

**Foreign Investment**

**Review Board**

Annual Report

2018-19

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4 May 2020

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer

It is my pleasure to present to you the annual report of the Foreign Investment Review Board (the Board) for the year ending 30 June 2019. The report has been prepared in accordance with the Board's responsibilities to advise the Government on foreign investment matters.

As in previous years, the Board assessed a number of high profile investment applications including Nippon Paint's \$3.8 billion takeover of the DuluxGroup, the proposed acquisition of APA Group by a consortium led by CK Asset Holdings Limited and the acquisition of Sirtex Medical Limited by the majority Chinese owned joint bidders CDH Investments, China Grand Pharmaceutical and Healthcare Holdings Limited.

The report provides data on proposed foreign investment in 2018-19. The value of proposed investment applications increased by \$67.9 billion to \$231.0 billion, with the number of transactions valued at \$2 billion or greater increasing from two in 2017-18 to 23 during this reporting period. Business investment is at its highest level since 2015-16 and this year it increased by over \$65 billion to \$216.2 billion.

While the number of proposed transactions approved dropped by approximately 2,500 as a result of a fall in the number of residential real estate applications, the value of proposed investments in this sector actually increased by over \$2 billion to \$14.8 billion.

In 2018-19, as in 2017-18, the United States was the largest source country of proposed investment applications, by value. Canada was the next largest source country followed by Singapore, Japan and China. The reduction in proposed investment applications, by value, from China reflects an ongoing downward trend in the value of Chinese investment from its peak in 2015-16. This can be attributed to a range of factors such as China's internal domestic policy settings including increased scrutiny of outbound investment and stricter capital controls. The fall in Chinese investment reflects a broader trend which has seen a decline in outbound global Chinese investment since 2016.

During the year, the Board continued its outreach to stakeholders to build a deeper understanding of the Government's approach to foreign investment in Australia, particularly in relation to sensitive assets such as critical infrastructure or where there were large holdings of personal information. A key message was the need for early engagement so that any national interest concerns are identified, assessed and managed as early as possible. These were key issues for discussion in my meetings with investors in Hong Kong and Beijing in September 2019, which was the first visit from a FIRB Chair since 2015.

The Board has been closely following reforms to foreign investment screening regimes in key economies, including the United States, United Kingdom, China and New Zealand where recent changes have enhanced the powers of governments to scrutinise investment, particularly in sensitive sectors.

The Board continues to monitor broader developments which may have implications for foreign investment. In January 2020, the Critical Minerals Facilitation Office (the Office) within the Department of Industry, Science, Energy and Resources was launched to support the development of critical mineral projects, including rare earths. Foreign investment is expected to remain important to the development of critical minerals where it is not contrary to the national interest. Close engagement will continue with the Office given its work can provide important insights into the Board's assessment of foreign investment applications.

Compliance continued to be a focus during the year. Treasury completed nine business investment audits, representing \$2.84 billion worth of proposed investment. The results of the audit program indicated that, largely, investors are meeting their obligations. The ATO completed 1,068 residential real estate investigations, identifying 600 properties that were in breach – a similar figure to that identified in 2017-18 – with the ATO pursuing divestments, retrospective approvals and variations to conditions in response to these breaches.

Looking ahead, in the 2019-20 Budget funding was provided to Treasury and other Commonwealth agencies, including the Department of Home Affairs, to identify and assess national interest issues (particularly national security risks) arising from foreign investment at the sectoral level. This work will help inform the Board's assessment of the national interest with respect to individual foreign investment proposals. It will also help identify opportunities to address sectoral policy issues through regulatory mechanisms or reform within and outside of the existing foreign investment framework.

The upcoming Senate Economics Reference Committee Inquiry into foreign investment proposals, which is scheduled to report by 7 September 2020, will be an opportunity for the public to provide its views on the foreign investment framework and for Government to explain foreign investment policy settings.

I would like to take the opportunity to thank my Board colleagues for their ongoing contribution and commitment. I welcome Ms Meg McDonald to the Board, who brings a wealth of experience in the resources and the environmental sectors, as well as significant expertise in intergovernmental relations.

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  
Chair

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## EXECUTIVE SUMMARY

- Data in this report reflects proposed foreign investment in 2018-19, thereby providing information regarding flows of proposed investment into Australia in the period.
- In 2018-19, Australia remained an attractive destination for foreign direct investment (FDI).
- The combined approved investment value increased by \$67.9 billion to \$231.0 billion. This was driven by an increase in the number of approvals valued at \$2 billion or more from two in 2017-18 to 23 in the current reporting period. This included a \$16.6 billion corporate restructure, representing almost 25 per cent of the overall increase in the value of approved investment.
- Accompanying the increase in value, however, was a decline in the number of proposed transactions approved by almost 2,500 compared with the previous year. This drop is predominately the result of a fall in the number of approved residential real estate applications.
- Outside of residential real estate, a total of 1,175 business applications worth \$216.2 billion were approved in 2018-19, as compared to the 1,024 business approvals worth \$150.6 billion of proposed investment in 2017-18. Proposed business investment is now at its highest level since 2015-16.
- As in 2017-18, the United States is the largest source country for approved proposed investment by value, followed by Canada, Singapore, Japan and China.
- For the United States, the value of approvals rose from \$36.5 billion in 2017-18 to \$58.2 billion. While investment in finance and insurance, manufacturing, electricity and gas and mineral exploration and development fell, this was offset by strong growth in the services and real estate (commercial and residential) sectors, and to a lesser degree in the agriculture, fishing and forestry sector. Much of the increase in the value of investment from the United States can be attributed to Walt Disney Company's acquisition of Twenty-First Century Fox Inc.
- Canadian investors increased their total approved proposed investment in 2018-19 by nearly \$15 billion. As the number of approvals from Canadian investors remained relatively constant in 2018-19, Canada's lift in the rankings is the result of increases in transaction values in a number of sectors (commercial real estate, services and mineral exploration and development).
- Over the period, there was a continued decline in approved proposed investment by both number and value from China, moving it to the fifth largest source country by value. The number of approvals decreased by 1,915, accompanied by falls in values across all sectors. Since 2015-16, Chinese proposed investment into Australia has shown a downward trend, due to a range of factors including China's domestic policy settings that have increased

scrutiny over outbound FDI as well as stricter capital controls. This trend is also reflected in OECD data, which show a decline in outbound Chinese FDI since 2016, with a fall in value of 30 per cent year-on-year over 2017-18.

- In terms of investment in particular sectors, in 2018-19 the largest by value remained the services sector (at \$76 billion), which includes accommodation, communications, construction and health. There has been a rising trend in the overall value in the services sector since 2015-16. The commercial real estate sector also attracted significant investment over the period (\$73 billion) as did the manufacturing, electricity and gas sector (\$36.7 billion).
- While the largest number of proposed investment approvals was again in residential real estate (7,513), there was a drop of 2,523 compared with 2017-18. Despite this fall, the total value of residential real estate approvals rose by \$2.3 billion to \$14.8 billion. 'For development residential real estate exemption certificates' contributed the most to the total value of residential real estate approvals.
- In, agriculture, forestry and fishing sector there were 197 approvals granted for \$7.3 billion worth of proposed investment. Proposed investment applications have remained reasonably stable since 2016-17 with approximately 200 applications per year worth between \$7 billion and \$8 billion.
- In 2018-19, compliance was a key focus for Treasury and the Australian Taxation Office (ATO). Treasury completed nine business investment audits, representing 17 foreign investment transactions worth approximately \$2.84 billion of investment. The results of the audit program indicated that investors are, largely, meeting their obligations. The ATO completed 1,068 residential real estate investigations, identifying 600 properties that were in breach – the same number of properties in breach as in 2017-18. Outcomes of these breaches included divestments, retrospective approvals, variations of conditions and raising a vacancy fee liability.
- The Board has continued to keep the foreign investment framework under review to ensure that it keeps pace with domestic and international developments. Over time, we have seen a build-up of the compliance functions of both the ATO and Treasury. The Board continues to monitor and assess the framework, and provide advice to the Treasurer on issues which require government consideration.

## OVERVIEW OF REPORT

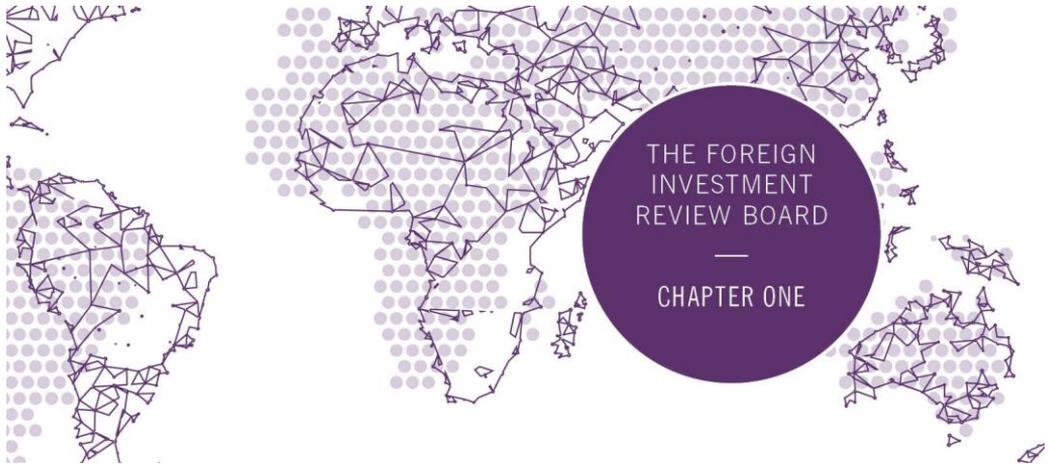
This report has four chapters and four appendices:

- Chapter one provides an overview of the Foreign Investment Review Board (the Board) and the Foreign Investment Review Board agencies (FIRB agencies),<sup>1</sup> including responsibilities, membership and operational costs;
- Chapter two discusses developments in domestic and international foreign investment;
- Chapter three analyses data on foreign investment applications finalised in 2018-19. It includes approvals data by number, value, sector, and investor country. It also includes data on variations and foreign investment fee collections;
- Chapter four explains key developments in Australia's foreign investment compliance program. It discusses the approach to compliance by FIRB agencies, and the work underway to strengthen assurance that foreign persons are meeting their obligations;
- Appendix A lists Board members' attendance at Board meetings;
- Appendix B provides an overview of the main methodological and data caveats that apply to applications and approvals data in this report;
- Appendix C sets out the examination and approval process for foreign investment applications; and
- Appendix D contains a glossary.

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1 The Board is supported in its responsibilities by Treasury's Foreign Investment Division and Public Groups and International in the Australian Taxation Office (ATO). Treasury and the ATO are collectively referred to in this report as 'FIRB agencies'.





This chapter provides an overview of the Board and FIRB agencies, including details on the Board’s responsibilities, the Board’s membership and operational costs.

The Board is a non-statutory body established in 1976 to advise the Treasurer and the Government on foreign investment matters. The Board’s functions are advisory only and it does not make binding decisions on foreign investment proposals. Responsibility for making decisions on foreign investment policy and investment proposals rests with the Treasurer.<sup>2</sup>

During 2018-19, the Board increased to eight members, comprising seven part-time members and one full-time executive member — the head of Treasury’s Foreign Investment Division. The Government seeks to attract members to the Board with deep knowledge and experience in a range of sectors that can actively contribute to the Board’s responsibilities. Strong probity procedures are in place to ensure any conflicts of interest that may occur are managed appropriately.

The Board considers all applications that are provided to the Treasurer for decision. To facilitate its advice, the Board meets face-to-face monthly and weekly by telephone, and considers matters out-of-session via email. Appendix A lists Board members’ attendance for the monthly face-to-face meetings during the reporting period.

## Board responsibilities

The role of the Board is to:

- examine proposed investments that are subject to the *Foreign Acquisitions and Takeovers Act 1975* (the Act) and supporting legislation, and to make recommendations to the

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<sup>2</sup> The Treasurer has provided delegations to senior officers in FIRB agencies to make decisions on applications that are consistent with the foreign investment framework. Certain applications are decided by other Treasury portfolio ministers.

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;
- foster awareness and understanding, both in Australia and abroad, of Australia's foreign investment policy;
- provide guidance to foreign persons and their representatives or agents on the operation of the foreign investment framework; and
- monitor and ensure compliance with the foreign investment framework.

## **Board membership**

As at 30 June 2019, the Board comprised the following members.

- Mr David Irvine AO (Chair)
- Ms Alice Williams
- Mr David Peever
- The Hon Cheryl Edwardes AM
- Ms Teresa Dyson
- The Hon Nick Minchin AO
- Ms Margaret (Meg) McDonald
- Mr Roger Brake (full-time executive member)

Mr Patrick Secker's term expired on 16 December 2018. Mr Minchin was appointed on 17 December 2018, and Ms McDonald was appointed on 26 March 2019.



The Board; (left to right,) Roger Brake, Meg McDonald, Teresa Dyson, Alice Williams, Chair David Irvine, Cheryl Edwardes and Nick Minchin. Absent: David Peever. 15 November 2019, Canberra.

## Board membership as of 30 June 2019

### Mr David Irvine AO

#### *Chair and non-executive member*

Chair since 16 April 2017

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.



#### *Other roles*

Adjunct Professor – Australian Graduate School of Policy and Security at Charles Sturt University

Chair – Cyber Security Cooperative Research Centre

### Ms Alice Williams

#### *Non-executive member*

Member since 16 July 2015

Ms Williams has over 25 years of senior management and board level experience in the corporate and government sectors. Former directorships include Ansett Australia, the Australian Accounting Standards Board, JP Morgan, NM Rothschild, State Trustees and a Commissioner of the Victorian Competition and Efficiency Commission.



She has been a consultant to listed corporations in Australia, the Gulf States and state and federal regulatory bodies.

#### *Other roles*

Director – Cooper Energy Ltd

Director – Defence Health

Director – Djerriwarrh Investments Ltd

Director – Equity Trustees

## Mr David Peever

### *Non-executive member*

Member since 1 February 2016

Mr Peever retired as Managing Director of Rio Tinto Australia in 2014, after 27 years with the company.

He is a former Vice Chairman of the Minerals Council of Australia and Director of the Business Council of Australia. He was a member of the Prime Minister's Indigenous Advisory Council and chaired the Minister of Defence's First Principles Review of the Defence Department as well as the subsequent Implementation Oversight Committee. He is a former Director of Melbourne Business School and was the founding Director of the Stars Foundation which enables education and opportunity for indigenous girls. He is also the former Chairman of Cricket Australia.



### *Other roles*

Chairman – Brisbane Airport Corporation Group of Companies  
Chair – First Principles Review Oversight Board  
Director – Australian Foundation Financial Investment Company  
Director – Naval Group Australia

## The Hon Cheryl Edwardes AM

### *Non-executive member*

Member since 14 August 2017

Mrs Edwardes brings extensive legal and regulatory experience to the Board. 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. Mrs Edwardes was awarded an Order of Australia in the Queen's Birthday Honour 2016 for significant service to the people and Parliament of Western Australia, to the law and to the environment and through executive roles with business, education and community organisations.



### *Other roles*

Commissioner – West Australian Football Commission  
Director – VIMY Resources  
Director – Flinders Resources  
Director – Auscann

## **Ms Teresa Dyson**

### *Non-executive member*

Member since 2 January 2018

Ms Dyson is a non-executive director, serving on a range of listed, public and not-for-profit boards. Ms Dyson has over 25 years of experience as a senior tax adviser, 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 is a former member and chair of the Board of Taxation.

### *Other roles*

- Director – Energy Qld Ltd
- Director – Energy Super
- Director – Genex Power Ltd
- Director – Seven West Media Ltd

## **The Hon Nick Minchin AO**

### *Non-executive member*

Member since 17 December 2018

Mr Minchin brings wide ranging senior leadership credentials, public policy, industry and international experience to the Board.

Recently, Mr Minchin served as the Australian Consul-General in New York.



Mr Minchin held a number of ministerial positions, including as Minister for Industry, Science and Resources from 1998 until 2001 and Minister for Finance and Administration from 2001 until 2007. While in office, he held the posts of Leader of the Government in the Senate, and Vice President of the Executive Council. Mr Minchin was elected to the Australian Senate for South Australia in July 1993 and served until June 2011.

## **Ms Margaret (Meg) McDonald**

### *Non-executive member*

Member since 26 March 2019

Ms McDonald has extensive experience in senior public and private sector roles, in Australia and internationally.

Ms McDonald has previously held a number of executive positions including Chief Operating Officer of the Clean Energy Finance Corporation, CEO of Low Carbon Australia Limited (LCAL) and positions with global resources and metals manufacturer Alcoa.



Ms McDonald was Deputy Ambassador to the United States in Washington DC between 1998 and 2002 and as Australia's Ambassador for the Environment between 1996 and 1998.

Ms McDonald holds an Honours Degree in Applied Science from the University of NSW.

### *Other roles*

Director – Australian Renewable Energy Agency

Director – Cooperative Research Centre for Low Carbon Living

Trustee – The Nature Conservancy

## **Mr Roger Brake**

### *Executive member*

Member 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 Board and the Treasury, which provides support to the Board.



## Public speeches

In 2018-19, Mr Irvine, the Chair of the Board, delivered the keynote address at the 2018 Infrastructure Investors' Forum: Australia. The Chair and Board members also participated in a range of meetings and outreach activities with investors, their representatives and representatives of particular sectors. These forums encourage two-way dialogue, providing investors with information on Australia's foreign investment environment and the approach to foreign investment screening. They allow the Board to gain market intelligence and insights which feed into its advice to the Government.

Mr Irvine's speeches on foreign investment are available on the FIRB website.

## FIRB agencies

The Board is supported in its responsibilities by Treasury's Foreign Investment Division, and Public Groups and International in the ATO. Treasury and the ATO are collectively referred to in this report as 'FIRB agencies'.

### Treasury

The Foreign Investment Division is responsible for advising Government on all aspects of foreign investment policy. It is also responsible for the day-to-day administration of the foreign investment framework in relation to business, agriculture and sensitive or complex commercial real estate cases.

### Australian Taxation Office

The ATO administers all aspects of foreign investment in residential real estate, non-sensitive commercial real estate and corporate reorganisations. The ATO also has responsibility for the collection of all foreign investment application and vacancy fees, and for developing and administering the registers of foreign ownership of agricultural land, water entitlements and residential land.

## Stakeholder engagement

Stakeholder engagement by the Board and FIRB agencies focuses on:

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

## Engagement with foreign investors

Engagement with foreign investors occurs through channels including:

- the FIRB website: This includes up-to-date guidance material for investors, which in 2018-19 was accessed by more than 228,000 users from around the world;
- foreign investment email enquiries: In 2018-19, the ATO replied to over 10,300 written enquiries on foreign investment matters and Treasury responded to over 450. Enquiries ranged from general queries about the foreign investment framework or sectoral trends, to specific queries about past, prospective and current FIRB applications;
- the foreign investment enquiries hotline: In 2018-19, the ATO handled over 13,000 calls on its foreign investment enquiry line and Treasury handled over 2,300 calls. These enquiries ranged from questions about investors' proposed acquisitions and their regulatory requirements, to media or investor queries about sectoral trends; and
- face-to-face sessions and webinars with stakeholders: FIRB agencies met with potential foreign investors, their representatives (including with the Law Council of Australia's Foreign Investment Committee in March), industry peak bodies, and foreign government officials. Both Treasury and the ATO held several stakeholder meetings in 2018-19 that were tailored to promote understanding of certain aspects of the foreign investment framework, and seek stakeholders' feedback.

## Engagement relating to the 2019 Federal Election

On 11 April 2019, the Prime Minister advised the Governor-General to dissolve the 45th Australian Parliament and to issue writs for an election to be held on 18 May 2019. On the same date, a 'caretaker' period commenced. During a caretaker period, the business of government can continue and ordinary matters of administration are still addressed, but the Government avoids making major decisions that could commit an incoming government.

Prior to the commencement of the caretaker period, Treasury placed a notification on the FIRB website that larger, more significant or sensitive investment applications may not be able to proceed during the caretaker period, and invited prospective investors or their advisers to contact Treasury to discuss such proposals.

## Engagement with consultation partners

Given the breadth of industries and transactions subject to the foreign investment framework, FIRB agencies rely on building strong relationships with key consultation partners.

In 2018–19, Treasury held several meetings to enhance consult partner relationships. This included the Foreign Investment Insights Day on 15 May 2019, attended by representatives from approximately 20 consultation partners. Topics discussed included managing compliance, sectoral analyses, collaborating across government, and the outlook for mergers and acquisitions. In April and May 2019, Treasury also met with state and territory counterparts to

discuss administration of the foreign investment regime. In addition, there were a number of secondments between Treasury and key agencies including the ATO, the Inspector-General of Taxation and the Critical Infrastructure Centre.

## Operational costs

### **The Board** **\$0.5 million**

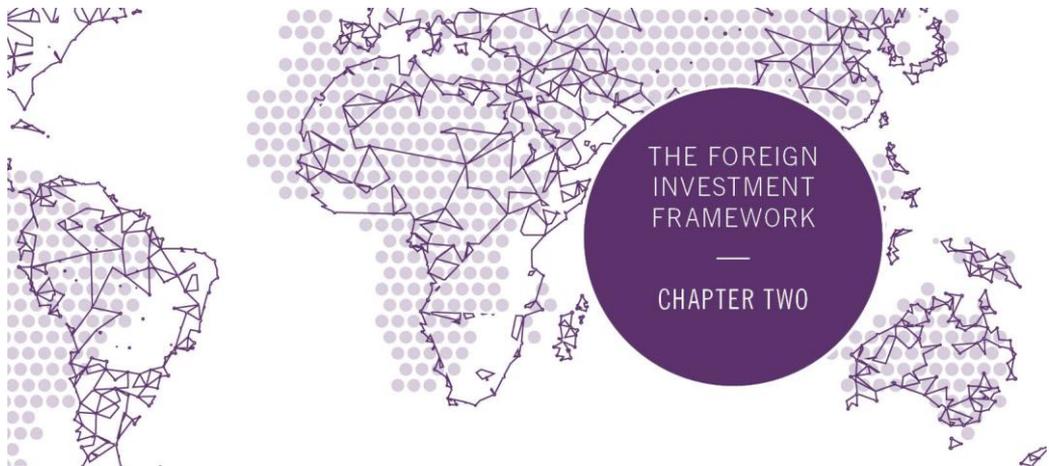
Remuneration of Board members in 2018-19 was around 82 per cent of total Board expenses, with the remainder expended on travel, car hire and incidentals. Board members' fees are determined by the Remuneration Tribunal.

### **Treasury** **\$8.9 million**

Expenses for Treasury's Foreign Investment Division mainly reflect employee salary and administrative costs. Over the course of 2018-19, the Division employed an average of 55 full-time equivalent Treasury staff, and a number of external contractors and consultants, including lawyers from the Australian Government Solicitor. Staff are located in Canberra and Sydney.

### **The Australian Taxation Office** **\$5.8 million**

In 2018-19, the ATO employed 66.5 full-time equivalent staff, employed across the residential real estate application screening process, data matching and compliance activities, application screening of non-sensitive commercial land (vacant and non-vacant) and corporate reorganisations, the development and maintenance of foreign ownership registers, and the development of systems and administration of the annual vacancy fee measure. The ATO's teams are located across a number of sites including Sydney, Canberra, Newcastle and Melbourne.



This chapter describes trends in foreign investment flows and policy in Australia and around the world, and details specific changes to Australia’s foreign investment framework during 2018-19.

It outlines:

- Australia’s foreign investment policies and priorities;
- changes to global investment flows and screening frameworks;
- key developments in Australian foreign investment policy, including how changes impact this report; and
- changes made to bring an increased focus on compliance.

## Foreign investment policies and priorities

Foreign investment provides considerable benefits to the Australian people. As a country with abundant natural resources, a relatively fast-growing population, a highly-skilled workforce and a stable supportive legal regime, Australia is an attractive investment destination with high-quality investment opportunities which cannot be realised from domestic savings alone. Foreign investment allows projects that might otherwise not proceed to go ahead. In doing so, it strengthens the economy, supports jobs growth, and helps raise living standards in Australia.

Foreign investment is critical to some of Australia’s leading industries. It supports local businesses, infrastructure and regional economies, and drives greater competitiveness, innovation and productivity through new technologies. Analysis using 2014-15 data showed that firms with at least at least 10 per cent foreign ownership supported one in 10 jobs in Australia, employing 1.2 million people and paying higher wages than Australian owned businesses. Businesses supported by foreign direct investment (FDI) hold \$2.7 trillion in assets – almost a quarter of Australia’s total assets. These businesses contribute to \$286 billion in Industry Value

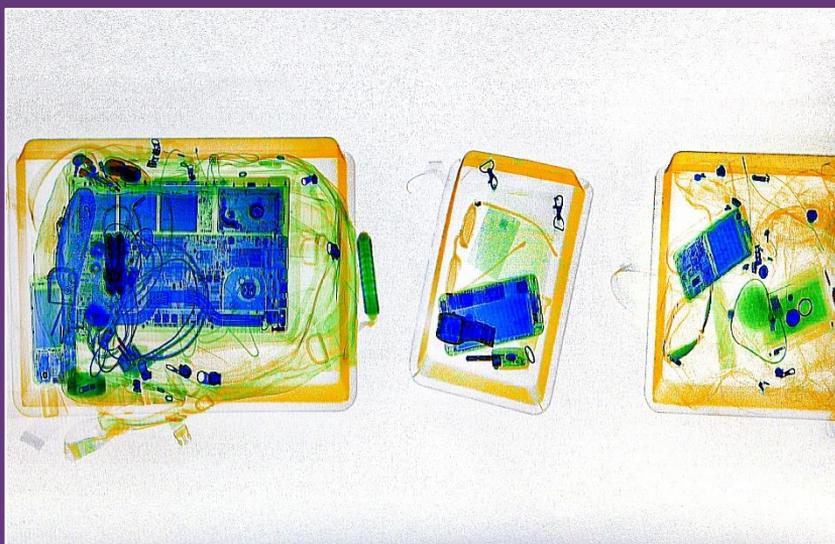
Add<sup>3</sup> – more than a quarter of the national economy – and are responsible for nearly 30 per cent of our exports.<sup>4</sup>

## Micro-X case study

Foreign investment in innovative technology start-ups delivers many benefits to Australia including employment in the technology and manufacturing sectors. It also provides access to overseas expertise and enables breakthrough technologies to be brought to market.

In 2019, French defence contractor Thales Group acquired Adelaide based technology company Micro X.

This investment will allow Micro-X to combine its expertise in carbon nanotube emitter technologies, which enable the unique miniaturisation of a number of x-ray applications, with Thales' experience in x-ray devices to deliver innovative products in the medical and security markets.



Thales, an established global supplier of defence and security technology systems, plans to cross-sell Micro-X's Mobile Backscatter Imager for assessment of Improvised Explosive Devices, a product manufactured in Adelaide.

It is expected that the investment will also enable Micro-X, based at Adelaide's Tonsley Innovation District, to hire new research and development staff to support the growth in its business.

3 Industry Value Add is the industry's (in this case foreign invested enterprises) contribution to GDP.

4 All statistics in this paragraph from: ABS Catalogue no.: 5494.0 – *Economic Activity of Foreign Owned Businesses in Australia*.

The Australian Government's foreign investment review framework balances these expected benefits with the potential risks from foreign investment. Through a process that is open and non-discriminatory, applications are assessed on a case-by-case basis to ensure investments are not contrary to the national interest. National interest considerations have increasingly included national security issues, including the threats associated with foreign ownership in a particular sector or control of critical infrastructure. In these cases, the Board will look carefully at a range of factors including the concentration of ownership. In addition, where an acquisition is proposed in sectors or businesses that hold large amounts of personal data, the Board will consider how best to protect this data, not only for privacy reasons but also on national security grounds. If the Treasurer determines that a proposal is contrary to the national interest, it will not be approved or conditions will be applied to mitigate any risks to the national interest.

### **Changes in global foreign investment flows and foreign investment screening frameworks**

Australia remained an attractive destination for FDI during 2018-19. OECD data show a 27 per cent decrease in 2018 global FDI flows, which follows a 16 per cent decline in 2017. Australia was one of only five OECD member economies to record increased FDI inflows in 2018.

Growing national security concerns have led many countries to review both their policy frameworks for screening inward investment and the way in which they are applied. Two broad trends stood out.

At a global level, the shift towards policies that liberalise and facilitate investment continued, especially among developing countries which have historically operated more restrictive regimes. At the same time, a number of countries – particularly developed economies that long ago liberalised their investment regimes – have moved to strengthen foreign investment screening on national security grounds (Box 1 provides further details). This trend reflects growing concerns about geopolitical developments and the risks associated with new technologies.

## **Box 1: International developments in foreign investment screening**

Several advanced and emerging economies have recently introduced changes to their foreign investment screening rules which generally increase the powers of governments to scrutinise investment, particularly in sensitive sectors. Despite this, international governments overwhelmingly continue to recognise the important benefits of foreign investment.

In July 2018, **the United Kingdom** outlined plans in a White Paper for a new national security power. The United Kingdom also lowered investment screening thresholds in high-tech industries, including quantum computing.

In November 2019, the **New Zealand** government announced reforms to the *Overseas Investment Act 2005* that enhance compliance powers, introduce a 'national interest test' (similar to Australia's) and introduce new powers to protect New Zealand's 'core interests', including national security. The latter includes mandatory notification requirements for sensitive transactions and a new power to enable the government to call in certain transactions that are not currently screened.

In the **United States**, the *Foreign Investment Risk Review Modernization Act 2018* commenced in November 2018, significantly expanding the government's powers to review investment in critical technologies, infrastructure and data. Under regulations that came into effect in February 2020, Australia is one of three countries to be declared an 'excepted foreign state', meaning Australian investors can claim an exemption from certain notification and screening requirements.

In March 2019, **China** enacted the *Foreign Investment Law*, which has implications for foreign firms operating in China or looking to invest in China. In particular, the Law has some provisions to improve transparency and the equal treatment of foreign firms. The Law also includes a provision to permit the review of foreign investment on national security grounds.

The **European Commission** also introduced a new foreign investment screening framework, which commenced on 10 April 2019. The framework is intended to improve information sharing and cooperation between the individual screening rules of each member state. Several European Union members, including France and Germany, have recently strengthened their foreign investment rules.

## Developments in Australian foreign investment framework

The Board continues to monitor the broader foreign investment environment and assess the effectiveness of the framework. In 2018-19, the Board, Treasury and the ATO engaged with a range of stakeholders, both international and domestic, in order to gain insights into the effectiveness of the framework. The views conveyed by stakeholders are important in helping the Board consider the advice it provides to the Treasurer on Australia's domestic policy settings.

Australia's foreign investment review framework and policy settings remained relatively stable during 2018-19.

### *The Australian opportunity policy*

The main change in the period concerned the Australian opportunity policy. This policy requires an open and transparent sale process for foreign purchases of agricultural land, thereby ensuring Australian bidders have an opportunity to participate in the sale process.

On 26 September 2018, the Government announced it had revised its guidance on how it applies the Australian opportunity policy. The revision, which was made following consultations with stakeholders, included a number of changes. First, instead of applying to all investments in agricultural land by foreign persons, with some exceptions, the requirement was narrowed to sales of agricultural land that are intended to be used for a primary production business or residential development. Second, the requirement was no longer applied to leasehold interests or licences, except where these have freehold characteristics. Third, the guidance note was revised to clarify that the requirement may be satisfied through not only a 30-day public marketing campaign, but also alternative forms of sale process that provide equal or greater participation by Australian bidders. Fourth, the requirement was generally not applied to foreign investors that acquired agricultural land and allowed significant Australian participation in the primary production business.

### *Increased focus on compliance*

The increased use of conditions over recent years has demanded a greater focus on compliance. Since announcing an enhanced approach to compliance on sensitive commercial cases in September 2017, Treasury has been developing and maturing its compliance function. This included: expanding the size of its compliance unit; dedicating resources to improving and standardising conditions; recognising that clearer and more targeted conditions result in better compliance outcomes; scrutinising and improving how compliance monitoring is undertaken; carrying out a stocktake of compliance status on sensitive cases; working more closely with other government agencies and departments on compliance issues; and clarifying roles and responsibilities of government agencies where compliance action is proposed under the Act. Further detail on compliance activities for the period is outlined in Chapter 4.





This chapter provides an overview of all applications that were finalised during 2018–19, irrespective of the date the application was submitted. This report refers to ‘proposed investment’, the value of which for acquisitions (including securities, real estate or other assets) is the consideration agreed between the parties or, if not yet agreed, a reasonable estimate at the time of the application. Data on the value of expected investment for new businesses is not collected. The data in this report reflects the proposed investment flows during the period.

There are a number of caveats to be applied in interpreting the data, which are set out in detail in Appendix B. Importantly, approvals data does not measure actual total foreign investment made in any year or changes in net foreign ownership levels in Australia. This is because, while a foreign person may be approved to make an acquisition, the acquisition may not proceed. Further, notification is subject to screening thresholds, and therefore not all acquisitions are captured. Trends in actual investment are measured by the Australian Bureau of Statistics (ABS).<sup>5</sup>

Policy or legislative changes, and changes to reporting methodologies over time, can limit the comparability of data year-to-year. Approvals data can also be impacted by one or more large one-off proposed transactions, affecting the comparability of industry data across years.

This chapter deals with applications considered and the related approvals during 2018–19, followed by information on variations during the same period. The variations considered are for existing approvals, certificates and orders given during 2018–19 or earlier. Foreign investment

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5 See ABS Catalogue no.:

5302.0 – *Balance of Payments and International Investment Position, Australia*, which provides the overall investment trends;

5352.0 – *International Investment Position, Australia: Supplementary Statistics*, which includes actual foreign investment statistics by investor country or by industry division for inward foreign investment; and

5494.0 – *Economic Activity of Foreign Owned Businesses in Australia, 2014-15*, for information on the economic activity of foreign owned businesses in Australia.

fee collection amounts reported by the ATO, including for application fees as well as vacancy fees, are listed at the end of the chapter.

## Overall applications considered

In 2018–19, the total number of applications considered, excluding variations, was 9,466. Of the 8,725 on which a decision was made (that is, not otherwise withdrawn or exempt), 8,724 were approved for \$231.0 billion of proposed investment. This represents a decline of 2,421 in the number of cases approved compared to 2017-18 where there were 11,145 approvals.

In 2018-19, the number of business approvals increased by 151, mostly in the services and commercial real estate sectors. This small increase was, however, offset by a decline in residential real estate approvals of 2,523. At the same time as the decline in the number of applications, the value of proposed investment approvals has significantly increased by \$67.9 billion, up from \$163.1 billion in 2017-18 (see Tables 3.1 and 3.2).

The decline in foreign investment application numbers since the introduction of application fees in December 2015, particularly for residential real estate, reflects in part that foreign persons now apply when they are confident about investing. Specific factors that may have contributed to declines or increases in particular sectors are noted in the discussion of the relevant sectors.

## Conditional approvals

Where an application raises national interest concerns, such as potential tax risks, conditions can be imposed on the approval to mitigate the potential risks and ensure the proposed investment is not contrary to the national interest. In 2018–19, the number of approvals made subject to conditions increased by around four percentage points to around 48 per cent of the total number and over 80 per cent of the total value of approvals. For non-real estate approvals, the majority of conditions related to tax.

## Rejections and other outcomes

In 2018–19, one application was rejected, meaning the proposed investment was prohibited from proceeding. For information on investments that were required to be divested due to being in breach of the framework, see Chapter 4: Compliance.

In 2018-19, no exemption certificate applications were declined, nor were any exemption certificates revoked.

In 2018–19, 670 applications were withdrawn prior to a decision being made, representing an increase of 26 withdrawals over the prior year. Around 85 per cent of these related to residential real estate applications. In the residential real estate sector, withdrawals may result from applicants submitting a series of applications and subsequently withdrawing their remaining applications once they purchase a property or if the property subject to the application has been sold to other parties. In general, applications may be withdrawn because a foreign person decides not to proceed with a purchase or to defer a purchase for commercial reasons. Also, in

competitive bid or tender processes a foreign person may not be shortlisted or be unsuccessful prior to a decision on their application. A small number of withdrawals may relate to assets, land or securities being withdrawn from sale by a vendor, or to the investor consortium composition changing following the submission of an application.

In 2018-19, 71 applications were determined to be exempt, 10 more than in the prior year. Over 40 per cent of these related to residential real estate applications. Exempt refers to where applications have been lodged for a proposed investment that is subsequently determined to be exempt due to the proposed investment meeting the criteria for an exemption in the Act or factors such as the proposed investment not meeting a threshold subject to the Act.

**Table 3.1: Applications considered: 2015–16 to 2018–19 (number of applications)**

|                                 | 2015-16       | 2016-17       | 2017-18       | 2018-19      |
|---------------------------------|---------------|---------------|---------------|--------------|
| Outcome                         | No.           | No.           | No.           | No.          |
| Approved without conditions (a) | 26,954        | 8,607         | 6,301         | 4,575        |
| Approved with conditions (a)    | 14,491        | 5,750         | 4,844         | 4,149        |
| <b>Total approved</b>           | <b>41,445</b> | <b>14,357</b> | <b>11,145</b> | <b>8,724</b> |
| Rejected                        | 5             | 3             | 2             | 1            |
| Declined                        | -             | -             | 3             | -            |
| <b>Total decided</b>            | <b>41,450</b> | <b>14,360</b> | <b>11,150</b> | <b>8,725</b> |
| Withdrawn                       | 1,319         | 770           | 644           | 670          |
| Exempt                          | 244           | 60            | 61            | 71           |
| <b>Total considered</b>         | <b>43,013</b> | <b>15,190</b> | <b>11,855</b> | <b>9,466</b> |

(a) As of 2017-18, residential land approvals have included a condition to register on the Residential Land Register. Where this is the only condition of the approval, for reporting purposes the approval has been classified as Approved without conditions.

Notes: In determining the number of applications considered, an applicant is required to have paid a foreign investment application fee or had the fee waived or be an exempt application.

Variations considered are not included here. These are separately reported at Tables 3.15 and 3.16.

Numbers include corporate reorganisations and new businesses. Corporate reorganisations and new businesses data are excluded from analysis in other sections of this chapter, unless otherwise noted.

Data on declined applications is not separately available for years before 2017-18.

Data from 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30pm on Tuesday 9 May 2017. The 2017-18 data was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

Residential retrospective approval numbers are included here, in other applicable tables in this chapter and in Table 4.2, Chapter 4: Compliance.

**Table 3.2: Applications decided: 2015–16 to 2018–19 (value of proposed investment)**

|                                 | 2015-16      | 2016-17      | 2017-18      | 2018-19      |
|---------------------------------|--------------|--------------|--------------|--------------|
| Outcome                         | \$b          | \$b          | \$b          | \$b          |
| Approved without conditions (a) | 97.0         | 53.8         | 40.1         | 45.9         |
| Approved with conditions (a)    | 150.8        | 143.9        | 123.0        | 185.1        |
| <b>Total approved</b>           | <b>247.9</b> | <b>197.7</b> | <b>163.1</b> | <b>231.0</b> |
| Rejected                        | 0.0          | 20.0         | 0.1          | 10.0         |
| Declined                        | -            | -            | 3.0          | -            |
| <b>Total decided</b>            | <b>247.9</b> | <b>217.7</b> | <b>166.1</b> | <b>241.0</b> |

(a) As of 2017-18, residential land approvals have included a condition to register on the Residential Land Register. Where this is the only condition of the approval, for reporting purposes the approval has been classified as approved without conditions.

Notes: Totals may not add due to rounding.

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

Figures exclude corporate reorganisations (128 approved in 2018–19) and new businesses (22 approved in 2018-19), since they are attributed \$0 value. Corporate reorganisations and new businesses are also excluded from earlier year data.

Data on declined applications is not separately available for years before 2017-18.

Data for 2016-17 has been amended from earlier published data to reflect an upward revision of residential real estate values. These revisions have also been applied to Tables 3.3, 3.4, and 3.10. Data for 2015–16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30pm on Tuesday 9 May 2017. The 2017-18 data was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

## Approvals overview

As noted earlier, the value of approvals in 2018–19 was substantially greater than in 2017-18. This is notwithstanding the decline in the number of approvals overall in 2018-19.

The number of approvals valued at \$2 billion or more rose substantially in 2018-19, with 23 approvals in this category. This compares to previous periods with only two recorded in 2017-18 and 13 in 2016-17.

**Table 3.3: Total approvals by value of proposed investment range: 2015–16 to 2018–19 (number and value of approvals)**

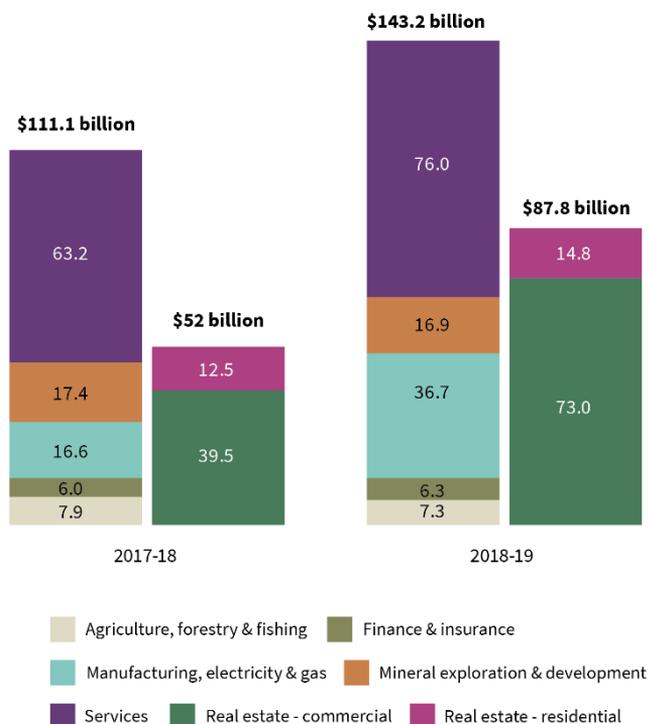
| Value of approval                 | 2015-16       |              | 2016-17       |              | 2017-18       |              | 2018-19      |              |
|-----------------------------------|---------------|--------------|---------------|--------------|---------------|--------------|--------------|--------------|
|                                   | No.           | \$b          | No.           | \$b          | No.           | \$b          | No.          | \$b          |
| < \$1 million                     | 33,028        | 18.4         | 10,285        | 5.7          | 7,638         | 4.1          | 6,042        | 3.1          |
| ≥ \$1 million & < \$50 million    | 7,744         | 21.2         | 3,516         | 13.4         | 2,995         | 11.3         | 2,160        | 10.0         |
| ≥ \$50 million & < \$100 million  | 195           | 14.1         | 147           | 10.3         | 103           | 7.3          | 103          | 7.2          |
| ≥ \$100 million & < \$500 million | 296           | 65.2         | 235           | 53.3         | 213           | 44.9         | 219          | 47.3         |
| ≥ \$500 million & < \$1 billion   | 33            | 21.2         | 45            | 29.7         | 53            | 34.8         | 49           | 33.5         |
| ≥ \$1 billion & < \$2 billion     | 15            | 19.8         | 15            | 16.9         | 22            | 28.4         | 14           | 18.5         |
| ≥ \$2 billion                     | 18            | 88           | 13            | 68           | 2             | 32           | 23           | 111.4        |
| <b>Total</b>                      | <b>41,329</b> | <b>247.9</b> | <b>14,256</b> | <b>197.7</b> | <b>11,026</b> | <b>163.1</b> | <b>8,610</b> | <b>231.0</b> |

Notes: Totals may not add due to rounding.

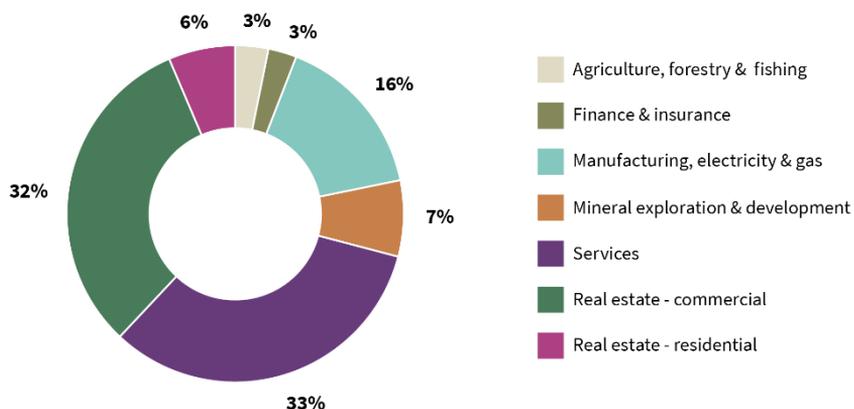
Figures exclude corporate reorganisations (128 approved in 2018–19) and new businesses (22 approved in 2018-19), since they are attributed \$0 value. Data prior to 2017-18 has been amended to exclude new business approvals as these are now separately reported at Table 3.13.

Data from 2015–16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30pm on Tuesday 9 May 2017. The 2017-18 data was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

## Approvals by industry sector

**Chart 3.1: Approvals value by industry sector: 2017–18 and 2018–19**

**Chart 3.2: Share of total value of approvals, by industry sector in 2018–19**



**Notes applying to Charts 3.1 and 3.2**

The total number of approvals in Chart 3.1 is recorded by target, reflecting the industry sector of the target. See notes to Table 3.4 for examples.

Corporate reorganisations (128 approved in 2018-19) and new businesses (22 approved in 2018-19) are excluded.

Data for 2016-17 has been amended from earlier published data to reflect an upward revision of residential real estate values.

Data for 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30 pm on Tuesday, 9 May 2017. The 2017-18 data was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability across time.

In 2018-19, the services sector again attracted the highest value of approved investment, totalling \$76.0 billion, followed by commercial real estate, totalling \$73.0 billion. Over the past four years, there has been a gradual increase in the value of proposed investment approvals in the services sector.

The value of approvals in a number of other sectors increased in 2018-19 compared to 2017-18. Total investment approvals increased in the commercial real estate sector by \$33.5 billion (to \$73.0 billion), in the manufacturing, electricity and gas sector by \$20.1 billion (to \$36.7 billion), and in the services sector by \$12.8 billion (to \$76.0 billion). There was also an increase of \$0.3 billion in the finance and insurance sector (to \$6.3 billion).

In 2018-19, residential real estate saw an increase in the value of approvals for the first time since 2015-16. In 2018-19, the value of investment in this sector was \$14.8 billion. At its peak in 2015-16 it was at \$72.4 billion.

In other sectors, however, the value of investment approvals fell in 2018-19 from the previous year. The largest fall in value was for approvals in the agriculture, forestry and fishing sector by \$0.6 billion (to \$7.3 billion) followed by the mineral exploration and development sector by \$0.5 billion (to \$16.9 billion).

**Table 3.4: Total approvals by industry sector: 2015–16 to 2018–19**

| Industry Sector                    | 2015-16       |              | 2016-17       |              | 2017-18       |              | 2018-19      |              |
|------------------------------------|---------------|--------------|---------------|--------------|---------------|--------------|--------------|--------------|
|                                    | No.           | \$b          | No.           | \$b          | No.           | \$b          | No.          | \$b          |
| Agriculture, forestry & fishing    | 227           | 4.6          | 223           | 7.0          | 201           | 7.9          | 197          | 7.3          |
| Finance & insurance                | 19            | 13.5         | 25            | 3.8          | 37            | 6.0          | 26           | 6.3          |
| Manufacturing, electricity & gas   | 66            | 56.6         | 73            | 40.9         | 95            | 16.6         | 99           | 36.7         |
| Mineral exploration & development  | 180           | 27.6         | 140           | 15.9         | 115           | 17.4         | 121          | 16.9         |
| Services                           | 153           | 23.5         | 215           | 56.5         | 185           | 63.2         | 245          | 76.0         |
| Real estate - commercial           | 606           | 49.7         | 465           | 43.7         | 391           | 39.5         | 487          | 73.0         |
| <i>Sub-total 'Non-residential'</i> | <i>1,251</i>  | <i>175.4</i> | <i>1,141</i>  | <i>167.7</i> | <i>1,024</i>  | <i>150.6</i> | <i>1,175</i> | <i>216.2</i> |
| Real estate - residential          | 40,149        | 72.4         | 13,198        | 30.0         | 10,036        | 12.5         | 7,513        | 14.8         |
| <b>Total</b>                       | <b>41,400</b> | <b>247.9</b> | <b>14,339</b> | <b>197.7</b> | <b>11,060</b> | <b>163.1</b> | <b>8,688</b> | <b>231.0</b> |

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

Notes: Total number of approvals in Table 3.4 is recorded by target acquired, reflecting the industry sector of the target. For example, one application to acquire two targets (under the single agreement) that operate in separate sectors will appear as two approvals, with one approval recorded per sector. If they operate in the same sector, this will appear as two approvals recorded against the sector.

Totals may not add due to rounding.

Excludes corporate reorganisations (128 approved in 2018-19) and new businesses (22 approved in 2018-19), but includes all exemption certificates, including 28 business exemption certificates in 2018-19 for total proposed investment up to \$2.6 billion. Earlier year data has also been amended to exclude new business approvals as these are now separately reported on at Table 3.13.

Data from 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30 pm on Tuesday, 9 May 2017. The 2017-18 data was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

## Agriculture, forestry and fishing

In 2018-19, there were 197 approvals granted for \$7.3 billion worth of proposed investment in the agriculture, forestry and fishing sector. The largest source countries of investment by value in this sector were Canada (\$1.6 billion) and the United States (\$1.2 billion).

## Finance and insurance

The value of approved proposed investment in the finance and insurance sector was \$6.3 billion in 2018-19. This was an increase of \$0.3 billion on the value of proposed investment compared to 2017-18.

Japan was the largest source country of investment by value in this sector (\$4.1 billion), mainly due to Mitsubishi UFJ Trust and Banking Corporation acquiring Colonial First State Global Asset Management from Commonwealth Bank of Australia for \$4 billion.

## Manufacturing, electricity and gas

In 2018-19 there was \$36.7 billion worth of proposed investment approved in the manufacturing, electricity and gas sector. This represents a \$20.1 billion increase on the value recorded in 2017-18 and includes a \$16.6 billion corporate restructure.

The increase was also driven by a \$4.2 billion increase in the value of approvals in the specialised chemical sector during the year, with Australian subsidiaries sold as part of global transactions.

Electricity and gas supply sales continued their decline from prior year highs as a result of more limited government privatisation activity. Activity in the 'other' category was boosted by Nippon Paint's acquisition of DuluxGroup in a \$3.8 billion transaction.

Japan was the largest source country of investment by value in this sector (\$4.7 billion), followed by Singapore (\$3.1 billion) and the United States (\$2.6 billion).

**Table 3.5: Manufacturing, electricity and gas sector approvals: 2015–16 to 2018–19**

| Group                               | 2015-16   |             | 2016-17   |             | 2017-18   |             | 2018-19   |             |
|-------------------------------------|-----------|-------------|-----------|-------------|-----------|-------------|-----------|-------------|
|                                     | No.       | \$b         | No.       | \$b         | No.       | \$b         | No.       | \$b         |
| Chemical, petroleum & coal products | 6         | 1.2         | 1         | 1.0         | 2         | 0.3         | 4         | 4.4         |
| Electricity & gas supply            | 37        | 41.2        | 37        | 33.5        | 52        | 9.3         | 47        | 3.7         |
| Food, beverages & tobacco           | 11        | 11.1        | 21        | 3.8         | 15        | 4.6         | 15        | 1.3         |
| Water, sewerage & waste disposal    | 3         | 0.6         | 7         | 1.3         | 8         | 0.2         | 9         | 2.0         |
| Other (a)                           | 9         | 2.5         | 7         | 1.3         | 18        | 2.2         | 24        | 25.3        |
| <b>Total</b>                        | <b>66</b> | <b>56.6</b> | <b>73</b> | <b>40.9</b> | <b>95</b> | <b>16.6</b> | <b>99</b> | <b>36.7</b> |

(a) Comprises: textile, leather, clothing and footwear manufacturing; pulp, paper and converted paper product manufacturing; polymer product and rubber products manufacturing; non-metallic mineral product manufacturing; primary metal and metal product manufacturing; fabricated metal products manufacturing; transport equipment manufacturing; machinery and equipment manufacturing; and furniture manufacturing.

Notes: Totals may not add due to rounding.

Excludes corporate reorganisations and new businesses.

Data for 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2017-18 was impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

## DuluxGroup case study

Japanese companies were involved in several large transactions in 2019. Among these was Nippon Paint's \$3.8 billion acquisition of the ASX listed DuluxGroup Limited. DuluxGroup is one of Australia's largest manufacturers and distributors of paints, adhesives and other building products. The acquisition is expected to allow Nippon Paint to expand across the Asia Pacific region, beyond its existing market. Nippon Paint intends to grow the DuluxGroup business, and provide increased opportunities for DuluxGroup to pursue its growth ambitions by leveraging Nippon Paint's global scale and resources.

Competition is a key national interest consideration when assessing proposed investments. In this particular transaction Nippon Paint only sold specialised paint in Australia to the car repairs industry and, as such, there was little overlap between its and Dulux's business, thereby mitigating concerns around a lessening of competition.



Source: DuluxGroup

## Mineral exploration and development

In 2018–19, there were 121 approvals in the mineral exploration and development sector, with a proposed investment value of \$16.9 billion. This is down by \$0.5 billion compared to the previous year.

The United States (\$2.9 billion), China (\$2.7 billion) and Canada (\$1.1 billion) were the largest source countries of investment by value in the sector.

**Table 3.6: Mineral exploration and development sector approvals: 2015–16 to 2018–19**

| Group   | 2015-16    |             | 2016-17    |             | 2017-18    |             | 2018-19    |             |
|---|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
|   | No.        | \$b         | No.        | \$b         | No.        | \$b         | No.        | \$b         |
| Coal  | 31         | 1.5         | 24         | 5.5         | 23         | 8.5         | 37         | 6.5         |
| Oil & gas extraction                          | 30         | 20.7        | 17         | 1.1         | 20         | 1.6         | 17         | 4.1         |
| Metallic minerals                             | 85         | 4.0         | 73         | 6.3         | 51         | 4.9         | 43         | 4.6         |
| Non-metallic minerals mining and quarrying    | 9          | 0.3         | 4          | 0.2         | 3          | -           | 3          | 0.8         |
| Exploration and other mining support services | 25         | 1.2         | 22         | 2.8         | 18         | 2.4         | 21         | 0.9         |
| <b>Total</b>                                  | <b>180</b> | <b>27.6</b> | <b>140</b> | <b>15.9</b> | <b>115</b> | <b>17.4</b> | <b>121</b> | <b>16.9</b> |

Notes: Time series includes amended data from earlier publication reflecting a methodology change and greater alignment with the Australian and New Zealand Standard Industrial Classification (ANZSIC, 2006).

Totals are aggregated by Group this year due to composition changes over the time series period.

Totals may not add due to rounding.

Excludes corporate reorganisations and new businesses.

Data for 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2017-18 was impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability across time.

In January 2020, the Critical Minerals Facilitation Office (the Office) within the Department of Industry, Science, Energy and Resources was launched to support the development of critical mineral projects, including rare earths.

## Services

There were 245 approvals for proposed investment in the services sector in 2018-19, an increase of 60 approvals on the previous year.

In 2018-19, the United States was the largest source country of proposed investment by value with \$31.1 billion of proposed investment. This was more than three times the value of the second largest source country, Canada, with \$9.2 billion of proposed investment in this sector.

The large value of proposed investment from the United States can be partly attributed to the Walt Disney Company's purchase of the Twenty-First Century Fox Inc global business.

Transport sector approvals showed an increase during the year mainly driven by two approvals for proposed investment in the Westconnex road project. The successful bidding consortium was 29.5 per cent foreign owned and paid approximately \$9.3 billion for a 51 per cent stake in the asset.

The value of proposed investments in health services grew to \$12.4 billion in 2018-19, representing a 70 per cent increase from the previous year. Notable transactions in this sector included the \$4.5 billion takeover of private hospital operator Healthscope by Brookfield Capital Partners and the purchase of Sirtex Medical by an offshore consortium for \$1.9 billion.

**Table 3.7: Services sector approvals: 2015–16 to 2018–19**

| Group                                | 2015-16    |             | 2016-17    |             | 2017-18    |             | 2018-19    |             |
|--------------------------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
|                                      | No.        | \$b         | No.        | \$b         | No.        | \$b         | No.        | \$b         |
| Accommodation, food and beverage (a) | 3          | 0.5         | 10         | 1.4         | 8          | 2.0         | 17         | 1.5         |
| Arts and Recreation (b)              | 3          | 0.3         | 11         | 2.3         | 14         | 1.3         | 8          | 0.7         |
| Communications (c)                   | 29         | 5.8         | 8          | 0.9         | 19         | 2.2         | 21         | 17.4        |
| Construction (d)                     | 14         | 0.9         | 48         | 7.3         | 14         | 1.3         | 22         | 4.1         |
| Health (e)                           | 20         | 3.3         | 29         | 3.6         | 34         | 7.3         | 39         | 12.4        |
| Property and business services (f)   | 32         | 6.2         | 26         | 0.7         | 41         | 35.1        | 57         | 9.1         |
| Trade (g)                            | 16         | 1.1         | 26         | 3.6         | 24         | 4.0         | 24         | 6.1         |
| Transport (h)                        | 32         | 5.1         | 45         | 30.2        | 20         | 5.8         | 37         | 18.7        |
| Other (i)                            | 4          | 0.3         | 12         | 6.6         | 11         | 4.3         | 20         | 5.8         |
| <b>Total</b>                         | <b>153</b> | <b>23.5</b> | <b>215</b> | <b>56.5</b> | <b>185</b> | <b>63.2</b> | <b>245</b> | <b>76.0</b> |

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

(b) Comprises: heritage activities; creative and performing arts; sports and recreation and gambling.

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

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

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

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

(g) Comprises: wholesaling of basic material, machinery and equipment, grocery, liquor and tobacco products; motor vehicle and motor vehicle parts retailing; retailing of fuel, food and other store based retailing; and non-store retailing and retail commission-based buying and/or selling.

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

(i) Comprises: repair and maintenance; public administration; defence; education related services; and personal and other services.

Notes: Time series includes amended data from earlier publications reflecting a change in methodology that arts and recreation services, which was previously separately reported as tourism, has been included in this table as of this report so there is greater alignment with the Australian and New Zealand Standard Industrial Classification (ANZSIC, 2006).

Totals may not add due to rounding.

Excludes corporate reorganisations and new businesses.

Data for 2015–16 onwards was impacted by the 1 December 2015 reforms. Data from 2017-18 was impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability across time.

## Sirtex case study

In 2019, the majority Chinese owned joint bidders CDH Investments, China Grand Pharmaceutical and Healthcare Holdings Limited acquired ASX listed Sirtex Medical Limited for \$1.9 billion. Sirtex supplies a clinically proven liver cancer radiation therapy to hospitals in more than 40 countries.

This acquisition continued the strong interest of foreign investors in Australia's healthcare sector.



The acquisition saw Sirtex change from being a publicly listed company to one owned and operated by an investor which is expected to take a long term view and has indicated that it has capital available for further investment in the business. The new owners have indicated they intend to expand the business and market Sirtex's expertise in the treatment of liver cancer to the Asian markets.

CDH Investments has invested over \$20 billion globally. China Grand Pharmaceutical and Healthcare Holdings Limited are principally engaged in the development, manufacture and sale of pharmaceuticals, medical devices and healthcare products around the world.

## Commercial real estate

In 2018-19, there were 487 approvals for \$73.0 billion of proposed investment in the commercial real estate sector. This is a significant increase compared to 2017-18 when there were 391 approvals for \$39.5 billion in proposed investment.

The increase in value was partly due to a \$12.1 billion increase in the quantity and size of exemption certificates granted during the year. These certificates have been used by investment management funds to cover a range of pre-defined target investments in the developed commercial property sector.

The sale of the Investa Office Fund saw proposals submitted by several interested foreign bidders, with Canadian pension fund OMERS ultimately successful with its \$3.4 billion bid.

**Table 3.8: Commercial real estate approvals, by type: 2015–16 to 2018–19**

|                                    | 2015-16    |             | 2016-17    |             | 2017-18    |             | 2018-19    |             |
|------------------------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
|                                    | No.        | \$b         | No.        | \$b         | No.        | \$b         | No.        | \$b         |
| <b>Commercial</b>                  |            |             |            |             |            |             |            |             |
| <u>Developed</u>                   |            |             |            |             |            |             |            |             |
| - Existing commercial property     | 331        | 39.5        | 219        | 20.9        | 166        | 18.3        | 184        | 39.0        |
| - Exemption certificates (a)       | 18         | 4.5         | 30         | 11.2        | 25         | 7.1         | 37         | 19.2        |
| <i>Sub-total 'Developed'</i>       | <i>349</i> | <i>43.9</i> | <i>249</i> | <i>32.1</i> | <i>191</i> | <i>25.4</i> | <i>221</i> | <i>58.3</i> |
| <u>For development</u>             |            |             |            |             |            |             |            |             |
| - Vacant commercial property       | 235        | 4.0         | 182        | 3.7         | 169        | 6.0         | 228        | 6.8         |
| - Exemption certificates (a)       | 22         | 1.8         | 34         | 7.9         | 32         | 8.0         | 38         | 7.9         |
| <i>Sub-total 'For development'</i> | <i>257</i> | <i>5.7</i>  | <i>216</i> | <i>11.6</i> | <i>200</i> | <i>14.0</i> | <i>266</i> | <i>14.7</i> |
| <b>Total commercial</b>            | <b>606</b> | <b>49.7</b> | <b>465</b> | <b>43.7</b> | <b>391</b> | <b>39.5</b> | <b>487</b> | <b>73.0</b> |

(a) From 1 December 2015, annual programs under the new provisions in the Act are known as exemption certificates for foreign persons. They are no longer limited to a 12 month period.

Notes: Totals may not add due to rounding.

Excludes individual approvals for corporate reorganisations (some corporate reorganisations may be covered by exemption certificates).

Data for 2015–16 onwards was impacted by the 1 December 2015 reforms. Data from 2017-18 was impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability across time.

**Table 3.9: State and territory distribution of proposed investment in commercial real estate in 2018–19**

| Location     | Number of approvals | Commercial    |                     | Total \$b   |
|--------------|---------------------|---------------|---------------------|-------------|
|              |                     | Developed \$b | For development \$b |             |
| ACT          | 3                   | 0.1           | 0.0                 | 0.1         |
| NSW          | 117                 | 7.6           | 2.6                 | 10.2        |
| NT           | 2                   | 0.0           | 0.0                 | 0.0         |
| Qld          | 78                  | 1.6           | 1.9                 | 3.5         |
| SA           | 18                  | 0.0           | 0.1                 | 0.2         |
| Tas.         | 2                   | 0.0           | 0.1                 | 0.1         |
| Vic.         | 113                 | 3.3           | 0.9                 | 4.3         |
| WA           | 43                  | 0.3           | 0.6                 | 0.9         |
| Various (a)  | 111                 | 45.3          | 8.5                 | 53.8        |
| <b>Total</b> | <b>487</b>          | <b>58.3</b>   | <b>14.7</b>         | <b>73.0</b> |

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

Notes: Totals may not add due to rounding.

Excludes individual approvals for corporate reorganisations (some corporate reorganisations may be covered by exemption certificates).

Includes exemption certificates.

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

The 2017-18 figures were impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. The reforms may affect data comparability.

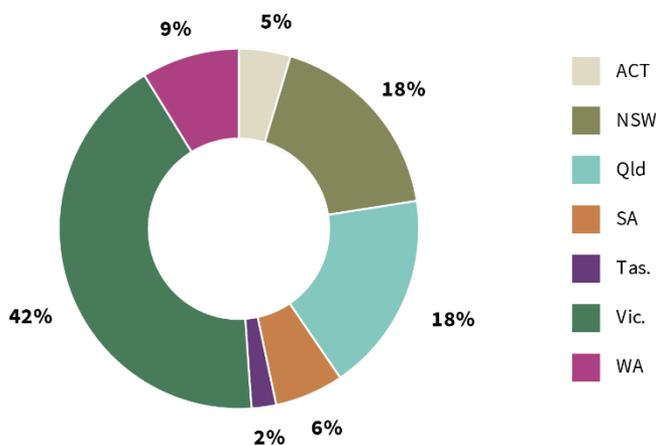
## Residential real estate

In 2018-19, a total of 7,513 residential real estate applications were approved for proposed investment worth \$14.8 billion. This is a 2,523 decline in the number of approvals from 2017-18 and continues a trend seen since 2015-16. Despite this, 2018-19 saw an increase in the value of proposed investment in residential real estate by \$2.3 billion, representing an 18 per cent increase on the previous year. This increase can be attributed almost solely to the approval of ‘for development residential real estate exemption certificates’.

An analysis of residential real estate data since 2015-16 indicates a dampening of foreign demand for residential real estate. Many factors may explain the fall in the number of residential real estate approvals. These include foreign investment application fees, a tightening of domestic credit and increased restrictions on capital transfers in home countries, state taxes and foreign resident stamp duty increases, and the introduction of an exemption certificate so that only one approval is required for individuals considering a number of residential properties with the intention to purchase only one property.

In 2018–19, the number of residential real estate approvals for proposed purchases in New South Wales and Victoria fell to 60 per cent of all approvals given to single states/territories. The value of residential real estate approvals in these two states together fell by roughly 25 per cent compared to the previous financial year.

**Chart 3.3: Share of residential real estate approvals by state and territory in 2018-19, by number**



Notes: This Chart excludes approvals that apply to more than one state or territory. The Northern Territory has not been allocated a share for the purpose of this Chart due to the proportionately small number of approvals. Due to the above and rounding this Chart does not add to 100 per cent.

### *Established residential dwellings*

In 2018-19, there were 1,312 approvals 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 Australian based staff or for redevelopment to add to the housing stock.

After increasing to about a third of all established dwelling approvals in 2017-18, established dwelling single purchase exemption certificates returned to about a quarter of all established dwelling approvals in 2018-19. 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.

### *For development*

Australia's foreign investment policy encourages investment in the residential real estate sector, which is expected to help build new supply. In 2018-19, 6,200 approvals for development were given including combination exemption certificates for new dwellings, vacant land and other residential property for development.

In 2018-19, the value of exemption certificate approvals increased to \$9.2 billion compared to \$4.6 billion in the previous period.

**Table 3.10: Residential real estate approvals, by type: 2015–16 to 2018–19**

|  | 2015-16       |             | 2016-17       |             | 2017-18       |             | 2018-19      |             |
|--|---------------|-------------|---------------|-------------|---------------|-------------|--------------|-------------|
|  | No.           | \$b         | No.           | \$b         | No.           | \$b         | No.          | \$b         |
| <b>Residential</b>                                   |               |             |               |             |               |             |              |             |
| <u>Developed</u>                                     |               |             |               |             |               |             |              |             |
| - Existing residential property                      |               |             |               |             |               |             |              |             |
| - Individual purchases                               | 5,632         | 6.9         | 1,484         | 2.1         | 1,075         | 1.5         | 995          | 1.2         |
| - Single purchase EC (a)                             | 244           | 0.4         | 521           | 0.8         | 538           | 0.9         | 317          | 0.4         |
| <i>Sub-total 'Existing'</i>                          | <i>5,876</i>  | <i>7.3</i>  | <i>2,005</i>  | <i>2.9</i>  | <i>1,613</i>  | <i>2.3</i>  | <i>1,312</i> | <i>1.7</i>  |
| - Exemption certificate (b)                          | 1             | 0.0         | 3             | 0.0         | 2             | 0.0         | 1            | 0.1         |
| <i>Sub-total 'Developed'</i>                         | <i>5,877</i>  | <i>7.3</i>  | <i>2,008</i>  | <i>3.0</i>  | <i>1,615</i>  | <i>2.4</i>  | <i>1,313</i> | <i>1.8</i>  |
| <u>For development</u>                               |               |             |               |             |               |             |              |             |
| - Vacant land  |               |             |               |             |               |             |              |             |
| - Individual purchases                               | 7,005         | 2.8         | 2,911         | 1.1         | 2,281         | 0.9         | 1,745        | 0.7         |
| - Single purchase EC (a)                             | na            |             | na            |             | 118           | 0.1         | 39           | 0.0         |
| <i>Sub-total 'Vacant land'</i>                       | <i>7,005</i>  | <i>2.8</i>  | <i>2,911</i>  | <i>1.1</i>  | <i>2,399</i>  | <i>0.9</i>  | <i>1,784</i> | <i>0.7</i>  |
| - New dwellings                                      |               |             |               |             |               |             |              |             |
| - Individual purchases                               | 26,052        | 19.3        | 7,864         | 6.6         | 5,494         | 4.8         | 3,888        | 3.1         |
| - Single purchase EC (a)                             | na            |             | na            |             | 166           | 0.1         | 60           | 0.1         |
| - New dwelling EC                                    | 201           | 38.4        | 46            | 14.1        | 24            | 2.7         | 16           | 1.7         |
| - Near new dwelling EC                               | na            |             | na            |             | 10            | 0.0         | 22           | 0.0         |
| <i>Sub-total 'New dwellings'</i>                     | <i>26,253</i> | <i>57.6</i> | <i>7,910</i>  | <i>20.7</i> | <i>5,694</i>  | <i>7.7</i>  | <i>3,986</i> | <i>4.8</i>  |
| - Redevelopment                                      | 988           | 2.8         | 335           | 0.9         | 315           | 0.8         | 261          | 0.5         |
| - Exemption certificate (b)                          | 18            | 2.0         | 34            | 4.3         | 13            | 0.8         | 43           | 6.8         |
| <i>Sub-total 'For development'</i>                   | <i>34,264</i> | <i>65.2</i> | <i>11,190</i> | <i>27.1</i> | <i>8,421</i>  | <i>10.2</i> | <i>6,074</i> | <i>12.9</i> |
| Combination exemption certificates                   |               |             |               |             |               |             |              |             |
| - established dwelling / vacant land / new dwellings | na            |             | na            |             | na            |             | 126          | 0.1         |
| <b>Total residential</b>                             | <b>40,141</b> | <b>72.4</b> | <b>13,198</b> | <b>30.0</b> | <b>10,036</b> | <b>12.5</b> | <b>7,513</b> | <b>14.8</b> |

(a) Exemption certificates to purchase one established dwelling, known as established dwelling exemption certificates, were introduced from 1 December 2015. Initially the certificates were only available if purchasing at auction. As of 2016-17 the certificates were expanded to cover purchase by any method. Exemption certificates for the certificate holder to purchase one lot of vacant land or one new dwelling were introduced from 1 July 2017.

(b) From 1 December 2015, annual programs, under the new provisions in the Act are known as exemption certificates for foreign persons. They are no longer limited to a 12 month period.

Notes: Totals may not add due to rounding.

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

EC refers to exemption certificates.

An approval category that was not available during a financial year is denoted by 'na'.

The value ascribed to a new dwelling exemption certificate is the total estimated sales value of the new dwellings in the development available for purchase by foreign persons. The value recorded is as provided by the applicant when applying for the exemption certificate. From the 2017-18 Budget onwards, approved new dwelling exemption certificates only allow developers to sell a maximum of 50 per cent of dwellings in a development to foreign persons.

Data for 2015-16 onwards was impacted by the 1 December 2015 reforms. Data from 2016-17 onwards was impacted by the limiting foreign ownership in new developments reform announced in the 2017-18 Budget that had immediate effect from Budget night, 7.30 pm on Tuesday, 9 May 2017. Data from 2017-18 was impacted by the other reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. These reforms may affect data comparability.

**Table 3.11: State and territory distribution of proposed investment in residential real estate in 2018–19**

| Location     | Number of approvals | Residential   |                     | Total \$b   |
|--------------|---------------------|---------------|---------------------|-------------|
|              |                     | Developed \$b | For development \$b |             |
| ACT          | 346                 | 0.0           | 0.2                 | 0.2         |
| NSW          | 1,337               | 0.3           | 2.8                 | 3.1         |
| NT           | 9                   | 0.0           | 0.0                 | 0.0         |
| Qld          | 1,343               | 0.2           | 1.1                 | 1.3         |
| SA           | 462                 | 0.1           | 0.2                 | 0.2         |
| Tas.         | 165                 | 0.1           | 0.0                 | 0.1         |
| Vic.         | 3,163               | 0.9           | 2.9                 | 3.9         |
| WA           | 657                 | 0.2           | 0.5                 | 0.6         |
| Various (a)  | 31                  | 0.1           | 5.4                 | 5.5         |
| <b>Total</b> | <b>7,513</b>        | <b>1.8</b>    | <b>13.0</b>         | <b>14.8</b> |

(a) Comprises approvals 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.

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

The 2017-18 figures were impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. The reforms may affect data comparability.

**Table 3.12: State and territory distribution of proposed investment in residential real estate, by type in 2018-19**

| Location     | New Dwelling |            | Existing Property |            | Redevelopment |            | Vacant land  |            | Developer (b) |            | Combination ECs |            |
|--------------|--------------|------------|-------------------|------------|---------------|------------|--------------|------------|---------------|------------|-----------------|------------|
|              | No.          | \$b        | No.               | \$b        | No.           | \$b        | No.          | \$b        | No.           | \$b        | No.             | \$b        |
| ACT          | 294          | 0.2        | 40                | 0.0        | 4             | 0.0        | 3            | 0.0        | 0             | 0.0        | 5               | 0.0        |
| NSW          | 946          | 1.1        | 162               | 0.3        | 99            | 0.3        | 107          | 1.0        | 9             | 0.4        | 14              | 0.0        |
| NT           | 0            | 0.0        | 7                 | 0.0        | 0             | 0.0        | 1            | 0.0        | 0             | 0.0        | 1               | 0.0        |
| Qld          | 699          | 0.5        | 209               | 0.2        | 28            | 0.2        | 385          | 0.2        | 9             | 0.3        | 13              | 0.0        |
| SA           | 304          | 0.2        | 92                | 0.1        | 9             | 0.0        | 45           | 0.0        | 0             | 0.0        | 12              | 0.0        |
| Tas.         | 17           | 0.0        | 97                | 0.1        | 1             | 0.0        | 33           | 0.0        | 0             | 0.0        | 17              | 0.0        |
| Vic.         | 1,423        | 1.1        | 533               | 0.9        | 72            | 0.3        | 1,059        | 0.5        | 19            | 0.9        | 57              | 0.1        |
| WA           | 265          | 0.2        | 172               | 0.2        | 53            | 0.1        | 159          | 0.1        | 1             | 0.1        | 7               | 0.0        |
| Various (a)  | 3            | 1.2        | 1                 | 0.1        | 13            | 1.9        | 14           | 2.3        | 0             | 0.0        | 0               | 0.0        |
| <b>Total</b> | <b>3,951</b> | <b>4.4</b> | <b>1,313</b>      | <b>1.8</b> | <b>279</b>    | <b>2.7</b> | <b>1,806</b> | <b>4.2</b> | <b>38</b>     | <b>1.7</b> | <b>126</b>      | <b>0.1</b> |

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

(b) 'Developer' includes new dwelling exemption certificates provided to real estate developers (previously off the plan approvals), as well as near new dwelling exemption certificates.

Notes: Totals may not add due to rounding.

This table excludes the developed, and for development exemption certificates for foreign persons shown in Table 3.10.

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

The 2017-18 figures were impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. The reforms may affect data comparability.

## New business approvals

Foreign government investors require approval to start an Australian business.<sup>6</sup> New business approvals in the agriculture, forestry and fishing sector, the finance and insurance sector and the services sector increased on 2017-18 approvals, while the number of new business approvals in the manufacturing, electricity and gas sector and the mineral exploration and development sector declined.

**Table 3.13: New business approvals by industry sector: 2015-16 to 2018-19**

| Industry                          | 2015-16   | 2016-17  | 2017-18   | 2018-19   |
|-----------------------------------|-----------|----------|-----------|-----------|
|                                   | No.       | No.      | No.       | No.       |
| Agriculture, forestry & fishing   | 0         | 0        | 0         | 1         |
| Finance & insurance               | 3         | 2        | 5         | 7         |
| Manufacturing, electricity & gas  | 0         | 0        | 3         | 2         |
| Mineral exploration & development | 2         | 1        | 1         | 0         |
| Services                          | 12        | 4        | 11        | 12        |
| <b>Total</b>                      | <b>17</b> | <b>7</b> | <b>20</b> | <b>22</b> |

Notes: A proposed investment value is not attributed to new business approvals.

Prior to the inclusion of this table from 2017-18, new business approvals were reported in approvals by industry sector.

As commercial and residential real estate relate to acquisitions of land, these industry sectors are not included in this table.

## Investor countries

### Leading sources of proposed investment

Table 3.14 shows proposed investment approvals in 2018-19, disaggregated by industry sector, for the top 18 countries by approvals value. The United States and Canada were the top two sources of proposed investment by value in 2018-19. Singapore, Japan, China were the third to fifth top investors by value.

The value of approvals from United States investors increased significantly, from \$36.5 billion in 2017-18 to \$58.2 billion in 2018-19. While investment in finance and insurance; manufacturing, electricity and gas; and mineral exploration and development fell, these declines were offset by strong growth in the services and real estate (commercial and residential) sectors, and to a lesser degree in the agriculture, fishing and forestry sector. The value of proposed investment in the services sector increased from \$19.7 billion in 2017-18 to \$31.2 billion in 2018-19, and real estate saw an increase in approvals value from \$5.8 billion in 2017-18 to \$19.6 billion in

<sup>6</sup> This requirement was codified in the Act from 1 December 2015.

Starting an Australian business refers to when a foreign government investor starts to carry on an Australian business, or if a foreign government investor already carries on an Australian business, the business starts a new activity under the Australian and New Zealand Standard Industrial Classification (ANZSIC, 2006) Codes and the activity is not incidental to an existing activity of the Australian business and the activity is within a different Division under the Codes. For a foreign government investor that already carries on an Australian business, starting a new business excludes when they establish a new entity, alone or with others, to undertake the same Australian business or acquire interests in such an Australian business.

2018-19. Much of the growth in the services sector was the result of Walt Disney Company's acquisition of Twenty-First Century Fox Inc.

Proposed approved investment from Canada increased by nearly \$15 billion, with a number of large proposed transactions from pension and private equity funds, moving Canada to the second largest source investor country.

In 2018-19, the number of approvals and the value of proposed investment from China declined, shifting China to the fifth largest source country by value. The value of approvals fell from \$23.7 billion in 2017-18 to \$13.1 billion in 2018-19. The number of approvals fell by 1,915 (from 6,816 to 4,901). The value of approvals from China fell across all sectors. This has continued a downward trend in the number and value of proposed investment by Chinese investors since 2015--16. This could be due to a range of factors including China's domestic policy settings which have increased scrutiny over outbound FDI and stricter capital controls. The effect of these policy settings at a broader level is also reflected in OECD data, which show a 30 per cent year-on-year decline in outbound Chinese FDI over 2017-18.

Table 3.14 Approvals by country of investor, by industry sector in 2018-19

| Country (a)                      | Number of approvals (f) | Agriculture, forestry & fishing \$m | Finance & insurance \$m | Manufacturing, electricity & gas \$m | Mineral exploration & development \$m | Real estate \$m | Services \$m    | Total \$m        |
|----------------------------------|-------------------------|-------------------------------------|-------------------------|--------------------------------------|---------------------------------------|-----------------|-----------------|------------------|
| UNITED STATES                    | 401                     | 1,169.3                             | 791.8                   | 2,571.3                              | 2,934.3                               | 19,559.1        | 31,152.0        | 58,177.8         |
| CANADA                           | 238                     | 1,581.6                             | 190.2                   | 643.1                                | 1,077.6                               | 13,299.7        | 9,222.7         | 26,014.9         |
| SINGAPORE                        | 501                     | 257.5                               | 176.7                   | 3,136.5                              | 24.1                                  | 9,797.8         | 2,604.8         | 15,997.4         |
| JAPAN                            | 125                     | 57.8                                | 4,117.0                 | 2,509.4                              | 3,057.7                               | 3,809.7         | 1,515.0         | 15,066.7         |
| CHINA (b)                        | 4,901                   | 251.9                               | 84.8                    | 502.4                                | 2,679.7                               | 6,071.0         | 3,549.0         | 13,138.7         |
| HONG KONG                        | 531                     | 684.1                               | 34.0                    | 108.9                                | 757.1                                 | 9,328.0         | 119.5           | 11,031.4         |
| UNITED KINGDOM                   | 377                     | 143.2                               | 94.7                    | 1,503.1                              | 916.9                                 | 1,579.5         | 1,884.7         | 6,122.0          |
| NEW ZEALAND                      | 50                      | 243.6                               | -                       | 593.1                                | -                                     | 4,710.1         | 525.3           | 6,072.2          |
| SWITZERLAND                      | 51                      | 69.9                                | 337.0                   | 2,164.2                              | 847.4                                 | 678.7           | 1,053.7         | 5,150.9          |
| FRANCE                           | 101                     | 28.8                                | 0.4                     | 730.1                                | 35.2                                  | 740.1           | 2,194.9         | 3,729.5          |
| UNITED ARAB EMIRATES             | 93                      | 126.2                               | 39.8                    | 83.2                                 | 1.1                                   | 1,219.6         | 1,373.2         | 2,843.0          |
| NETHERLANDS                      | 66                      | 170.1                               | -                       | 445.0                                | -                                     | 1,027.5         | 1,136.0         | 2,778.6          |
| GERMANY                          | 88                      | 228.7                               | 4.1                     | 114.6                                | 8.0                                   | 1,065.9         | 1,101.4         | 2,522.7          |
| SOUTH AFRICA                     | 81                      | 20.9                                | 94.3                    | 1,010.8                              | 1,035.                                | 112.2           | 238.2           | 2,511.8          |
| THAILAND                         | 32                      | 140.0                               | -                       | 50.0                                 | -                                     | 816.8           | -               | 2,006.8          |
| INDIA                            | 96                      | 191.0                               | -                       | 0.0                                  | 0.3                                   | 138.0           | 1,384.9         | 1,714.1          |
| NORWAY                           | 10                      | 400.1                               | -                       | 348.6                                | -                                     | 864.0           | 101.3           | 1,714.0          |
| KOREA, REPUBLIC OF (SOUTH KOREA) | 87                      | 267.9                               | 6.8                     | 97.1                                 | 00.1                                  | 425.2           | 729.5           | 1,626.5          |
| Other Countries (c)              | 1,736                   | 655.2                               | 225.1                   | 2,873.3                              | 1,601.6                               | 5,462.7         | 2,238.8         | 13,056.6         |
| New Dwelling EC (d)              | 38                      | -                                   | -                       | -                                    | -                                     | 1,664           | -               | 1,664.2          |
| <b>Sub-total</b>                 | <b>9,603</b>            | <b>6,687.7</b>                      | <b>6,196.7</b>          | <b>21,692.5</b>                      | <b>12,868.4</b>                       | <b>83,369.8</b> | <b>62,124.9</b> | <b>192,940.0</b> |
| Australia (e)                    | 246                     | 637.6                               | 103.1                   | 17,223.2                             | 1,087.0                               | 5,111.9         | 13,871.6        | 38,034.3         |
| <b>Total</b>                     | <b>9,849</b>            | <b>7,325.2</b>                      | <b>6,299.8</b>          | <b>38,915.7</b>                      | <b>13,955.3</b>                       | <b>88,481.7</b> | <b>75,996.5</b> | <b>230,974.3</b> |

### Notes applying to Table 3.14

- (a) Includes overseas territories.
- (b) China excludes Special Administrative Regions and Taiwan.
- (c) 'Other' comprises all other countries not specifically listed in the top countries by value, from which there is 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 value reflects the maximum amount that foreign persons may acquire under the certificate in the proposed development. As of the 2017-18 Budget, the maximum number of dwellings that could be sold to foreign persons under new certificates was reduced from 100 per cent to 50 per cent of the dwellings in a development.
- (e) Comprises approvals where Australians hold disclosed beneficial interests in the investor, or where widely held interests have been allocated to Australia based on other factors such as location or control of the investor. Also includes when an Australian investor(s) jointly intends to make a proposed investment with a foreign person through a new entity, or jointly establish a new business with a foreign government investor.
- (f) These figures indicate the total number of approvals in which investors from the particular country have a disclosed beneficial interest in or where widely held interests have been allocated to a country based on factors such as the largest interest holder or country of control of the investor. Approvals involving investment originating from more than one country are generally counted as one approval for each of the countries concerned where they include investment from foreign persons greater than five per cent or where there is shared control.

Notes: Totals may not add due to rounding.

Includes corporate reorganisations, exemption certificates and new businesses.

Total number of approvals in this table may be greater than or equal to the total number of approvals in Tables 3.1, 3.3, and 3.4 as the data is recorded by target, for both industry sectors and investor countries. For instance, one application 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 four approvals).

The 2017-18 figures were impacted by the reforms announced in the 2017-18 Budget, which were given effect on 1 July 2017. The reforms may affect data comparability.

## Variations

The Act allows foreign persons to apply for variations relating to approvals, conditions that are imposed as part of an approval, exemption certificates, and to orders. Variations may also be made at the Treasurer's own initiative if the person consents to the variation or the variation meets a no disadvantage to the foreign person test. Irrespective of whether an application is received or the variation is at the Treasurer's initiative, the variation may only be made 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 and extensions of deadlines in conditions.

For example, a commercial real estate development condition has a deadline of five years for the commencement of construction from the date of approval. Where, due to circumstances beyond the developer's control, the developer is unlikely to meet the deadline, the developer may apply for the deadline for the condition to be varied to provide further time.

A significant departure from the original application or approval will generally require a further application. This could include the addition of another foreign person to the application or increasing the equity interest in the proposed investment.

In 2018-19, there were 376 variations considered, compared to 504 in 2017-18. Of these, 357 were approved in 2018-19 compared to 453 in 2017-18. No variations were declined in 2018-19.

**Table 3.15: Variations considered: 2017-18 to 2018-19 (number of variations by variation type)**

| Outcome                 | Variation to exemption certificate (a) |           |                              |          | Variation to Land approval (b) |            |           |           | Variation to Other approval (c) |           |            |            | Total All variations |     |         |     |
|-------------------------|--|-----------|------------------------------|----------|--------------------------------|------------|-----------|-----------|---------------------------------|-----------|------------|------------|----------------------|-----|---------|-----|
|                         | Acquisition program certificate (d)    |           | New dwelling certificate (e) |          | Residential (f)                |            | Other (g) |           | 2017-18                         |           | 2018-19    |            | 2017-18              |     | 2018-19 |     |
|                         | No.                                    | No.       | No.                          | No.      | No.                            | No.        | No.       | No.       | No.                             | No.       | No.        | No.        | No.                  | No. | No.     | No. |
| Approved                | 7                                      | 12        | 1                            | 0        | 413                            | 302        | 9         | 14        | 23                              | 29        | 453        | 357        |                      |     |         |     |
| Declined (h)            | 1                                      | 0         | 0                            | 0        | 3                              | 0          | 0         | 0         | 0                               | 0         | 4          | 0          |                      |     |         |     |
| <b>Total decided</b>    | <b>8</b>                               | <b>12</b> | <b>1</b>                     | <b>0</b> | <b>416</b>                     | <b>302</b> | <b>9</b>  | <b>14</b> | <b>23</b>                       | <b>29</b> | <b>457</b> | <b>357</b> |                      |     |         |     |
| Not a variation (i)     | 1                                      | 1         | 0                            | 0        | 0                              | 0          | 1         | 2         | 1                               | 1         | 3          | 4          |                      |     |         |     |
| Withdrawn (j)           | 0                                      | 3         | 0                            | 0        | 42                             | 7          | 0         | 2         | 2                               | 3         | 44         | 15         |                      |     |         |     |
| <b>Total considered</b> | <b>9</b>                               | <b>16</b> | <b>1</b>                     | <b>0</b> | <b>458</b>                     | <b>309</b> | <b>10</b> | <b>18</b> | <b>26</b>                       | <b>33</b> | <b>504</b> | <b>376</b> |                      |     |         |     |

**Table 3.16: Variations approved: 2017-18 to 2018-19 (number of variations by variation reason)**

| Reason                                   | Variation to exemption certificate (a) |           |                              |          | Variation to Land approval (b) |            |           |           | Variation to Other approval (c) |           |            |            | Total All variations |     |         |     |
|--|--|-----------|------------------------------|----------|--------------------------------|------------|-----------|-----------|---------------------------------|-----------|------------|------------|----------------------|-----|---------|-----|
|  | Acquisition program certificate (d)    |           | New dwelling certificate (e) |          | Residential (f)                |            | Other (g) |           | 2017-18                         |           | 2018-19    |            | 2017-18              |     | 2018-19 |     |
|  | No.                                    | No.       | No.                          | No.      | No.                            | No.        | No.       | No.       | No.                             | No.       | No.        | No.        | No.                  | No. | No.     | No. |
| Longer time to undertake action only (k) | 3                                      | 0         | 0                            | 0        | 2                              | 1          | 2         | 3         | 4                               | 13        | 11         | 17         |                      |     |         |     |
| Change to conditions only (l)            | 3                                      | 8         | 1                            | 0        | 224                            | 163        | 5         | 8         | 6                               | 6         | 239        | 185        |                      |     |         |     |
| Other, or more than one reason (m)       | 1                                      | 4         | 0                            | 0        | 187                            | 138        | 2         | 3         | 13                              | 10        | 203        | 155        |                      |     |         |     |
| <b>Total approved</b>                    | <b>7</b>                               | <b>12</b> | <b>1</b>                     | <b>0</b> | <b>413</b>                     | <b>302</b> | <b>9</b>  | <b>14</b> | <b>23</b>                       | <b>29</b> | <b>453</b> | <b>357</b> |                      |     |         |     |

## Notes applying to Tables 3.15 and 3.16

- (a) Exemption certificate refers to exemption certificates that allow for a program of acquisitions by a foreign person or exempts foreign persons from purchasing a new dwelling or near new dwelling from developers to whom a certificate is given (see (d) and (e) below). It does not include residential land certificates given to foreign persons to make a single purchase. These are included in variation to land approval – residential.
- (b) Land approval refers to no objection notifications covering interests in Australian land (that is, agricultural land, commercial land, residential land and mining and production tenements) and tenement interests, including interests in land entities. It also includes residential land exemption certificates given to foreign persons to make a single property purchase. It excludes variations relating to corporate reorganisations.
- (c) Other approval includes variations to all other approvals. For example, variations to approvals for the acquisition of securities in an entity or for the acquisition of assets of an Australian business. It includes any variations relating to corporate reorganisations. It does not include any exemption certificates.
- (d) Acquisition program certificate refers to land exemption certificates for foreign persons (formerly annual programs), business exemption certificates, and tenements and mining, production or exploration entity certificates.
- (e) New dwelling certificate refers to new dwelling exemption certificates (previously off-the-plan approvals) and residential land (near-new dwelling interests) exemption certificates. These allow developers to obtain pre-approval for foreign purchases.
- (f) Includes variations that have been made so that an approval reflects a property's street address when the property street address has become available after the approval has been granted. Fees are generally waived in this situation.
- (g) Other includes interests in Australian land (that is, agricultural land, commercial land, and mining and production tenements) and tenement interests, including interests in land entities, except interests in residential land, or where residential land is the dominant land type of a land entity.
- (h) The application received is for a variation, but the variation is determined to be contrary to the national interest.
- (i) The outcome of 'not a variation' was introduced as of 2017-18 for variation applications lodged via the FIRB Application Portal. This data is not available for residential variation applications lodged with the Australian Taxation Office. This refers to a variation application that does not meet the requirements to be treated as a variation. In such situations, the application may have been subsequently lodged as a normal application reported on in Table 3.1.
- (j) Includes variation applications where the application was withdrawn prior to a decision being made.
- (k) An extension is given to the time to enter into an agreement to make the covered acquisition(s).
- (l) A substantive change to a condition, including an amendment to (for example, an extension of time to take an action required by a condition), or the removal or addition of a condition.
- (m) Examples of 'other' include typographical corrections, non-substantive updating of identifiers such as name or address (for example, address is issued for lot) or adding a wholly-owned subsidiary of the approval holder as an additional acquirer.

Notes: Variations have been reported on since 1 December 2015.

These tables only include variations relating to exemption certificates and no objection notifications, irrespective of if resulting from an application by a foreign person, the Treasurer's initiative, or a compliance action. In 2017-18, they do not include variations relating to orders.

Excluding the outcome of 'not a variation', to be counted as a variation considered, any required foreign investment application fee must have been paid or waived.

Variations are not attributed a value as applicable values have been attributed to the exemption certificate or no objection notification that is subject to the variation.

Variations are reported in the financial year in which the variation is considered irrespective of when the original approval was given.

Over time multiple variations could be made to a single approval.

Changes of conditions resulting from residential real estate investigations are also included in Table 4.2, Chapter 4: Compliance.

## Vacancy fees

In the 2017-18 Budget, the Government introduced a vacancy fee for houses left vacant by foreign investors for more than six months in a 12 month period. The fee was intended to encourage foreign investors to make their properties available for rent where they are not occupied as a residence and so increase the number of properties available for Australians to live in.

Foreign investors who applied for investment approval or propose to purchase in a development using a New Dwelling Exemption Certificate after 9 May 2017 are required to lodge an annual vacancy fee return at the end of each 12 month period of ownership (referred to as the vacancy year). Foreign owners of dwellings that are not residentially occupied or made available on the rental market for more than 183 days each year may be liable to pay a vacancy fee.

If a foreign owner does not lodge a vacancy fee return by the due date, the property may be deemed to be vacant and a vacancy fee liability may be raised regardless of the number of days the dwelling was residentially occupied during the vacancy year.

In 2018-19, 2,218 vacancy fee returns were received and a further 44 foreign owners who failed to lodge a return were required to pay a vacancy fee. The returns indicate a low vacancy rate of approximately 5.3 per cent among properties subject to the vacancy fee measure.

**Table 3.17: Vacancy fee statistics – 1 July 2018 to 30 June 2019**

|                              | 2018-19      |
|------------------------------|--------------|
| Occupied 183 days or more    | 2,037        |
| Occupied fewer than 183 days | 118          |
| Dwelling exempt              | 63           |
| Subtotal declarations        | 2,218        |
| Deemed unoccupied            | 44           |
| <b>Total</b>                 | <b>2,262</b> |

## Foreign investment fee collections

The ATO administers the vacancy fee, and is also responsible for collecting foreign investment application fees. In 2019, the ATO reported in its Annual Report that \$94 million in foreign investment fees were collected. As detailed in Table 3.18, this figure includes \$92.2 million in application fees and \$1.8 million in vacancy fees.

In 2018-19, application fee collections were down on 2017-18 reflecting a decline in applications considered and the introduction of a new fee structure, which came into effect on 1 July 2017.

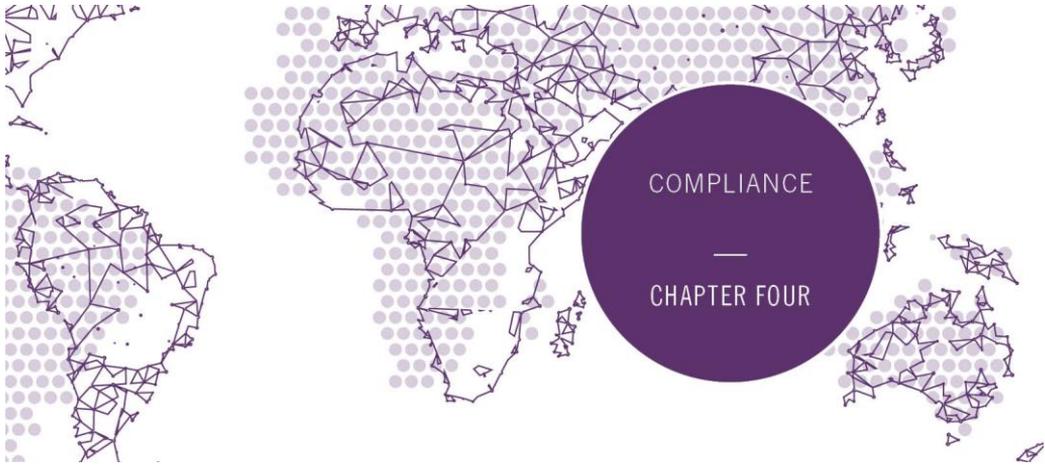
**Table 3.18: Foreign investment fee collections: 2016-17 to 2018-19**

|                  | 2016-17      | 2017-18      | 2018-19     |
|------------------|--------------|--------------|-------------|
| Fee Collections  | \$m          | \$m          | \$m         |
| Application Fees | 134.0        | 114.0        | 92.2        |
| Vacancy Fees     |              |              | 1.8         |
| <b>Total</b>     | <b>134.0</b> | <b>114.0</b> | <b>94.0</b> |

Notes: Application fees were introduced as of 1 December 2015.

Foreign investment application fees are collected when an application is submitted to the Board. The revenue recognised is based on the receipt of the application and/or payment during the reporting period (including fees paid under New Dwelling Exemption Certificates for acquired properties) less an estimate of future outflows relating to cases where the fee might be waived.

Source: ATO Annual Report for each applicable period, see the table ATO net tax collections.



This chapter discusses the Treasury's and the ATO's approach to ensuring compliance by investors with their obligations under the Act and provides an overview of compliance activities in 2018-19.

## Compliance approach

Compliance activities are fundamental to the integrity of the foreign investment framework.

Treasury is responsible for compliance and enforcement activities for proposals within its areas of screening responsibility, including business, agricultural and commercial land foreign investment proposals. The ATO is responsible for compliance and enforcement activities for proposals within its screening responsibility, including residential real estate and the vacancy fee, and some commercial land proposals. FIRB agencies adopt a risk-based approach to their compliance work and focus efforts on areas of risk to the national interest. They aim to achieve a balance between providing assurance that investors are complying with their obligations and detecting and remedying non-compliance, while encouraging and supporting foreign investors to do the right thing.

Foreign investment compliance activities are also supported by specialist advice from other agencies as required. Agencies that support compliance work include the Department of Home Affairs, the Department of Defence, the Department of Health, the Department of Foreign Affairs and Trade, AUSTRAC and the Australian Federal Police.

## Education and promotion

Stakeholder engagement activities include educating foreign investors and their advisers on their compliance obligations. In 2018-19, stakeholder engagement activities undertaken by FIRB agencies included:

- regular meetings with key stakeholders;
- engagement with professional service providers that are advising investors;

- participation in industry forums and seminars, including the fourth Cross-Government Foreign Investment Compliance Forum which Treasury hosted;
- developing and publishing guidance material on the FIRB and ATO websites to educate foreign investors and their advisers on their compliance obligations; and
- responding to written enquiries and phone calls to the FIRB agencies hotlines.

The ATO also continued to assist foreign persons understand new vacancy fee arrangements and the use of exemption certificates introduced during 2017–18, including through live webinars.

## Treasury's compliance activities

Treasury's compliance activities in 2018-19 have been framed against the enhanced Foreign Investment Compliance Framework which was implemented in September 2017. Broadly, this covers compliance assurance, enforcement, stakeholder engagement and market intelligence.

An outline of activities undertaken under each of these areas follows.

### Compliance assurance

#### *Audit program*

The introduction of an annual rolling audit program in 2017 has been integral to enhancing Treasury's approach to compliance. In undertaking compliance audits, Treasury uses a risk-based approach to determine which transactions are subject to audit. This approach considers issues such as the nature of conditions imposed on an investment proposal, the impact of non-compliance on the national interest and indicators of potential non-compliance. During the 2018-19 audit program, nine compliance audits were completed, which considered 17 different foreign investment transactions. This represents approximately \$2.84 billion worth of investment being subject to compliance review as part of the 2018-19 program. The results of the audit program have indicated that investors are generally meeting their obligations. In instances where investors have been found to be non-compliant or partially compliant, Treasury works with them to bring them into compliance.

#### *Reviews*

Treasury reviews instances of potential non-compliance as part of its compliance assurance activities. Reviews are often triggered by information received from members of the public regarding suspected breaches of the Act by investors. In 2018-19, Treasury received 30 reports of potential non-compliance, and finalised 23 reviews. In 17 instances, no follow up compliance action was required. Compliance action was taken in three instances and a separate four matters were referred to other government agencies for review.

## **Compliance monitoring**

Treasury's assurance activities also include ongoing monitoring of compliance. For example, investors are often requested to report on their compliance with conditions imposed as part of no objections notifications. These reports provide Treasury with information regarding the level of compliance and provide information about how compliance activities could be targeted in the future. In 2019, Treasury received over 230 compliance reports.

## **Enforcement**

The Act provides a number of powers to enforce the foreign investment rules, including criminal and civil penalties for non-compliance. Penalties may be applied for breaches of the Act, including where a foreign person fails to notify investments that fall within screening thresholds, or breaches a condition imposed on an investment. Penalties under the Act are designed to deter non-compliance, support the integrity of the foreign investment framework, and ensure the national interest is safeguarded. In general, Treasury will seek to work with foreign investors to achieve compliance in cases where non-compliance is inadvertent, self-reported by the foreign investor, the breach is administrative, and the investor is willing to remediate the breach as quickly as possible. Treasury's focus continues to be on encouraging and assisting investors to comply.

## **Market intelligence**

Treasury's market intelligence activities are currently focused on making better use of data to improve monitoring of foreign investment compliance. Activities underway include putting arrangements in place with other agencies to enable more open sharing of information. It is expected this will put Treasury in a better position to identify investments that should have been screened under the foreign investment framework but were not.

## **ATO's residential real estate compliance activities**

Since December 2015, the ATO has been responsible for managing residential real estate applications and associated compliance work. In April 2017, the ATO assumed several additional responsibilities, including the screening of applications and compliance work for non-sensitive commercial real estate and corporate reorganisation cases.

The data reported in this section is based on residential real estate compliance investigations undertaken by the ATO from 1 July 2018 to 30 June 2019.

During 2018-19, 1,220 cases were identified for investigation (down from 1,710 cases in 2017-18). Of these, 1,068 investigations were completed (1,404 in 2017-18), which identified 600 properties that were in breach of Australia's foreign investment rules (identical to last year) (see Table 4.1).

**Table 4.1: Residential real estate compliance investigations in 2017-18 and 2018-19**

| Investigations       | 2017-18 | 2018-19 |
|----------------------|---------|---------|
|                      | No.     | No.     |
| Identified           | 1710    | 1220    |
| Completed            | 1404    | 1068    |
| Properties in breach | 600     | 600     |

### *Outcomes of residential property investigations*

Compliance investigations in 2018-19 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 a property within specified timeframes;
- failure to undertake certain actions within a specified period; and
- the lodgement of a vacancy fee return with incorrect or false information.

Outcomes of investigations that identified breaches included divestments, retrospective approvals, variations of conditions and raising a vacancy fee liability. These outcomes are reported in Table 4.4. In some circumstances an infringement notice may have also been applied. Infringement notice data is reported separately. Table 4.5 provides detail on these outcomes.

As outlined in the below table, change of conditions (36.7 per cent outcome) and retrospective approvals (35.5 per cent outcome) are the most frequent outcomes. Compliance outcomes are influenced by the ATO's compliance strategy and case selection methodologies, which apply a risk-based approach to encourage foreign investors to comply with the rules where their investment is in the national interest. In most circumstances an infringement notice, which imposes a financial penalty on a foreign person, was applied to breaches even if the application was subsequently given approval or conditions of approval changed. Infringement notice data is reported in Table 4.5.

**Table 4.2: Outcomes of residential real estate investigations that identified breaches in 2017-18 and 2018-19**

| Compliance outcome                                   | 2017-18    |              | 2018-19    |              |
|--|------------|--------------|------------|--------------|
|  | No.        | Percentage   | No.        | Percentage   |
| Divestment (a)                                       | 131        | 21.8         | 83         | 13.8         |
| Retrospective approval (b)                           | 102        | 17.0         | 79         | 13.2         |
| Change of conditions (c)                             | 177        | 29.5         | 220        | 36.7         |
| Retrospective approval during FIRB consideration (d) | 190        | 31.7         | 213        | 35.5         |
| Vacancy fee raised                                   | -          | -            | 5          | 0.8          |
| <b>Total outcomes</b>                                | <b>600</b> | <b>100.0</b> | <b>600</b> | <b>100.0</b> |

- (a) Refers to situations where a foreign person has voluntarily disposed of a property following a breach, including during an investigation, and where a formal disposal order was issued under the Act.
- (b) Refers to situations where approval is provided after the property has been purchased. Retrospective approval may be given when the foreign person failed to seek foreign investment approval but would have received approval had they submitted an application before acquiring the property. Retrospective applications remain liable to pay the relevant application fee and an infringement notice.
- (c) Refers to situations where conditional approval has previously been provided but the foreign person is not able to comply with their conditions and they are subsequently varied. For example, where an application had development conditions imposed and these were not able to be met due to delays in local government approval, the development conditions may be varied to extend the time permitted. Where appropriate, an infringement notice is also issued in these situations for failure to comply with conditions.
- (d) Refers to situations where a foreign person is seeking approval to acquire an interest in property and it is identified during the foreign investment screening process that they had already acquired an interest in the property in question. Where appropriate, an infringement notice is also issued in these situations for failure to seek approval before acquiring an interest in the property.
- (e) Refers to situations where a vacancy fee liability is raised for a dwelling that is residentially occupied for fewer than 183 days during a vacancy year or where a foreign person is liable to pay a vacancy fee for failing to lodge a vacancy fee return.

Notes: Retrospective approval and retrospective approval during Board consideration numbers are also included in the residential approvals numbers in Chapter 3: Applications Data.

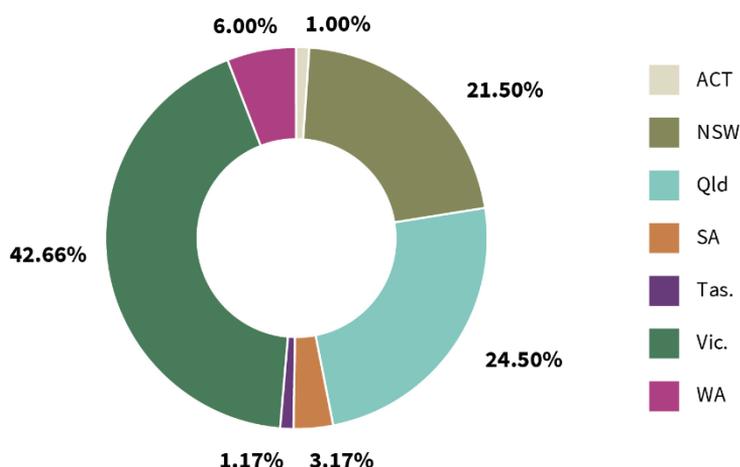
Change of conditions numbers are also included in the residential variation numbers in Chapter 3: Applications Data.

Percentage totals may not add due to rounding.

### *Breaches by location*

Chart 4.1 shows the geographic distribution of properties that were found to be in breach of the foreign investment rules in 2018-19.

Just over 40 per cent of the breaches identified by compliance investigations related to residential property in Victoria. The proportion of breaches recorded in Queensland increased from 17.2 per cent in 2017-18 to 24.5 per cent. The proportion of breaches in New South Wales remained relatively stable.

**Chart 4.1: Location of residential real estate breaches identified in 2018-19**

Note: This Chart does not add to 100 per cent due to rounding. No properties were found in breach in the Northern Territory. The Northern Territory had only a small number of residential real estate approvals for the period.

### *Investigations by source*

The ATO identifies properties for investigation using a range of sources including community information, data matching and self-disclosures (see Table 4.3).

**Table 4.3: Source of residential real estate cases in 2017-18 and 2018-19**

| Source of Case            | 2017-18      |              | 2018-19      |              |
|---------------------------|--------------|--------------|--------------|--------------|
|                           | No.          | Percentage   | No.          | Percentage   |
| Community information     | 256          | 15.0         | 88           | 7.2          |
| Data matched (a)          | 1,090        | 63.7         | 939          | 77.0         |
| Self-disclosure           | 288          | 16.8         | 107          | 8.8          |
| Other referrals           | 76           | 4.4          | 86           | 7.0          |
| <b>Total received (b)</b> | <b>1,710</b> | <b>100.0</b> | <b>1,220</b> | <b>100.0</b> |

(a) Data matched includes the vacancy fee

(b) The total number of received cases includes new cases identified in the prior financial year which remained open at the end of that financial year. In 2018-19 there were 306 cases carried forward from 2017-18 year.

Notes: Percentage totals may not add due to rounding.

ATO data matching analysis is an increasingly important source of information used in compliance investigations. The ATO continues to increase its use of state and territory data regarding foreign investors in the residential real estate sector and continues to increase its data matching capacity in this sector.

Data matching made up 77 per cent of the 1,220 cases identified for investigation in 2018-19. Although information received from the community is a 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 found to be Australian citizens or permanent residents and were therefore exempt from the Act.

**Table 4.4: Outcomes of completed residential real estate investigations by source in 2017-18 and 2018-19**

| Source                | 2017-18                         |                 | 2018-19                         |                 |
|-----------------------|---------------------------------|-----------------|---------------------------------|-----------------|
|                       | No. of completed investigations | No. of breaches | No. of completed investigations | No. of breaches |
| Community information | 228                             | 37              | 86                              | 12              |
| Data matching         | 866                             | 370             | 810                             | 484             |
| Self disclosure       | 249                             | 175             | 103                             | 76              |
| Other referral        | 61                              | 18              | 69                              | 28              |
| <b>Total</b>          | <b>1,404</b>                    | <b>600</b>      | <b>1,068</b>                    | <b>600</b>      |

Note: 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.

Data matching figures include vacancy fee investigations.

### *Infringement notices*

There are two levels of infringement notices which impose different financial penalties on a foreign person. A Tier 1 infringement notice may be issued where a foreign person notifies of a breach before an infringement notice is issued, while in cases where the ATO identifies a breach as a result of compliance activity, a Tier 2 infringement notice may be issued.

**Table 4.5: Infringement notices issued in relation to residential real estate in 2017-18 and 2018-19**

| Penalty type        | 2017-18    |                  | 2018-19    |                  |
|---------------------|------------|------------------|------------|------------------|
|                     | No.        | Total Value \$   | No.        | Total Value \$   |
| Tier 1 infringement | 347        | 1,001,080        | 346        | 1,288,000        |
| Tier 2 infringement | 82         | 1,175,400        | 169        | 2,267,320        |
| <b>Total</b>        | <b>429</b> | <b>2,176,480</b> | <b>515</b> | <b>3,555,320</b> |

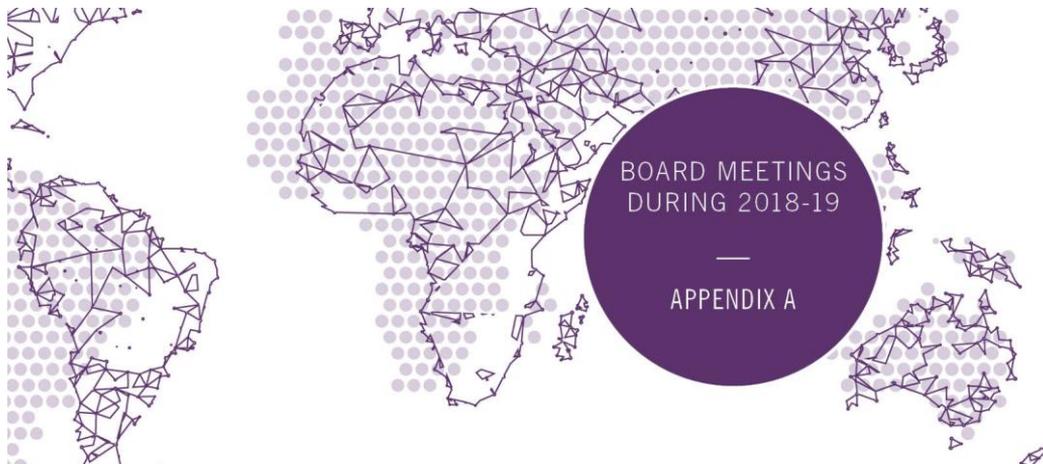
Notes: Tier 1 infringement notices are issued where the breach is self-disclosed.

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

## **The Australian National Audit Office (ANAO) report on residential real estate compliance**

In 2017-18, FIRB agencies supported the ANAO review and report *Management of compliance with foreign investment obligations for residential real estate*, which was tabled in Parliament in June 2018.

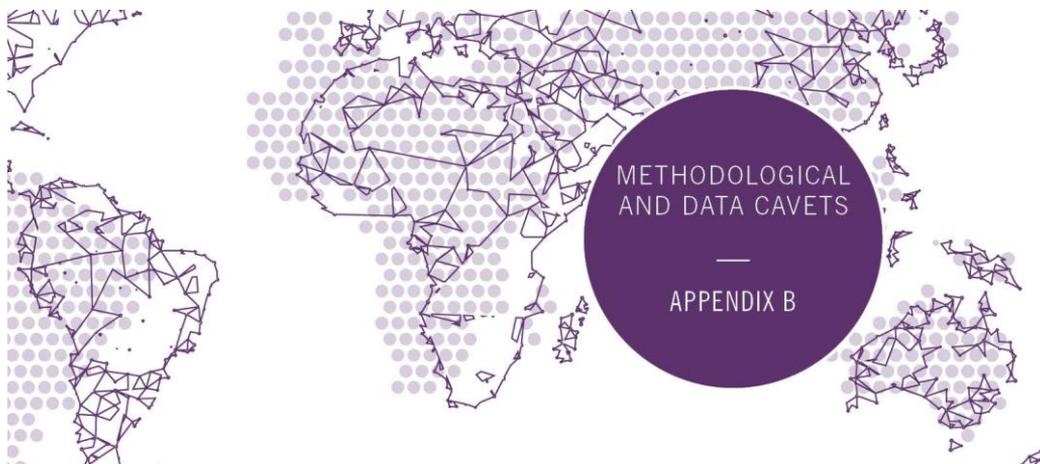
The report made practical recommendations to improve the ATO's effectiveness in detecting non-compliance and reporting. The ATO implemented these recommendations in 2018-19, including compiling an overarching compliance and enforcement strategy, and implementing outstanding data matching rules to aid the detection of key compliance risks.



**Table A.1: Board meeting attendance during 2018–19**

|                         | No. of meetings attended | No. of meetings eligible to attend |
|-------------------------|--------------------------|------------------------------------|
| David Irvine (Chair)    | 9                        | 9                                  |
| Teresa Dyson            | 9                        | 9                                  |
| Cheryl Edwardes         | 8                        | 9                                  |
| Margaret (Meg) McDonald | 3                        | 3                                  |
| Nick Minchin            | 5                        | 5                                  |
| David Peever            | 8                        | 9                                  |
| Patrick Secker          | 4                        | 4                                  |
| Alice Williams          | 7                        | 9                                  |
| Roger Brake             | 9                        | 9                                  |





This appendix provides an overview of the main methodological and data caveats that apply to applications and approvals data in this Annual Report. While a useful source of data on proposed foreign investment in Australia, the Board 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 competing proposals for the same target.
- There are substantial differences between these statistics on proposed investments and actual investment flows. The latter are captured by the ABS, which covers 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.
- Prior to 2017–18, the source country of proposed investment identified in the Board’s data was generally attributed to the investor(s) who was likely in control of, or in a position to control, the investor proposing to make the investment. Non-controlling foreign government investors with greater than a five per cent interest in the investor were allocated a notional interest (that is, one per cent). For example, the source country may be attributed to a foreign investor’s only large interest holder, or if the investor’s securities were widely held, the country of domicile, primary listing, establishment or incorporation may be recorded.

- For consortium approvals, or where there is shared control, the proposed investment may be counted against a number of countries with the investment value apportioned between those countries involved.
- From 2017–18, the source country(s) of proposed investment is generally allocated based on the known or disclosed ultimate underlying ownership of the investor proposing to make the investment. While in some cases, this would be the same outcome as if attributed based on who was likely in a position to control the investor, the data is not comparable to that of 2016–17 and earlier years. Where a portion of the ultimate underlying owners are unknown, the unknown ownership portion is either apportioned amongst the countries of known investors or allocated to or amongst the country of domicile, primary listing, establishment or incorporation. It continues to be the case that if an investor’s securities are widely held, the country of domicile, primary listing, establishment or incorporation may be recorded.

### **Example 1**

When tracing back the ownership of Investor A, it has five beneficial owners all owning equal shares. Two each are from Countries A and B, and one is from Country C.

From 2017-18, the source country for Investor A’s proposed investment based on country of ownership is recorded as 40 per cent each for Countries A and B, with the remaining 20 per cent allocated to Country C.

Prior to 2017-18, the source country for Investor A’s proposed investment based on country of control was recorded as 50 per cent each for Countries A and B, as these investors had an equal number of directors on the board of Investor A and both had to agree on any major decisions. Country C was not allocated an amount as their interest in Investor A was as a passive investor only, with no board seats or veto rights.

## Example 2

Investor D, which although incorporated in Country D, is listed and controlled in Country Y, has five passive shareholders each with a 10 per cent interest (Shareholder E, F, G, H and I, who come from Countries E, F, G, H and I) and the remaining 50 per cent is widely held. Shareholder E has two shareholders from Countries J and K holding 25 per cent each and the remainder is widely held.

From 2017-18, the source country for Investor D's proposed investment based on country of ownership is recorded as 50 per cent for Country Y, 10 per cent each for Countries F, G, H and I, 5 per cent for Country E and 2.5 per cent for Countries J and K. For Investor D and Shareholder E, it is assumed that the widely held portions relate to owners in their country of listing or incorporation. If it was common for the widely held ownership portion of entities listed in Country Y to come from Countries Y and X in roughly equal proportions, the 50 per cent allocated to Country Y could have been split between Countries Y and X on this basis.

Prior to 2017-18, the source country for Investor D's proposed investment based on country of control was recorded as 100 per cent for Country Y.

- The data does not necessarily reflect a change from domestic to foreign ownership as in some cases both the seller and the purchaser are foreign persons.
- Proposed investment values allocated against source countries assume that investment funds will be sourced from overseas. The extent to which approved proposed investment 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 value ascribed to a proposed investment which has received approval is the amount agreed to in any contract entered into or a reasonable estimate advised by the applicant 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 (and assumes full implementation). In cases where the acquisition has already been completed, it is the amount paid for the interest acquired.
  - 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 contract or when the application was made.

- There are some approvals for which proposed investment is treated as nil. Examples include internal corporate reorganisation and financing arrangement approvals.
- Proposed investment recorded for exemption certificates is the maximum investment that may be made by foreign persons covered by the certificate over the duration of the certificate. Actual foreign investment under new dwelling exemption certificates is likely to take place over multiple years during the sale phase of the covered development. Also, as of December 2015, exemption certificates for foreign persons (formerly known as annual programs) are no longer limited to a maximum 12 month period and so investments under these certificates may take place over a longer period.
  - For new dwelling exemption certificates which allow developers to receive pre-approval on behalf of foreign persons to enable foreign persons to purchase up to 50 per cent of new dwellings within a development up to a cumulative value of \$3 million per investor in a single development, the approved investment figure may overstate the extent of actual foreign purchases.
  - Near-new dwelling exemption certificates will generally be given a nil value as the maximum value of proposed investment for the development will have been attributed to any associated new dwelling exemption certificate in the year that the certificate was granted.
- The statistics may include some transactions that do not actually proceed. They include:
  - approvals in a given year but which are not actually implemented in that year or at all;
  - approvals for multiple competing potential acquirers of the same target (including for potential consortium participants that are yet to determine their final maximum percentage interest);
  - approvals for shares, units or other interests, where only a portion of those intended may be acquired; and
  - proposed investment programs covered by an exemption certificate, where the program is not fully implemented.
- Proposed 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.
- Proposed acquisitions of land, including land entities and mining, production or exploration entities, are classified as follows:
  - commercial land and residential land are reported in the real estate sector;

- agricultural land is included in the agriculture, forestry and fishing sector and within this industry, is allocated based on actual use, or if not currently being used for a primary production business, based on its likely use as agricultural land; and
- tenements are included in the mineral exploration and development sector and within this industry are allocated based on the mineral, oil or gas that can be recovered. If a tenement allows for different types of minerals to be recovered then this is allocated based on the primary target mineral or mineral thought to be dominant.

## Policy scope and changes

The breadth of the data on proposed investment in this annual report reflects the requirements under the foreign investment framework during the applicable reporting period. The requirements have changed over time, and in some instances, during a reporting period.

The data does not cover foreign investments considered or made below the various screening thresholds that apply under the Act. For example, in 2018-19 a \$266 million takeover of an Australian business only required foreign investment approval in limited situations, such as if the acquirer was a foreign government investor, or the Australian business was an agribusiness or in the media sector. If the foreign investor was an agreement country investor they could take over an Australia business in a non-sensitive sector for \$1.154 billion, or acquire any commercial property under this amount without requiring foreign investment approval.

In addition, the data does not cover follow-on investments to expand the capital stock of existing foreign owned businesses (both in existing areas and into related areas) such as pro-rata capital injections. For example, additional investment by a foreign owned miner expanding its mining operations by reinvesting its Australian profits in its operations is not reflected in the data.

Furthermore, policy and legislative change can have a considerable impact on the continuity of data. For instance, changes in Australia's foreign investment 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 trade agreements and general policy changes (for example, the lowering of the general rural 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, with the latter reducing the number of Australian based entities that were foreign persons due to interests held in them by overseas investors;
- changes to exemption certificates; and
- the increase in the monetary threshold for commercial developed land that is not sensitive from \$55 million to \$266 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 most recent Australian and New Zealand Standard Industrial Classification (ANZSIC, 2006) was adopted for data recording and reporting purposes as part of the 1 July 2014 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 corporate reorganisation cases from 1 April 2017. Data for cases screened by the ATO are captured in this annual report using data from the ATO systems.
- Data on the collection of foreign investment fees now includes vacancy fees data along with the foreign investment applications fees.



The assessment of foreign investment applications is a rigorous process and seeks to ensure that proposed investments are not contrary to Australia’s national interest. In fulfilling this objective, proposed investments are examined with a view to identifying any sensitivity regarding the national interest and determining whether these sensitivities can be mitigated or managed.

## **Board involvement**

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

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

The Board recognises that much of the information required to assess an application 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, FIRB agencies are subject to legislative provisions that govern if information received under the framework may be used or disclosed. Circumstances in which information can be disclosed include for the administration of specified Commonwealth statutes, to certain law enforcement bodies and in aggregate form, such as the public reporting of FIRB data in this report. Unauthorised disclosure of protected information under the

framework is an offence subject to a maximum of two years imprisonment, a \$25,000 fine, or both.

## Application screening process

### Initial examination

The initial examination seeks to determine whether an application meets the notification requirements specified in the Act, 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 Board has direct and early involvement in significant or sensitive applications.

### Consultation arrangements

For significant applications, consultations are undertaken with Australian Government departments, state and territory government departments, national security agencies and authorities with responsibilities relevant to the proposed investment. Advice and comments provided by these agencies are important in assessing the implications of proposed investments and in particular, in determining whether they raise any national interest issues. The Board may also receive unsolicited submissions from third parties.

### National interest factors

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

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Treasurer can decide in each case whether the investment would be contrary to the national interest. Across all applications 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.

## Statutory timeframe

The Act requires a decision to be made on applications within 30 calendar days of the correct fee being paid, unless the application is a variation application. The Act 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 or an exemption certificate is deemed granted.

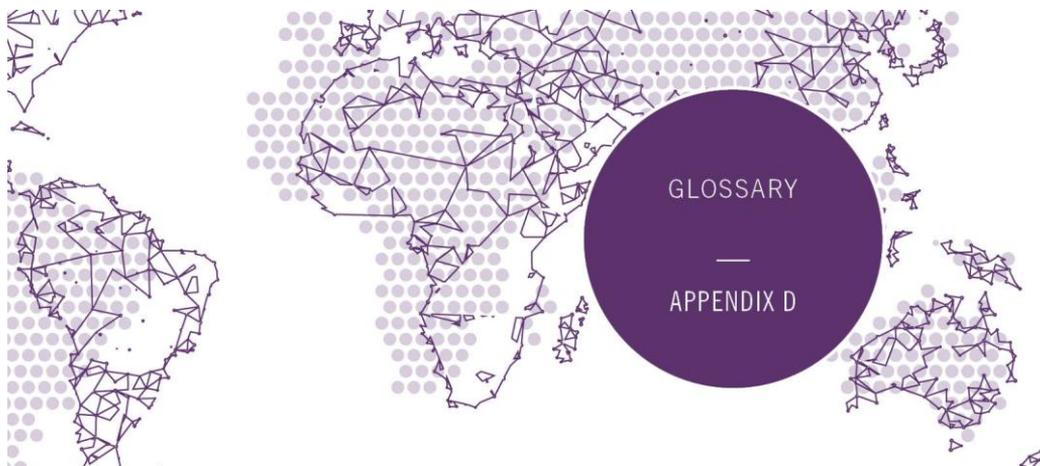
If such applications cannot be decided within 30 days, because they are complex or further information is needed to properly assess them, the applicant can voluntarily extend in writing the decision period where it is clear that more time will be required. In practice, this is the common way of extending the statutory timeframes. Alternatively, the Treasurer can issue an Interim Order extending the timeframe up to a further 90 days.

## Approvals and conditions

The Board, Treasury and the ATO work closely with applicants, and in some cases, vendors. If a proposed investment 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 a proposed investment 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, or granted an exemption certificate. Once an applicant receives a no objection or no objection subject to condition notification or is granted an exemption certificate, the applicant may proceed with the proposed investment. If national interest concerns remain and may not be able to be addressed, the proposed investment may be prohibited by the Treasurer, or in the case of an exemption certificate, the Treasurer may decline to grant the exemption certificate. The Treasurer declining to grant an exemption certificate is without prejudice to future applications for specified targets that the foreign person may lodge.





|                             |   |
|-----------------------------|---|
| Act                         | The <i>Foreign Acquisitions and Takeovers Act 1975</i> (as in force during 2018–19).  |
| 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 2018–19).</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 certificate.  |
| Foreign government investor | A foreign government investor includes: <ul style="list-style-type: none"> <li>• a foreign government or separate government entity; or</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);</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); or</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;</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; or</li> </ul> </li> </ul> |

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|  | <ul style="list-style-type: none"> <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> |
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| Foreign person | <p>Foreign person means:</p> <ul style="list-style-type: none"> <li>• an individual not ordinarily resident in Australia;</li> <li>• a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest;</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;</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;</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;</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> |
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| 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> |
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| 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> |
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| 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 2018–19); and</li> <li>• does not include land: <ul style="list-style-type: none"> <li>– used wholly and exclusively for a primary production business; or</li> <li>– on which the only dwellings are commercial residential premises.</li> </ul> </li> </ul> |
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| 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></ul> <p>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.</p>   |
| 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>a. the individual is residing in Australia;</li><li>b. the individual has applied for a permanent visa under the <i>Migration Act 1958</i>;</li><li>c. 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>   |

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