. One of these was in the residential real estate sector and the other two were in the manufacturing, electricity and gas sector related to the long-term lease of Ausgrid.

### Case Study: Ausgrid

In 2015-16 the NSW Government conducted a competitive bid process to lease 50.4 per cent of electricity distribution network Ausgrid for a 99-year period. Ausgrid supplies electricity to around 1.7 million customers in Eastern Sydney (including the Sydney CBD), the Hunter Valley and the Central Coast.

The final bidders were State Grid Corporation of China (a Chinese state-owned enterprise) and Cheung Kong Infrastructure Holdings (a private Hong Kong Stock Exchange-listed company).

Following comprehensive consideration of these investment proposals, and an opportunity for the bidders to respond, the Treasurer formally prohibited these proposals on 19 August 2016 as being contrary to the national interest, on national security grounds. National security concerns related to the specific nature of the asset highlighted the importance of thorough case-by-case assessment of each critical infrastructure sale, as not every electricity asset poses the same risks.

The NSW Government subsequently announced on 20 October 2016 that it had accepted an unsolicited proposal from IFM Investors and AustralianSuper, both Australian investors, to acquire the 99-year lease of 50.4 per cent of Ausgrid for gross proceeds of \$16.2 billion.

**Table 4.1: Applications considered: 2013–14 to 2016–17 (number of proposals)**

Outcome	2013-14 No.	2014-15 No.	2015-16 No.	2016-17 No.
Approved without conditions	12,307	21,355	26,954	8,607
Approved with conditions	11,795	16,598	14,491	5,750
<b>Total approved</b>	<b>24,102</b>	<b>37,953</b>	<b>41,445</b>	<b>14,357</b>
Rejected	3	-	5	3
<b>Total decided</b>	<b>24,105</b>	<b>37,953</b>	<b>41,450</b>	<b>14,360</b>
Withdrawn	719	799	1,319	770
Exempt	181	180	244	60
<b>Total considered</b>	<b>25,005</b>	<b>38,932</b>	<b>43,013</b>	<b>15,190</b>

Notes: Numbers include corporate reorganisations (94 in 2016–17). This data is excluded from other approvals analysis in this Chapter, unless otherwise noted.

The 2015–16 data were impacted by the 1 December 2015 reforms, which may affect data comparability.

**Table 4.2: Applications decided: 2013–14 to 2016–17 (value of proposed investment)**

	2013-14	2014-15	2015-16	2016-17
Outcome	\$b	\$b	\$b	\$b
Approved without conditions	125.3	125.7	97.0	53.8
Approved with conditions	42.1	66.2	150.8	139.1
<b>Total approved</b>	<b>167.4</b>	<b>191.9</b>	<b>247.9</b>	<b>192.9</b>
Rejected	2.2	-	0.0	20.0
<b>Total decided</b>	<b>169.6</b>	<b>191.9</b>	<b>247.9</b>	<b>212.9</b>

Notes: Totals may not add due to rounding.

'0.0' indicates a figure of less than \$50 million.

Figures exclude corporate reorganisations (94 in 2016–17), since they are attributed \$0 value.

The 2015–16 figures were impacted by the 1 December 2015 reforms, which may affect data comparability.

### Approval values

The value of approvals in 2016–17 dropped in comparison to 2015–16 levels, but remained higher than 2014–15 levels.

The number and value of approvals fell between 2015–16 and 2016–17 across all value ranges, except for those approvals valued between \$500 million and \$1 billion. Approvals for transactions valued over \$2 billion remained strong due to the continuation of sales of major energy and infrastructure assets.

**Table 4.3: Total approvals by value range: 2013–14 to 2016–17 (number and value of proposals)**

Value of proposal	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
< \$1 million	19,696	10.7	30,462	16.8	33,045	18.4	10,292	5.7
≥ \$1 million & < \$50 million	3,884	13.3	6,890	19.4	7,744	21.2	3,520	13.5
≥ \$50 million & < \$100 million	159	11.5	174	12.7	195	14.1	149	10.3
≥ \$100 million & < \$500 million	200	43.5	267	55.2	296	65.2	233	52.6
≥ \$500 million & < \$1 billion	38	24.5	46	30.8	33	21.2	43	28.5
≥ \$1 billion & < \$2 billion	23	26.3	22	27.8	15	19.8	13	13.9
≥ \$2 billion	13	37.5	7	29.2	18	87.9	13	68.5
<b>Total</b>	<b>24,013</b>	<b>167.4</b>	<b>37,868</b>	<b>191.9</b>	<b>41,346</b>	<b>247.9</b>	<b>14,263</b>	<b>192.9</b>

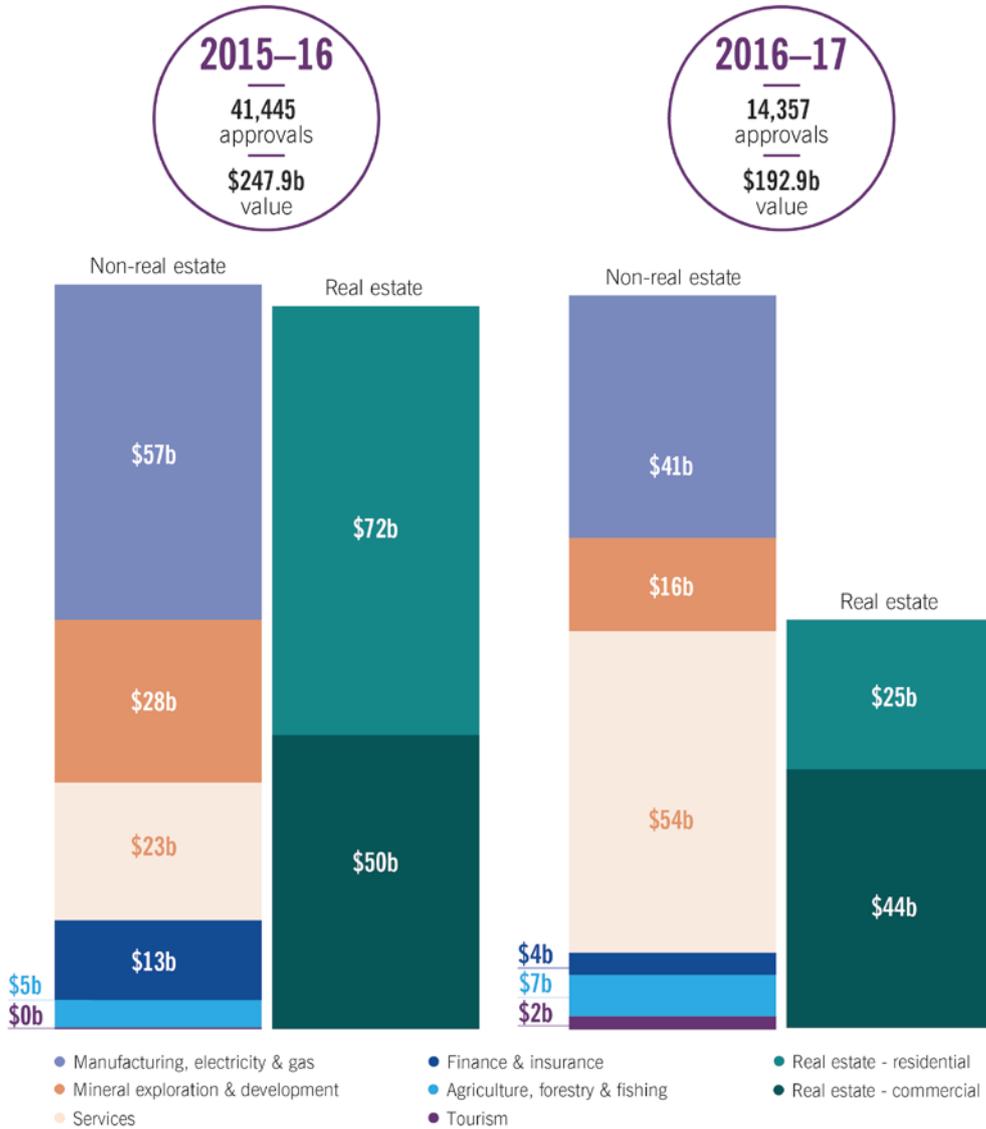
Notes: Totals may not add due to rounding.

Excludes corporate reorganisations.

The 2015–16 figures were impacted by the 1 December 2015 reforms, which may affect data comparability.

## Proposals data overview

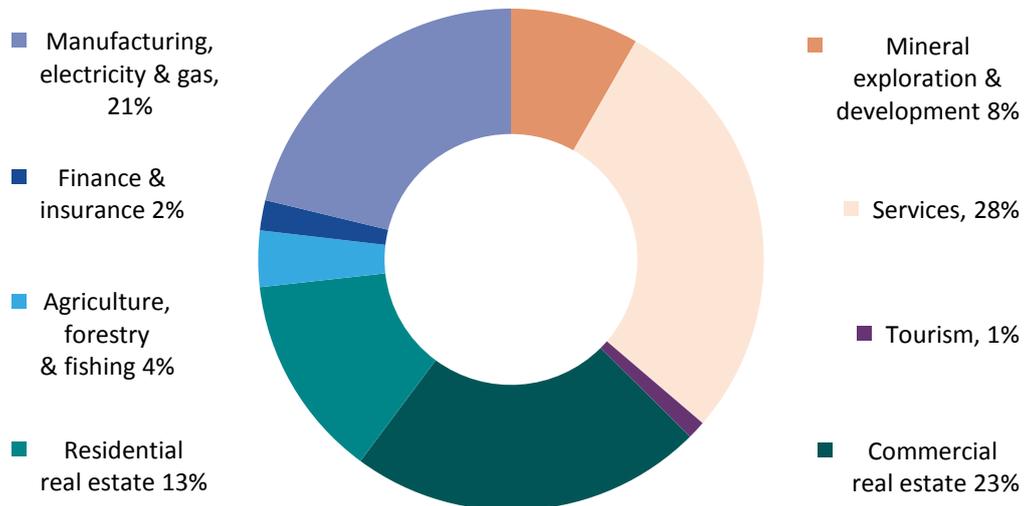
Chart 4.1: Proposals data sectoral overview: 2015–16 and 2016–17



Notes: Approvals data do not measure total foreign investment made in any year or changes in net foreign ownership levels in Australia. Approvals data can be impacted by large one-off proposed transactions, affecting the comparability of industry data across years.

## Approvals by sector

Chart 4.2: Share of total value of approvals, by industry sector in 2016–17



Notes: Totals may not add due to rounding. Corporate reorganisations are excluded (94 in 2016–17). Approvals data can be impacted by large one-off proposed transactions and this should be factored in when comparing industry data across years.

In 2016–17 the services sector attracted the highest value of approved investment, totalling \$54.2 billion. This reflected an increase in value of \$31 billion – or more than twice the value – from those approved in 2015–16. The value of approvals also increased by \$2.4 billion in the agriculture, forestry and fishing sector (total investment approvals of \$7 billion in 2016–17) and \$2 billion in the tourism sector (total investment approvals of \$2.3 billion in 2016–17).

For the five remaining sectors, the value of approvals fell. The largest fall was for residential real estate (investment approvals of \$25.2 billion in 2016–17, down \$47.2 billion from 2015–16), followed by manufacturing, electricity and gas (investment approvals of \$40.9 billion, down \$15.7 billion since 2015–16), mineral exploration and development (investment approvals of \$15.9 billion, down \$11.7 billion since 2015–16), finance and insurance (investment approvals of \$3.8 billion, down \$9.7 billion since 2015–16) and commercial real estate (investment approvals of \$43.7 billion, down \$5.9 billion since 2015–16).

**Table 4.4: Total approvals by industry sector: 2013–14 to 2016–17**

Industry	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Agriculture, forestry & fishing	58	3.4	77	2.5	227	4.6	223	7.0
Finance & insurance	22	1.7	33	6.7	22	13.5	27	3.8
Manufacturing, electricity & gas	56	10.5	62	19.5	66	56.6	73	40.9
Mineral exploration & development	248	22.4	182	26.6	182	27.6	142	15.9
Resource processing	3	0.1	np	np	np	np	np	np
Services	195	53.4	232	38.8	162	23.2	208	54.2
Tourism	3	1.3	6	0.7	3	0.3	11	2.3
Real estate - commercial (a)	374	39.9	506	36.2	606	49.7	465	43.7
Real estate - residential (a)	23,054	34.7	36,841	60.8	40,149	72.4	13,198	25.2
<b>Total</b>	<b>24,013</b>	<b>167.4</b>	<b>37,939</b>	<b>191.9</b>	<b>41,417</b>	<b>247.9</b>	<b>14,347</b>	<b>192.9</b>

(a) Proposed investment includes new dwelling exemption certificates provided to real estate developers (previously off-the-plan approvals) and approvals for exemption certificates. Further details are provided in the section on real estate.

Notes: Total number of approvals in Table 4.4 is recorded by target acquired, reflecting the industry sectors. The number of approvals in this table may be greater than or equal to the number of approvals in Tables 4.1 and 4.3. For example, one proposal to acquire two targets (under the single agreement) that operate in separate sectors will appear as two approvals, with one approval recorded per sector. Totals may not add due to rounding.  
Excludes corporate reorganisations (94 in 2016–17), but includes all exemption certificates.  
The manufacturing, electricity & gas sector has been renamed to improve clarity. The industries covered by this sector have not changed from previous annual reports.  
The 2015–16 figures were impacted by the 1 December 2015 reforms, which may affect data comparability.

### Agriculture, forestry and fishing



In 2016–17, approvals were granted for \$7.0 billion worth of proposed investment in the agriculture, forestry and fishing sector (up from \$4.6 billion in 2015–16). The largest source countries of investment by value in this sector were China (\$2.2 billion), Canada (\$1.5 billion) and the US (\$0.9 billion).

On 1 March 2015, the agricultural land screening threshold was lowered from \$252 million per acquisition to \$15 million cumulative. This means that more agricultural land applications, particularly for lower value transactions, were screened from this time.

### Finance and insurance

**\$3.8b  
approved  
investment**

The value of approved proposed investment in the finance and insurance sector fell from \$13.5 billion in 2015–16 to \$3.8 billion in 2016–17. The higher value of approved proposed investment in 2015–16 was largely due to a small number of high value transactions in this sector in 2015-16.

### Manufacturing, electricity and gas

**\$40.9b  
approved  
investment**

The \$40.9 billion worth of proposed investment approved in 2016–17 in the manufacturing, electricity and gas sector was \$15.7 billion lower than the value of approved investment in the sector in 2015–16, despite an increase in the number of approvals and a number of high value transactions.

The decline was driven by a \$7.3 billion decrease in the value of approvals in the food, beverages and tobacco sector (where there were a small number of very high value proposed investment approvals in 2015–16) and a \$7.7 billion decrease in the electricity and gas sector, only partly offset by an increase of \$800 million in the water, sewerage and waste disposal sector.

**Table 4.5: Manufacturing, electricity and gas sector approvals: 2013–14 to 2016–17**

Industry	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Chemical, petroleum & coal products	3	3.0	6	1.6	6	1.2	1	1.0
Electricity & gas	21	4.2	27	10.4	37	41.2	37	33.5
Food, beverages & tobacco	12	2.3	8	3.8	11	11.1	21	3.8
Water, sewerage & waste disposal	np	np	5	1.3	3	0.6	7	1.3
Other (a)	20	1.0	16	2.5	9	2.5	7	1.3
<b>Total</b>	<b>56</b>	<b>10.5</b>	<b>62</b>	<b>19.5</b>	<b>66</b>	<b>56.6</b>	<b>73</b>	<b>40.9</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.

Notes: Totals may not add due to rounding. Excludes corporate reorganisations.

### Mineral exploration and development

**\$15.9b  
approved  
investment**

There were 142 approvals given in 2016–17 for \$15.9 billion of proposed investment in the mineral exploration and development sector. This represents a decrease in the number of approvals of 40 from 2015–16, equivalent to a reduction of \$11.7 billion in value. The decrease reflects a \$19.6 billion fall in approvals for oil and gas. The 2015–16 value was inflated by the Australian component of Royal Dutch Shell’s takeover of BG Group Plc. However, there was a \$4.0 billion increase in the value of coal approvals (reflecting the approved foreign investment proposal for Yancoal) and a \$2.6 billion increase in the value of copper-gold approvals.

The decline in applications submitted in the mineral, exploration and development sector in recent years is consistent with the broader decline in mining investment in the Australian economy, as the economy shifts away from the investment phase of the mining boom. Approval values averaged around \$51 billion in the three years between 2010–11 and 2012–13 of the investment phase of the mining boom, relative to an average of approximately \$23 billion in the four years since 2013–14.

**Table 4.6: Mineral exploration and development sector approvals: 2013–14 to 2016–17**

Industry	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Coal	39	2.6	24	3.3	31	1.5	25	5.5
Metallic minerals								
- Bauxite	1	0.2	3	0.1	1	-	2	0.2
- Copper-gold	48	3.4	26	3.5	43	2.3	36	4.9
- Iron ore	45	7.6	22	1.8	25	0.9	14	0.6
- Nickel	3	0.1	2	0.0	-	-	-	-
- Uranium	9	0.1	-	-	-	-	-	-
- Zinc-lead-silver	6	0.1	5	0.0	1	0.1	4	0.1
- Other	18	0.4	13	0.3	15	0.7	17	0.6
Oil & gas	55	6.3	41	12.5	31	20.7	17	1.1
Other (a)	24	1.5	46	5.2	35	1.5	27	3.0
<b>Total</b>	<b>248</b>	<b>22.4</b>	<b>182</b>	<b>26.6</b>	<b>182</b>	<b>27.6</b>	<b>142</b>	<b>15.9</b>

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

Notes: Totals may not add due to rounding. Excludes corporate reorganisations.

## Services

**\$54.2b  
approved  
investment**

There were 208 approvals for proposed investment in the services sector in 2016–17, an increase of 46 approvals on the previous year. The value of approvals increased from \$23.2 billion in 2015–16 to \$54.2 billion in 2016–17, the highest value of approvals in the services sector over the last five years.

The services sector approvals data is typically affected by large one-off transactions. For example, the rise in the value of proposed investment approvals in this sector was driven by a \$25.1 billion increase in the value of approvals in the transport services sector, largely attributable to the proposed lease of the Port of Melbourne. The value of approvals also increased in the construction, trade, and the accommodation, food and beverage sectors.

The only two services sectors (out of seven) in which the value of approvals fell from 2015–16 were property and businesses services, decreasing in value by \$5.5 billion from 2015–16 (or 7 fewer approvals) and the communications sector (down 22 approvals or \$4.9 billion from 2015–16).

**Table 4.7: Services (excluding tourism) sector approvals: 2013–14 to 2016–17**

Industry	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
Accommodation, food and beverage (a)	-	-	21	2.9	3	0.5	10	1.4
Communications (b)	36	3.7	37	6.7	30	5.8	8	0.9
Construction (c)	13	2.8	31	4.4	19	0.9	48	7.3
Health (d)	24	7.4	16	4.5	20	3.3	29	3.6
Property and business services (e)	22	1.9	60	7.8	34	6.2	27	0.7
Trade (f)	33	4.1	25	1.9	18	1.1	26	3.6
Transport (g)	58	32.1	35	10.3	33	5.1	48	30.2
Other (h)	9	1.4	7	0.2	5	0.3	12	6.6
<b>Total</b>	<b>195</b>	<b>53.4</b>	<b>232</b>	<b>38.8</b>	<b>162</b>	<b>23.2</b>	<b>208</b>	<b>54.2</b>

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

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

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

(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. Excludes corporate reorganisations.

## Case Study: Port of Melbourne

During 2016–2017, the FIRB considered applications to acquire the 50-year lease for the Port of Melbourne. Through early engagement with the relevant Australian Government agencies and the Victorian Government, the privatisation process was completed with the sale ultimately going ahead for a price of \$9.7 billion, well above initial forecasts.

Close engagement with the Victorian Government supported the implementation of intergovernmental arrangements addressing key national interest issues such as separation and oversight of key port functions and security of port facilities.

The successful bidder was the Lonsdale Consortium, comprising Australian and foreign interests including the Australian Future Fund, China Investment Corporation, the Canadian-owned Pension Fund OMERS, and pension funds from a variety of countries.

The Port of Melbourne is Australia's largest container port, accounting for 13.3 per cent of Australia's \$3 billion a year port industry and expected to grow at an above-average 8.5 per cent annually. The sale has added significant value for the Victorian and Australian Governments and for the consortium that is expected to invest \$6 billion into upgrading the facility over the life of the 50-year lease.

The lease is expected to make the Port of Melbourne more efficient, more competitive and will reinforce Victoria's position in the Australian freight and logistics market. Benefits are expected to flow to producers and manufacturers who export all over the world.



## Commercial real estate

**\$43.7b  
approved  
investment**

In 2016–17 foreign investment approval was given for 465 proposals valued at \$43.7 billion in the commercial real estate sector, down from \$49.7 billion in 2015–16.

The decline in value was largely due to a significant decrease in approvals for existing commercial property. This may, in part, reflect a higher foreign investment screening threshold for Chinese investors as a result of the China-Australia Free Trade Agreement (ChAFTA) which came into force on 20 December 2015. Under the ChAFTA, Chinese investors are only required to obtain investment approval before purchasing developed commercial property valued at \$1,094 million or above (previously \$252 million). This is consistent with screening thresholds for many other foreign investors from countries with which Australia has established free trade agreements.

The decrease in the number of commercial real estate approvals also reflects a shift toward the use of exemption certificates for commercial real estate purchases. Exemption certificates streamline regulatory requirements and reduce application fees by facilitating approval for a program of investments (i.e. multiple acquisitions) through a single application. Exemption certificates provide pre-approval for purchases within agreed categories, value parameters and time limits. Exemption certificates also contain conditions (for example, development requirements) in line with standard approvals.

**Table 4.8: Commercial real estate approvals, by type: 2013–14 to 2016–17**

	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
<b>Commercial</b>								
Developed								
- existing commercial property	237	31.6	313	28.5	331	39.5	219	20.9
- exemption certificates (a)	10	3.5	18	3.1	18	4.5	30	11.2
<i>Sub-total 'Developed'</i>	<i>247</i>	<i>35.1</i>	<i>331</i>	<i>31.6</i>	<i>349</i>	<i>43.9</i>	<i>249</i>	<i>32.1</i>
For development								
- vacant commercial property	119	2.9	155	2.4	235	4.0	182	3.7
- exemption certificates (a)	8	1.9	20	2.2	22	1.8	34	7.9
<i>Sub-total 'For development'</i>	<i>127</i>	<i>4.7</i>	<i>175</i>	<i>4.6</i>	<i>257</i>	<i>5.7</i>	<i>216</i>	<i>11.6</i>
<b>Total commercial</b>	<b>374</b>	<b>39.9</b>	<b>506</b>	<b>36.1</b>	<b>606</b>	<b>49.7</b>	<b>465</b>	<b>43.7</b>

(a) From 1 December 2015, annual programs under the new provisions in the Act are known as Exemption Certificates.

Notes: Totals may not add due to rounding.  
Excludes corporate reorganisations.

**Table 4.9: State and territory distribution of proposed investment in commercial real estate in 2016–17**

Location	Number of approvals	Commercial		Total \$b
		Developed \$b	For development \$b	
ACT	*	0.61	-	0.61
NSW	117	12.82	1.58	14.40
NT	*	-	-	0.01
Qld	74	1.59	1.60	3.19
SA	11	0.72	0.04	0.76
Tas	*	-	-	0.00
Vic	106	3.28	1.60	4.88
WA	46	1.45	0.32	1.77
Various (a)	98	11.61	6.50	18.11
<b>Total</b>	<b>465</b>	<b>32.08</b>	<b>11.65</b>	<b>43.73</b>

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

Notes: Totals may not add due to rounding.

Excludes corporate reorganisations, but includes exemption certificates.

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

'\*' indicates between 1 and 9 approvals.

### Residential real estate

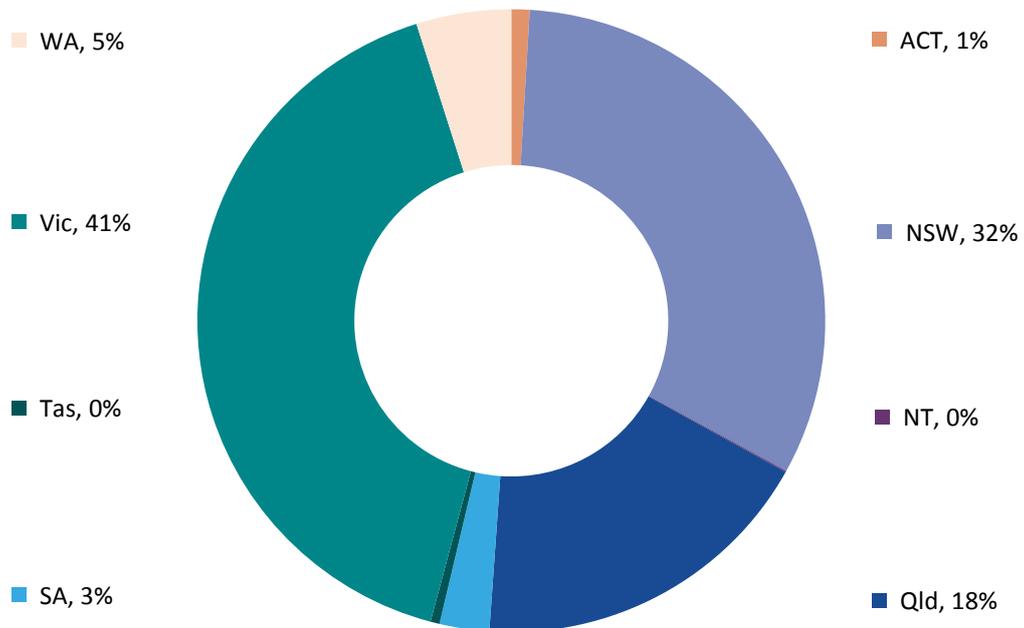
**\$25.2b  
approved  
investment**

In 2016–17, a total of 13,198 residential real estate applications were approved for proposed investment worth \$25.2 billion. This represents a decrease in the number of approvals of 26,951 and \$47.2 billion from 2015–16. However, approvals are indicative of potential rather than actual investment.

A significant factor contributing to the reduction applications for the reporting period was the introduction of application fees from 1 December 2015. The introduction of fees resulted in investors only applying for properties they intend to purchase. Other factors which may explain the decrease include; Chinese capital controls and the introduction of state based taxes on foreign investors.

The proportion of all residential real estate approvals for development remained relatively stable in comparison to the previous year and represents around 88 per cent of the value of all residential approvals in 2016–17. Approvals for development include approvals for new dwellings, vacant land and redevelopment of existing residential property that increases the housing stock. This aligns with Australia's foreign investment policy, which seeks to attract investment that increases the housing stock.

**Chart 4.3: Proportion of residential real estate approvals by state and territory in 2016–17**



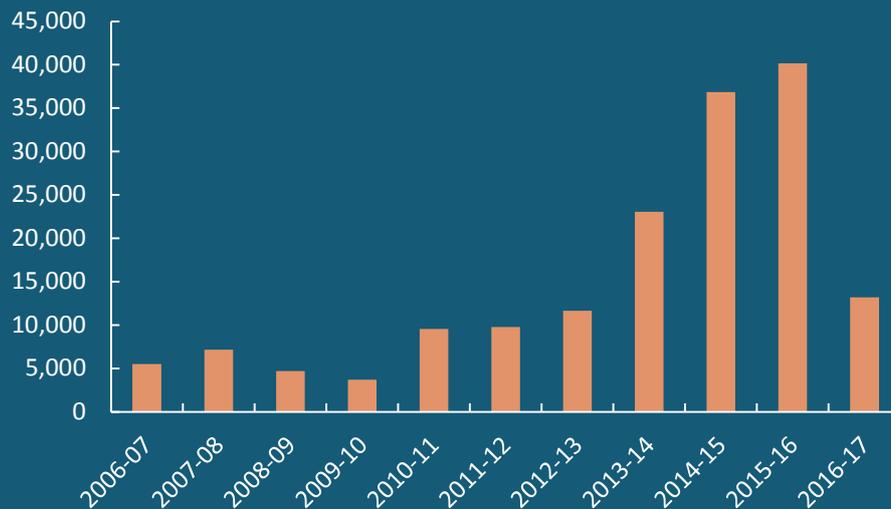
Nearly three-quarters of all residential real estate approvals were for purchases in Victoria or New South Wales. This is consistent with recent years and reflects strong demand for residential property in Sydney and Melbourne.

## A closer look at residential real estate

Government policy aims to increase Australia's housing stock by channelling foreign investment into new dwellings. Budget measures announced in 2017-18 build on the package of reforms the Government introduced in 2015 which strengthened the rules around foreign investment in residential real estate. In 2016-17, approximately 85 per cent of approved proposals for residential real estate were investments into new dwellings or vacant land for development, adding to Australia's total housing stock.

Following strong growth in foreign investment applications through 2014 and 2015, FIRB approvals to purchase residential real estate have decreased in 2016-17. The reduction in approvals reflects investor reaction to the introduction of FIRB application fees in 2015, which has changed investor behaviour by encouraging applications only for properties they intend to acquire. Investors now have an incentive to apply only when they have a high certainty of purchasing.

**Chart 4.4: Residential real estate approvals by year**



Prior to the introduction of fees in December 2015, individuals often made several applications earlier in the process when considering multiple properties, even though they might have only ended up purchasing a single property. This suggests that the resulting reduction in approvals may not imply a corresponding reduction in actual investment in residential real estate. That is, the actual decline is likely to be lower than implied by the data.

The actual slowdown also potentially reflects a weakening in underlying foreign demand. Factors affecting foreign investment include tightening of bank lending to foreigners, tighter Chinese capital controls (where Chinese investors made up 40 per cent of applications), weaker market conditions and additional taxes imposed on foreign investor purchases in Victoria, New South Wales and Queensland.

### **Established residential dwellings**

In 2016–17 2,008 approvals were given for established residential dwellings. Established dwellings (or developed residential premises) can generally only be purchased by temporary residents for use as their home while they remain in Australia. A small number of approvals are given for foreign persons that operate a substantial Australian business to acquire an established dwelling to house their Australian-based staff.

Established dwelling exemption certificates comprised a quarter of all established dwelling approvals. These certificates enable foreign persons to receive pre-approval to purchase a single established dwelling and notify the details of the property once purchased, rather than requiring the person to seek individual approvals for each dwelling they may be considering purchasing. In 2016–17, exemption certificates were broadened to allow foreign persons to acquire a dwelling through any purchase method, whereas previously these certificates were limited to purchases through an auction process only.

### **For development**

Australia's foreign investment policy encourages foreign investment in the residential real estate sector, which is expected help build new supply. During 2016–17, 11,190 approvals for development were given including approvals for new dwellings, vacant land and other residential property for development.

The new dwelling exemption certificate allows developers to receive pre-approval for foreign investors to purchase new residences up to a cumulative value of \$3 million in a development. In the 2017–18 Budget a new rule was introduced for new dwelling exemption certificates that restricted the number of dwellings a developer can sell to a foreign person to 50 per cent of all dwellings in the development. The developer is also required to market the dwellings locally and must report on all purchases made by foreign persons. As the value of the investment reported in the FIRB data against these exemption certificates represents the maximum amount foreign persons may acquire under the certificate, the approved investment figure may overstate the extent of actual foreign purchases.

**Table 4.10: Investment in residential real estate, by type of approval: 2013–14 to 2016–17**

	2013-14		2014-15		2015-16		2016-17	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b
<b>Residential</b>								
<u>Developed</u>								
- Existing residential property								
- Individual purchases	7,915	7.2	9,236	10.1	5,632	6.9	1,484	2.1
- Established dwelling EC (a)	na		na		244	0.4	521	0.8
<i>Sub-total 'Existing'</i>	<i>7,915</i>	<i>7</i>	<i>9,236</i>	<i>10</i>	<i>5,876</i>	<i>7.3</i>	<i>2,005</i>	<i>2.9</i>
- Exemption certificate (b)	5	0.4	11	1.4	1	0.0	3	0.0
<i>Sub-total 'Developed'</i>	<i>7,920</i>	<i>7.5</i>	<i>9,247</i>	<i>11.5</i>	<i>5,877</i>	<i>7.3</i>	<i>2,008</i>	<i>3.0</i>
<u>For development</u>								
- Vacant land								
- Individual purchases	3,150	1.7	5,908	2.5	7,005	2.8	2,911	1.1
<i>Sub-total 'vacant land'</i>	<i>3,150</i>	<i>2</i>	<i>5,908</i>	<i>3</i>	<i>7,005</i>	<i>2.8</i>	<i>2,911</i>	<i>1.1</i>
- New dwellings								
- Individual purchases	11,338	7.7	20,551	14.4	26,052	19.3	7,864	6.6
- New dwelling EC	103	16.4	152	28.7	201	38.4	46	9.4
<i>Sub-total 'new dwellings'</i>	<i>14,591</i>	<i>25.9</i>	<i>20,703</i>	<i>43.1</i>	<i>26,253</i>	<i>57.6</i>	<i>7,910</i>	<i>15.9</i>
- Redevelopment	534	0.8	972	2.3	988	2.8	335	0.9
- Exemption certificate (b)	9	0.6	11	1.4	18	2.0	34	4.3
<i>Sub-total 'For development'</i>	<i>18,284</i>	<i>29.0</i>	<i>27,594</i>	<i>49.2</i>	<i>34,264</i>	<i>65.2</i>	<i>11,190</i>	<i>22.3</i>
<b>Total residential</b>	<b>23,054</b>	<b>34.7</b>	<b>36,841</b>	<b>60.7</b>	<b>40,141</b>	<b>72.4</b>	<b>13,198</b>	<b>25.2</b>

(a) Established dwelling exemption certificates were introduced from 1 December 2015.

(b) From 1 December 2015, Annual Programs, under the new provisions in the Act are known as exemption certificates.

Notes: Totals may not add due to rounding. EC refers to Exemption Certificates.

The 2015–16 figures were impacted by the 1 December 2015 reforms, which may affect data comparability.

The value ascribed to a new dwelling ECs is the total value of the development available for purchase by foreign investors, as provided by the applicant. From the 2017–18 Budget onwards approved new dwelling exemption certificates will only allow developers to sell a maximum of 50 per cent of dwellings in a development to foreign persons.

**Table 4.11: State and territory distribution of proposed investment in residential real estate in 2016–17**

Location	Number of approvals	Residential		Total \$b
		Developed \$b	For development \$b	
ACT	124	0.02	0.51	0.52
NSW	4,224	1.00	5.59	6.58
NT	*	-	-	0.00
Qld	2,378	0.30	3.26	3.56
SA	337	0.10	0.10	0.20
Tas	62	0.02	-	0.02
Vic	5,396	1.29	9.75	11.04
WA	644	0.21	0.40	0.62
Various (a)	25	0.03	2.67	2.70
<b>Total</b>	<b>13,198</b>	<b>2.96</b>	<b>22.28</b>	<b>25.25</b>

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

Notes: Totals may not add due to rounding.

Includes exemption certificates.

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

'\*' indicates between 1 and 9 approvals.

**Table 4.12: State and territory distribution of proposed investment in residential real estate, by industry subtype in 2016–17**

Location	New Dwelling		Existing Property		Redevelopment		Vacant land		Developer (b)	
	No.	\$b	No.	\$b	No.	\$b	No.	\$b	No.	\$b
ACT	94	0.05	22	0.02	*	-	*	-	*	0.40
NSW	3,268	3.37	461	1.00	141	0.46	342	0.23	*	0.63
NT	*	-	*	-	*	-	*	-	*	-
QLD	1,428	0.92	351	0.30	56	0.08	531	0.23	10	2.00
SA	140	0.08	146	0.10	16	0.01	35	0.01	*	-
TAS	*	-	37	0.02	*	-	11	-	*	-
VIC	2,663	2.01	740	1.29	92	0.33	1,872	0.60	27	6.17
WA	261	0.17	241	0.21	23	0.02	116	0.05	*	0.17
Various (a)	*	-	*	-	*	-	*	-	*	-
<b>Total</b>	<b>7,864</b>	<b>6.59</b>	<b>2,005</b>	<b>2.93</b>	<b>335</b>	<b>0.90</b>	<b>2,911</b>	<b>1.13</b>	<b>46</b>	<b>9.36</b>

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

(b) 'Developer' includes new dwelling exemption certificate approvals provided to real estate developers (previously off-the-plan approvals).

Notes: Totals may not add due to rounding.

This table excludes developed, and for-development exemption certificates in Table 4.10.

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

'\*' indicates between 1 and 9 approvals.

## Investor countries

China and the United States continued to be the two top sources of foreign investment proposals by value in 2016–17<sup>2</sup>.

Chinese investors were again the largest source of foreign investment approvals by both value (\$38.9 billion) and number (9,714) in 2016–17. Key sectors of interest for Chinese investors included mineral exploration and development (for example Yancoal’s acquisition of Coal & Allied Industries), followed by manufacturing, electricity and gas and commercial real estate. China was continued to be the largest source of foreign investment associated with approvals for residential real estate, although the numbers were impacted by a range of factors as described above.

The United States was the second largest source of approvals by value, with \$26.5 billion worth of approved applications. US investors registered strong interest in the services sector (for example, the transactions related to the Port of Melbourne consortium and the ports and rail group Asciano), along with commercial real estate and mineral exploration and development.

Canadian investors were also prominent and received approvals totalling \$23 billion. The most significant sector of interest to Canadian investors was services, followed by commercial real estate and manufacturing, electricity and gas (for example, the Endeavour Energy transaction).

The next three top source countries for proposed investment by value were Hong Kong (with interest in the manufacturing, electricity and gas sector – for example, the energy utility operator Duet Group consortium transaction), Singapore and Japan (both with interest in the commercial real estate sector).

Proposed investment in 2016–17, disaggregated by sector, for the top 18 countries (by value) is shown in Table 4.13.

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2 An important caveat to this is that the source of proposed investment identified in Table 4.13 may not necessarily reflect all countries involved in a foreign investment transaction, but rather provides a guide on the source of controlling interests. The general approach is for the investment to be attributed to the controlling investor and a notional value recorded to any other foreign government investors greater than 5 per cent. For consortium proposals, the approach also considers the relative share of material investments between the consortium parties and the value of the investment may be allocated on a proportional basis. For example, the source may be attributed to a company’s single substantial (or controlling) shareholder; or if a company’s shares are widely held, the country of domicile or incorporation may be recorded. The practical effect of this approach is that proposed investment by some countries will be overstated and for others understated.

**Table 4.13: Approvals by country of investor, by industry sector in 2016–17**

Country (a)	Number of approvals (f)	Agriculture, forestry and fishing \$m	Financial & insurance \$m	Manufacturing, electricity & gas \$m	Mineral exploration & development \$m	Real estate \$m	Services \$m	Tourism \$m	Total \$m
China (b)	9,714	2,211.5	244.9	7,396.0	7,326.9	15,253.5	6,434.0	0.0	38,867.0
United States	316	901.7	1,238.3	983.0	3,814.1	6,810.9	12,488.4	218.4	26,454.6
Canada	193	1,466.5	507.4	4,425.4	650.6	7,252.7	8,887.9	0.0	23,190.4
Hong Kong	649	241.5	1.7	11,824.2	508.5	1,568.8	1,572.0	0.0	15,716.7
Singapore	477	380.5	6.2	879.8	113.6	5,295.8	3,461.4	21.8	10,159.1
Japan	113	12.2	0.0	1,150.3	109.5	3,199.6	937.5	0.0	5,409.1
Malaysia	666	106.4	0.0	52.2	16.4	3,494.2	597.7	0.0	4,266.9
United Kingdom	488	182.3	0.0	454.6	61.2	2,145.4	1,315.4	0.0	4,158.8
Netherlands	83	273.8	0.0	0.0	68.8	1,936.8	1,769.2	0.0	4,048.6
United Arab Emirates	90	38.9	200.0	2,016.8	0.0	464.2	98.8	401.1	3,219.8
Germany	90	231.2	0.0	48.7	42.3	1,687.3	1,174.3	0.0	3,183.8
Switzerland	32	159.2	1,241.0	0.0	0.0	979.2	304.5	0.0	2,684.0
Kuwait	16	6.1	0.0	2,021.2	0.0	30.5	0.1	0.0	2,057.9
Korea, Republic of	108	9.4	53.2	108.1	9.7	1,205.4	196.8	0.0	1,582.6
South Africa	110	0.3	0.0	0.0	642.8	520.7	367.0	0.0	1,530.7
New Zealand	37	5.3	0.0	78.8	31.2	551.9	681.0	0.0	1,348.2
Thailand	34	0.3	0.0	146.0	8.3	1,117.6	0.0	0.0	1,272.2
Qatar	18	1.6	0.0	800.0	0.0	32.2	277.2	0.0	1,111.0
Other Countries (c)	1,546	173.4	262.4	910.3	1,253.0	3,414.2	1,128.5	28.1	7,169.9
New Dwelling EC (d)	46	0.0	0.0	0.0	0.0	9,357.8	0.0	0.0	9,357.8
<i>Subtotal</i>	<i>14,826</i>	<i>6,401.8</i>	<i>3,755.0</i>	<i>33,295.5</i>	<i>14,656.8</i>	<i>66,318.6</i>	<i>41,691.9</i>	<i>669.3</i>	<i>166,789.0</i>
Australia (e)	394	582.2	0.0	7,596.8	1,201.9	2,661.5	12,495.8	1,584.2	26,122.4
<b>Total</b>	<b>15,220</b>	<b>6,984.1</b>	<b>3,755.0</b>	<b>40,892.2</b>	<b>15,858.7</b>	<b>68,980.1</b>	<b>54,187.7</b>	<b>2,253.5</b>	<b>192,911.4</b>

### Notes applying to Table 4.13

- (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 value of proposed investment approved.
- (d) One new dwelling exemption certificate (previously 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. Proposals involving investment originating from more than one country are generally counted as one proposal for each of the countries concerned where they include investment from foreign government investors greater than 5 per cent or where there is shared control.

Notes: Totals may not add due to rounding. Includes corporate reorganisations and exemption certificates.

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

Total number of approvals in this table may be greater than or equal to the total number of approvals in Tables 4.1, 4.3, and 4.4 as the data is recorded by target, which includes both industry sectors and investor countries. For instance, one proposal from two investor countries to acquire two targets that operate in separate sectors will appear as one approval per sector, per country (that is, it will be reflected as 4 approvals).





The Australian Government and the FIRB support the foreign investment regime through education and promotion of the framework, rigorous screening practices and a robust compliance program.

## **Education and promotion**

The FIRB and its officials in the Treasury and the ATO undertake numerous activities to educate and provide information to individuals and organisations affected directly and indirectly by the foreign investment rules. These activities are directed at ensuring investors and related parties are aware of their obligations under the foreign investment framework.

Education activities include regular meetings with key stakeholders, presenting at industry forums and seminars, publishing guidance material on the FIRB's website, responding to written enquiries and providing information through the general enquiries helpline and the compliance hotline.

For further information on the FIRB's engagement activities see the section on Stakeholder Engagement in Chapter 2 of this report and the 2016–17 FIRB Regulator Performance Framework Report, available on the FIRB's website.

## Compliance program

General compliance and monitoring work includes the following activities:

- investigations triggered by data matching and interpretation of trends. These investigations can include analysis of case histories, reviews of shareholding structures among listed Australian companies and regular monitoring of property market leasing and sales activity;
- investigations triggered by information received from members of the public;
- monitoring to ensure that foreign persons are complying with the conditions attached to, or scope of, their approvals; and
- liaising with a range of government agencies including relevant national security agencies, the Department of Immigration and Border Protection (now known as the Department of Home Affairs), the Australian Securities and Investments Commission, the Australian Criminal Intelligence Commission, the Australian Federal Police and state and territory industry regulators.

When screening new applications, the applicant's past compliance with the foreign investment regime is considered. This includes reviewing whether past transactions have been correctly notified and ensuring conditions relating to past proposals are met. Instances of non-compliance may result in more stringent conditions being imposed on future approvals or even prohibition of proposed investments. The application screening process is outlined in Appendix C of this report.

## Penalties and enforcement powers

The Act provides a number of powers to enforce the foreign investment rules. Criminal and civil penalties may be applied for breaches of the Act, including where a foreign person takes an action that has not received prior foreign investment approval or breaches a condition of a foreign investment approval. For more significant breaches, an investor may be ordered to divest (by requiring the parties to sell shares, assets or property). Civil penalties can also be applied to third parties who knowingly assist foreign investors to breach the rules.

There are additional civil penalties in relation to residential land, including requiring an investor to forfeit capital gains made on divestment of a property. Less significant breaches of the foreign investment rules in relation to residential real estate may be addressed by way of an infringement notice (instead of a higher civil penalty). Less serious breaches may involve circumstances where:

- the investor makes a full disclosure of the breach before it is detected;
- a breach occurs, and approval would have been granted had they given prior notice; or
- the person has inadvertently breached a condition of an existing foreign investment approval, but would have received approval had they applied to have those conditions varied.

## Strengthening commercial compliance

Ensuring there is strong compliance with Australia's foreign investment laws is a priority for the Australian Government.

Recent years have seen a significant change in the foreign investment environment, including the size of commercial investments being undertaken and the sectors in which investments are focussed. This has led to a higher proportion of applications being subject to conditions to ensure they are able to proceed without being contrary to the national interest. Chapter 2 outlines the foreign investment framework and detail regarding the management of national interest factors.

All commercial foreign investment approvals with conditions attached require regular reporting to the FIRB regarding compliance with those conditions. Non-compliance with conditions is treated seriously and a range of mechanisms, including penalties and divestment orders, are available.

As more complex and sophisticated conditions are attached to foreign investment approvals to address changing risks, so too have Treasury's compliance auditing, assurance and reporting become more sophisticated over 2016-17.

Further work is underway to enhance compliance arrangements, including strengthening compliance activities and rolling out a comprehensive audit program.

Information about the enhanced compliance arrangements was published on the FIRB website in July 2017. Treasury implemented the audit program in the second half of 2017 and is aiming to conduct up to 20 audits per year.

The objective of this work is to support voluntary compliance with the foreign investment regime, while providing a disincentive for non-compliance by using the penalties available under the regime. Future annual performance reports will report on the outcomes of the audit program and any associated enforcement action.

It also enables Treasury to collect valuable information on foreign investment risks and processes, including the use of conditions, as part of a commitment to continuous improvement and delivering best-practice regulation.

## Residential real estate compliance investigations and outcomes

The data reported in this section is based on residential real estate compliance investigations undertaken by the ATO from 1 July 2016 to 30 June 2017. As noted earlier in this report, responsibility for administering, monitoring and enforcing compliance with residential real estate rules was transferred to the ATO in December 2015, along with additional enforcement powers.

During 2016–17 1,669 cases were identified for investigation (down from 2,104 cases in 2015–16). Of these, 1,409 investigations were completed (1,637 in 2015–16), which identified 549 properties acquired in breach of Australia’s foreign investment rules (up from 260). There were 96 residential properties divested by foreign persons (up from 54 in 2015–16) totalling nearly \$97 million.<sup>3</sup>

Compliance investigations involved a broad range of residential property and identified varying severity of breaches. Identified breaches include:

- failure to seek approval before the purchase of a property;
- failure to sell an established property once the owner’s temporary resident visa expires;
- temporary resident visa holders owning more than one established property;
- Australian companies and trusts controlled by foreign persons owning established properties;
- failure to comply with the conditions of an approval, such as not adhering to the requirement to use a property as a principal place of residence, renting out a dwelling or failing to commence construction or to redevelop the property within specified timeframes; and
- failure to undertake certain actions within a specified period.

Outcomes of investigations that identified breaches include divestments, retrospective approvals and variations of conditions. In some circumstances an infringement notice may have also been applied. Infringement notice data is reported separately. Table 5.1 provides detail on these outcomes.

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<sup>3</sup> The value of properties is based on the value at the time the foreign person acquired the property.

**Table 5.1: Outcomes of residential real estate investigations that identified breaches in 2016–17**

Compliance outcome	Number of investigations	Percentage of total
Concessional divestment (a)	9	1.6
Formal divestment (b)	21	3.8
Self-divestment (c)	66	12.0
Retrospective approval	133	24.2
Change of conditions	93	16.9
Retrospective approval during FIRB consideration (d)	227	41.3
<b>Total outcomes</b>	<b>549</b>	<b>100.0</b>

(a) Concessional divestments are for self-disclosed breaches from investors during the reduced penalty period between 2 May 2015 and 30 November 2015.

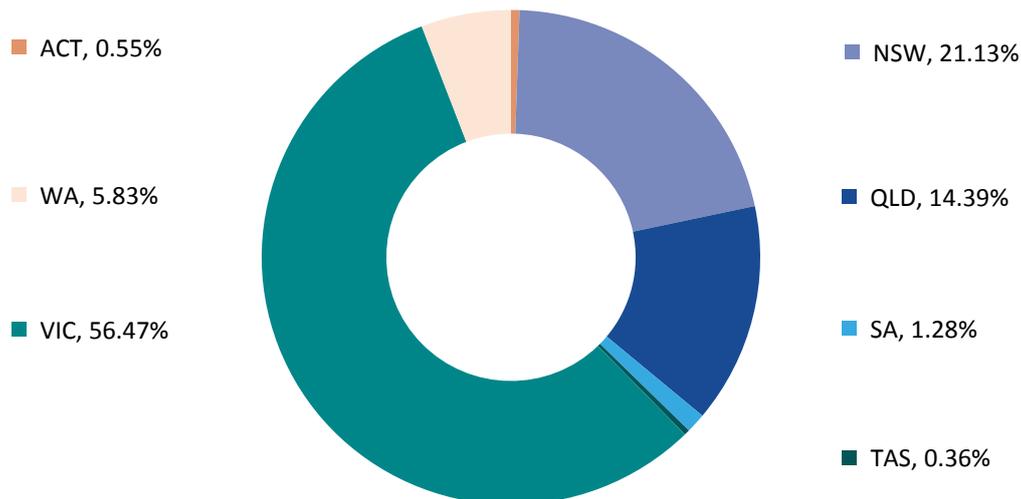
(b) Formal divestments are those where a formal disposal order was issued under the Act.

(c) Self-divestments are where an investor disposes of a property during an investigation.

(d) Refers to breaches identified during the FIRB screening process where foreign persons have previously acquired an interest in residential real estate prior to receiving approval.

### Breaches by location

More than half the breaches identified by compliance investigations related to residential property purchased in Victoria, while one-fifth related to property in New South Wales. Chart 5.1 shows the geographic distribution of the properties that were found to have been purchased in breach of the foreign investment rules in 2016–17.

**Chart 5.1: Location of residential real estate breaches identified in 2016–17**

### Investigations by source

The 1,669 cases identified for investigation in 2016–17 came from a range of sources including community information, data matching and self-disclosures. Table 5.2 provides a breakdown of the source of investigations.

ATO data matching is an increasingly important source of information used in compliance investigations. Data matching made up over 65 per cent of the cases identified for investigation in 2016–17, up from just 17.8 per cent in 2015–16. Although community ‘dob-ins’ are a valuable source of intelligence for the ATO, only a small proportion of investigations arising from community information actually involved a breach of the Act. In most cases, the owners of the properties reported by community members were determined to be Australian citizens or permanent residents and are therefore exempt from the Act.

**Table 5.2: Source of residential real estate investigations in 2016–17**

Source of Case	No.	Percentage	Description
Self-disclosure	100	6.0	Self-disclosures made from 2 May 2015 to 30 June 2016
Community information	349	20.9	Information received from ‘dob ins’ made by the community
Other referrals	127	7.6	Internal ATO referrals and referrals received from other Government agencies, media reports
Data matched	1093	65.5	ATO data matching sources
Total received	1,669	100.0%	

**Table 5.3: Outcomes of completed residential real estate investigations in 2016–17, by source (a)**

Source	No. of completed investigations	No. of breaches
Community information	303	34
Self disclosure	79	74
Data matching	929	430
Other referrals	98	11
Total	1,409	549

(a) The number of completed investigations and the number of breaches are not directly comparable. The number of breaches is reported by residential property and the number of completed investigations by case. There may be multiple properties involved in a case or multiple cases per property in the event of joint owners.

**Table 5.4: Infringement notices issued in relation to residential real estate, 2016–17**

Penalty type	No.	Total Value \$
Tier 1 infringement	349	924,540
Tier 2 infringement	68	820,800
Total	417	1,745,340

Notes: Tier 1 infringement notices are issued where the breach is self-reported.

Tier 2 infringement notices are issued where the breach is identified by the ATO's compliance activity.





**Table A.1: FIRB meeting attendance during 2016–17**

Date	Location	Attendees	Apologies
22 July 2016	Sydney	Brian Wilson (Chair) Alice Williams Michael D’Ascenzo Patrick Secker David Irvine	David Peever Rob Donnelly (part attendance)
26 August 2016	Sydney	Brian Wilson (Chair) Alice Williams Michael D’Ascenzo Patrick Secker David Irvine David Peever Rob Donnelly	
30 September 2016	Sydney	Brian Wilson (Chair) Alice Williams Patrick Secker David Irvine David Peever Rob Donnelly	Michael D’Ascenzo

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Date	Location	Attendees	Apologies
21 October 2016	Sydney	Brian Wilson (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Irvine David Peever Rob Donnelly	
17 November 2016	Canberra	Brian Wilson (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Irvine David Peever Rob Donnelly	
8 December 2016	Sydney	Brian Wilson (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Irvine	David Peever Rob Donnelly
23 February 2017	Melbourne	Brian Wilson (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Irvine David Peever Rob Donnelly	
24 March 2017	Sydney	Brian Wilson (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Irvine Roger Brake	David Peever
21 April 2017	Sydney	David Irvine (Chair) Alice Williams Patrick Secker David Peever Roger Brake	Michael D'Ascenzo
15 May 2017	Canberra	David Irvine (Chair) Alice Williams Michael D'Ascenzo David Peever	Roger Brake Patrick Secker
14 June 2017	Sydney	David Irvine (Chair) Alice Williams Michael D'Ascenzo Patrick Secker David Peever Roger Brake	



This appendix provides an overview of the main methodological and data caveats that apply to investment proposal data in this Annual Report. While a useful source of data on proposed foreign investment in Australia, the FIRB urges caution in the use of these statistics, particularly when making comparisons with earlier years or alternate data sources on foreign investment.

## Methodological and data caveats

- The statistics contained in this Annual Report 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 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 and from the 2015-16 Annual Report onwards much of the data is an aggregation of separate data captured by Treasury and the ATO.
- Data presented for earlier years may also have been revised since last published.

- 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. 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 FIRB statistics does not necessarily reflect all countries involved in a foreign investment transaction. The general approach is for the investment to be attributed to a controlling investor on the basis of value of investment, and also acknowledge the involvement of foreign government investors greater than 5 per cent in approval numbers and as a notional investment value. 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.
  - For consortium proposals, or where there is relatively shared control, the proposed investment may be counted against a number of countries with the investment value pro-rated between those countries involved.
- The data does not necessarily reflect a change from domestic to foreign ownership as in some cases both the target and the purchaser are foreign persons.
- The value ascribed to a proposed investment which has received approval is the amount advised by the applicant 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 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 in Australia.
  - 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 internal 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>4</sup>

#### Policy scope and changes

The breadth of the data reflects the requirements of Government policy at the time. The data do not cover foreign investments below the various screening 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).

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

- changes to the thresholds above which an acquisition requires foreign investment approval, both through free trade agreements and general policy changes (for example, the lowering of the general agricultural land screening threshold from \$252 million to \$15 million (cumulative) from 1 March 2015);
- 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, as well as changes in immigration policies that control the number of temporary resident visa holders;
- the significant 1 December 2015 reforms which included:
  - the introduction of fees for foreign investment applications;
  - the introduction of a \$55 million threshold for direct investments in agribusiness;
  - the shift of many requirements from Policy into legislation;
  - modernisation of the foreign investment legislation including changes to exemptions and the substantial interest threshold;

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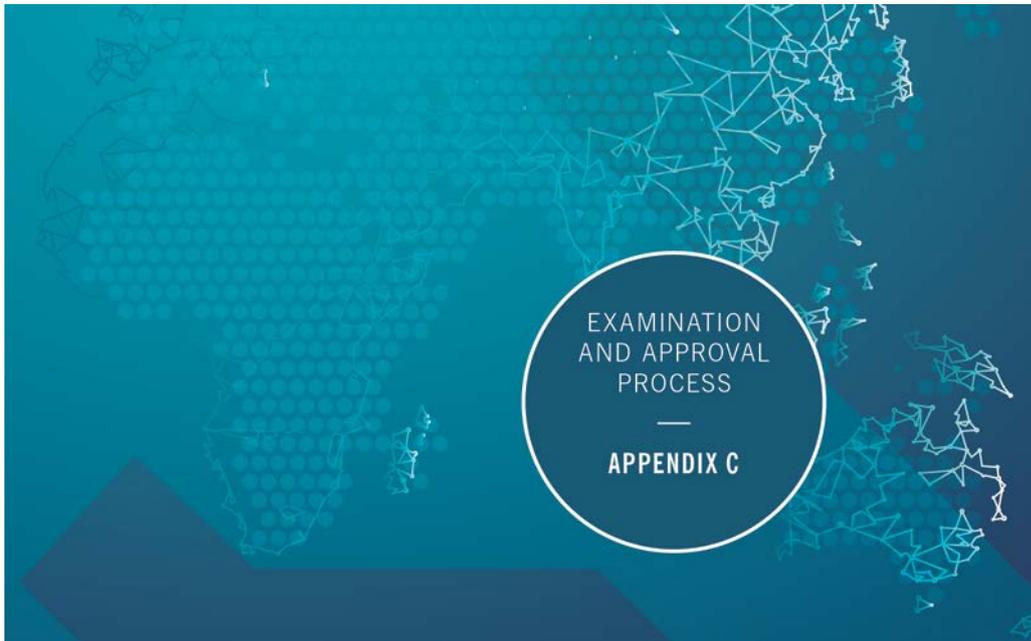
<sup>4</sup> Data to end of 2013-14 has been compiled by reference to the Australian and New Zealand Standard Industrial Classification (ANZSIC 1993), except: newspaper printing and publishing are allocated to the services industry sector (ANZSIC 1993 classifies these under manufacturing); some manufacturing 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 is compiled by reference to the Australian and New Zealand Standard Industrial Classification (ANZSIC 2006) and the FIRB is no longer reporting on resource processing.

- changes to exemption certificates; and
- the increase in the monetary threshold for commercial developed land that is not sensitive from \$55 million to \$252 million.

#### **Administrative practices**

Changes in administrative practice (for example, data collection and record keeping) 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.
- The transfer of screening of residential real estate cases to the ATO from 1 December 2015 and of non-sensitive commercial real estate and internal reorganisation (restructure) foreign investment applications from 1 April 2017.



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, proposals are examined with a view to identifying any sensitivity regarding the national interest and determining whether these sensitivities can be mitigated or managed.

### **FIRB involvement**

The FIRB provides advice on the application of the foreign investment framework across the range of proposals received 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 FIRB performs this role with the benefit of weekly reports on proposals received and through regular meetings and discussions with the Executive Member and Treasury or ATO officers. Formal Board meetings are generally held monthly, with telephone discussions taking place in the intervening weeks. The FIRB members draw on their considerable collective and individual professional and commercial experience in discharging their advisory role.

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

The FIRB 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 \$25,000 fine, or both.

## **Application Screening Process**

Key elements of the application screening process are outlined below, and summarised in Figure C.1.

### **Initial examination**

The initial examination 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 FIRB has direct and early involvement in significant or sensitive applications.

### **Consultation arrangements**

For significant proposals, consultations are undertaken with Australian Government departments, 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. The FIRB 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 Treasurer can decide in each case whether the investment would be contrary to the national interest. Across all proposals the Government typically considers the following factors:

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

Recognising their significance, additional factors are considered as part of the national interest test for proposed investments in the agricultural sector and for residential land as well as for applications made by foreign government investors. General guidance on the national interest factors is published in Australia's Foreign Investment Policy.

### **Extending the statutory timeframe**

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

If a proposal cannot be decided within 30 days, because the proposal is complex or further information is needed to properly assess it, the Treasurer can issue an Interim Order extending the timeframe up to a further 90 days. Alternatively, the applicant can voluntarily extend the decision period where it is clear that more time will be required.

### **Approvals and Conditions**

When assessing more significant proposals, the FIRB, Treasury and the ATO work closely with applicants, and in some cases, vendors. 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. 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 prohibited by the Treasurer.

**Figure C.1: FIRB application screening process**





Act	The <i>Foreign Acquisitions and Takeovers Act 1975</i> (as in force during 2016–17)
Agricultural land	Land in Australia that is used, or that could reasonably be used, for a primary production business. The regulations may provide that land of a specified kind is not agricultural land.
Commercial land	Land in Australia or the seabed of the offshore area, other than land: <ul style="list-style-type: none"><li>• used wholly and exclusively for a primary production business; or</li><li>• on which there is at least one dwelling (except commercial residential premises); or</li><li>• on which the number of dwellings (except commercial residential premises) that could reasonably be built is less than the number prescribed by the regulations (10, during 2016-17).</li></ul>
Established dwelling	A dwelling (except commercial residential premises) on residential land that is not a new dwelling.

Exemption certificates	Advance approval to allow foreign persons to undertake a program of acquisitions of land and/or business and entities. These are granted with a specified monetary limit within a defined region or sector and generally include conditions requiring the foreign person to report actual acquisitions and any other conditions that would normally be applied for the type of land and/or business and entity to be acquired. Business exemption certificates were introduced on 1 July 2017. Prior to 1 December 2015, the equivalent to land exemption certificates was known as an annual program.
Foreign government investor	<p>A foreign government investor includes:</p> <ul style="list-style-type: none"><li>• a foreign government or separate government entity;</li><li>• a corporation or trustee of a trust in which:<ul style="list-style-type: none"><li>– a foreign government or separate government entity, alone or together with one or more associates, holds a substantial interest (that is, an interest of at least 20 per cent); or</li><li>– foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate substantial interest (that is, an interest of at least 40 per cent);</li></ul></li><li>• a general partner of a limited partnership in which:<ul style="list-style-type: none"><li>– a foreign government or separate government entity, alone or together with one or more associates, holds an interest of at least 20 per cent; or</li><li>– foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate interest of 40 per cent or more;</li></ul></li><li>• a corporation, trustee or general partner of a kind described in the two dot points above, assuming the references to foreign government (or foreign governments) in those dot points include references to a foreign government investor (or foreign government investors) within the meaning of those dot points.</li></ul>

Foreign person	<p>Foreign person means:</p> <ul style="list-style-type: none"> <li>• an individual not ordinarily resident in Australia; or</li> <li>• a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest ; or</li> <li>• a corporation in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest ; or</li> <li>• the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest ; or</li> <li>• the trustee of a trust in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or</li> <li>• a foreign government; or</li> <li>• any other person, or any other person that meets the conditions, prescribed by the regulations.</li> </ul>
New dwelling	<p>A dwelling (except commercial residential premises) that will be, is being or has been built on residential land and that:</p> <ul style="list-style-type: none"> <li>• has not been previously sold as a dwelling; and</li> <li>• either has not been previously occupied; or if the dwelling is contained in a development and the dwelling was sold by the developer of the development — has not been previously occupied for more than 12 months total.</li> </ul>
Ordinarily resident	<ol style="list-style-type: none"> <li>1. An individual who is not an Australian citizen is ordinarily resident in Australia at a particular time if and only if:             <ol style="list-style-type: none"> <li>a. the individual has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and</li> <li>b. at that time:                 <ol style="list-style-type: none"> <li>i. the individual is in Australia and the individual’s continued presence in Australia is not subject to any limitation as to time imposed by law; or</li> <li>ii. the individual is not in Australia but, immediately before the individual’s most recent departure from Australia, the individual’s continued presence in Australia was not subject to any limitation as to time imposed by law.</li> </ol> </li> </ol> </li> <li>2. Without limiting paragraph (1)(b), an individual’s continued presence in Australia is subject to a limitation as to time imposed by law if the individual is an unlawful non-citizen within the meaning of the <i>Migration Act 1958</i>.</li> </ol>

Residential land	<p>Land in Australia if:</p> <ul style="list-style-type: none"><li>• there is at least one dwelling on the land; or</li><li>• the number of dwellings that could reasonably be built on the land is less than the number prescribed by the regulations (10 in 2016–17); and</li><li>• does not include land:</li><li>• used wholly and exclusively for a primary production business; or</li><li>• on which the only dwellings are commercial residential premises.</li></ul>
Substantial interest	<p>A person holds a substantial interest in an entity or trust if:</p> <ul style="list-style-type: none"><li>• for an entity — the person holds an interest of at least 20 per cent in the entity; or</li><li>• for a trust (including a unit trust) — the person, together with any one or more associates, holds a beneficial interest in at least 20 per cent of the income or property of the trust.</li></ul>
Temporary resident	<p>An individual who:</p> <ol style="list-style-type: none"><li>1. holds a temporary visa under the <i>Migration Act 1958</i> that allows the individual to remain in Australia for a continuous period of more than 12 months (disregarding the amount of that period remaining); or</li><li>2. meets the following conditions:<ol style="list-style-type: none"><li>i. the individual is residing in Australia;</li><li>ii. the individual has applied for a permanent visa under the <i>Migration Act 1958</i>;</li><li>iii. the individual holds a bridging visa under that Act that allows the individual to remain in Australia until the application has been finally determined; or</li></ol></li><li>3. meets the conditions prescribed by the regulations.</li></ol>
Vacant land	<p>Land is vacant if there is no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock.</p>