



# Australia's Foreign Investment Policy

## Our approach

The Australian Government welcomes foreign investment for the significant benefits it provides, while recognising the need to ensure investments are not contrary to the national interest. Foreign investment has helped build Australia's economy, and it will continue to enhance the wellbeing of Australians by supporting economic growth and innovation into the future. Without foreign investment, production, employment and income would all be lower.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, encourages innovation and the induction of new technologies and skills, provides access to markets and promotes competition amongst our industries.

The Government reviews foreign investment proposals on a case-by-case basis to ensure they are not contrary to the national interest.<sup>1</sup> This flexible approach is preferred to hard and fast rules. Rigid laws that prohibit a class of investments too often also stop valuable investments. The case-by-case approach maximises investment flows, while protecting Australia's interests.

The Government works with applicants to ensure the national interest is protected. If it is ultimately determined that a proposal is contrary to the national interest, it will not be approved, or conditions will be applied to safeguard the national interest.

The Government expects all investors (both foreign and domestically-owned) to comply with Australia's laws and maintain high standards of conduct at all times. This includes following both the spirit and the letter of Australian law, and acting in good faith in complying with any conditions imposed by the Government.


Foreign investors should familiarise themselves with Australia's foreign investment framework and ensure they comply with the law. Failure to do so may result in the imposition of penalties.

## The foreign investment review framework

The foreign investment review framework is set by the [Foreign Acquisitions and Takeovers Act 1975](#) (the **Act**) and the [Foreign Acquisitions and Takeovers Fees Impositions Act 2015](#) (the **Fees Imposition Act**), along with their associated regulations.

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<sup>1</sup> In certain circumstances, only national security considerations are taken into account. See page 11 for further details on the national security test.



The Act requires foreign investors to notify the Treasurer of proposed foreign investments that meet certain criteria. The Treasurer has the power to prohibit these investments, or apply conditions to the way they are implemented, to ensure they will not be contrary to the national interest (or national security, as the case requires). The overwhelming majority of proposed investments are approved.

In accordance with the Fees Imposition Act, foreign investors must pay a fee when notifying the Treasurer of a proposed investment. This ensures that Australian taxpayers do not bear the cost of administering the foreign investment review framework.

When making foreign investment decisions, the Treasurer is advised by the Foreign Investment Review Board (the **FIRB**), which examines foreign investment proposals and advises on the national interest implications. FIRB is a non-statutory advisory body. Responsibility for making decisions rests with the Treasurer.

The FIRB is supported by a secretariat located in the Department of the Treasury (the **Treasury**) and by the Australian Taxation Office (the **ATO**). The Treasury is responsible for the day-to-day administration of the framework in relation to business, agricultural land and commercial land proposals. The ATO administers foreign investment into residential real estate.

The [Foreign Investment website](#) provides a number of Guidance Notes that are designed to help investors understand their obligations under the foreign investment framework. They are provided for guidance only and should be read in conjunction with the legislation.

Australia has sought to liberalise trade and investment through Free Trade Agreements (**FTAs**) and will honour its commitments under those agreements. The commitments include negotiated higher foreign investment screening thresholds for certain investors. All proposed investments will, however, continue to be screened consistently, regardless of the country of investor.

## Who needs foreign investment approval?

Whether a foreign person is required to notify the Treasurer of their proposed investment will depend on a number of factors including: whether the investor is a foreign government or non-government investor; the type of acquisition; whether the investment is likely to raise national security concerns; the monetary thresholds relevant to the investment;<sup>2</sup> and whether any exemptions apply.

A foreign person is generally:

- an individual that is not ordinarily resident in Australia; or
- a foreign government or foreign government investor; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20 per cent; or
- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40 per cent.

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<sup>2</sup> The monetary thresholds are outlined at [www.foreigninvestment.gov.au](http://www.foreigninvestment.gov.au).

A 'foreign government investor' is:

- a foreign government or separate government entity; or
- a corporation, the trustee of a trust, or a general partner of a limited partnership, in which:
  - a foreign government or separate government entity holds a substantial interest of at least 20 per cent; or
  - foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate substantial interest of at least 40 per cent.

Foreign investors should seek independent legal advice if they have any doubt as to whether an investment is required to be notified.

## Non-government foreign investors

### Business acquisitions

Foreign persons generally require approval before acquiring a substantial interest (generally at least 20 per cent) in an Australian entity that is valued above the relevant monetary threshold.

- Consistent with Australia's FTA commitments, a higher monetary threshold applies for investors from certain free trade agreement partners investing in non-sensitive businesses.<sup>3</sup>

### National security businesses

Foreign persons generally require approval before acquiring a direct interest (generally at least 10 per cent) in a national security business, or starting a national security business, regardless of the value of the business or the country of the investor.

A business is a national security business if it is carried on wholly or partly within Australia, whether or not in anticipation of profit or gain, and it:

- is a responsible entity (within the meaning of the *Security of Critical Infrastructure Act 2018* as enacted) for an asset; or
- is an entity that is a direct interest holder in relation to a critical infrastructure asset (within the meaning of those terms in the *Security of Critical Infrastructure Act 2018* as enacted); or
- is a carrier or nominated carriage service provider to which the *Telecommunications Act 1997* applies; or
- develops, manufactures or supplies critical goods or critical technology that are, or are intended to be, for a military use, or an intelligence use, by defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or
- provides, or intends to provide, critical services to defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or

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<sup>3</sup> Sensitive businesses include those operating in the sectors of: transport; telecommunications; media; defence and military related industries; the extraction of uranium or plutonium; or the operation of nuclear facilities. See section 22 of the *Foreign Acquisitions and Takeovers Regulation 2015*.

- stores or has access to information that has a security classification; or
- stores or maintains personal information of defence and intelligence personnel collected by the Australian Defence Force, the Defence Department or an agency in the national intelligence community which, if accessed, could compromise Australia's national security; or
- collects, as part of an arrangement with the Australian Defence Force, the Defence Department or an agency in the national intelligence community, personal information on defence and intelligence personnel which, if disclosed, could compromise Australia's national security; or
- stores, maintains or has access to personal information on defence and intelligence personnel that has been collected as part of an arrangement with the Australian Defence Force, the Defence Department or an agency within the national intelligence community, which, if disclosed, could compromise Australia's national security.

#### Agribusinesses

Foreign persons generally require approval before acquiring a direct interest (generally at least 10 per cent) in an agribusiness where the value of their holdings in that business are more than the relevant monetary threshold.

#### Media businesses

Foreign persons generally require approval before acquiring an interest of at least 10 per cent in an Australian media business, regardless of the value of the investment.

## Acquisitions of Australian land

Australian land includes agricultural land, commercial land, mining and production tenements, and residential land. Some land in Australia is also considered 'national security land' for the purpose of the foreign investment review framework.

#### Agricultural land

Agricultural land means land in Australia that is used, or could reasonably be used, for a primary production business. Foreign persons generally require approval before acquiring an interest in agricultural land where the value of their agricultural land holdings is more than the relevant monetary threshold.

- Consistent with Australia's FTA commitments, a higher monetary threshold applies for investors from certain free trade agreement partners.

#### Commercial land

Commercial land includes vacant commercial land and developed commercial land, such as offices, factories, warehouses and shops. Commercial residential premises (such as hotels, motels and caravan parks) are also generally considered to be commercial land.

Foreign persons generally require approval before acquiring an interest in vacant commercial land, regardless of the value of the land. If an application for investment into vacant land is approved, it will generally be approved subject to the land being put to productive use. Foreign persons generally require approval before acquiring an interest in developed commercial land, if the value of the interest exceeds the relevant monetary threshold.

- If the land is considered sensitive commercial land, a lower monetary threshold applies.<sup>4</sup>
- Consistent with Australia's FTA commitments, a higher monetary threshold applies for investors from certain free trade agreement partners.

#### Mining tenements

Foreign persons generally require approval before acquiring an interest in a mining or production tenement, regardless of value.

- Consistent with Australia's FTA commitments, a higher monetary threshold applies for investors from certain free trade agreement partners.

#### Residential land

Foreign persons generally require approval before acquiring an interest in residential land, regardless of value.

Foreign persons can generally purchase newly constructed dwellings with few restrictions, whereas approvals for established dwellings are generally limited to the following and will normally be subject to conditions:

- Temporary residents can apply to purchase one established dwelling to use as their place of residence while they live in Australia.
- Foreign persons can apply to purchase an established dwelling for redevelopment, if the redevelopment will genuinely increase Australia's housing stock.
- Foreign controlled companies can apply, in limited circumstances, to purchase an established dwelling to house their Australian based staff.

#### Land entities

Investments into land entities (generally entities in which over 50 per cent of their assets are Australian land) may involve acquiring interests in Australian land and interests in an Australian entity.

Foreign persons generally require approval before acquiring an interest of 10 per cent or more in a listed land entity, or 5 per cent or more in an unlisted land entity where the value of the investment is above the relevant monetary threshold.

- Consistent with Australia's FTA commitments, a higher monetary threshold applies for investors from certain free trade agreement partners.

#### National security land

Foreign persons generally require approval before acquiring an interest in national security land, regardless of the value of the investment or the country of investor.

Land is national security land if it is:

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<sup>4</sup> Sensitive commercial land includes: land leased to a government body; land fitted out for a defence or military related business; land hosting servers for telecommunications or banking; mines; and land hosting public infrastructure (for example, an airport or a port). See section 52(6) of the *Foreign Acquisitions and Takeovers Regulation 2015*.

- ‘Defence premises’ within the meaning of section 71A of the *Defence Act 1903*. This includes all land owned or occupied by Defence, including buildings and structures. It also includes Defence prohibited areas. The definition excludes subparagraph (a)(iii) of the definition which relates to vehicles, vessels or aircraft.
- Land in which an agency in the national intelligence community has an interest, if the existence of the interest is publicly known or could be known upon the making of reasonable inquiries.

## Foreign government investors

In addition to the above requirements for non-government investors, foreign government investors generally also require approval before:

- acquiring a direct interest (generally at least 10 per cent) in an Australian entity or Australian business, regardless of the value;
- starting a new business;
- acquiring an interest in Australian land, regardless of the value of the investment; or
- acquiring a legal or equitable interest in a tenement, or an interest of at least 10 per cent in the securities of a mining, production or exploration entity, regardless of the value.

## Exemptions

Foreign persons may be exempt from the need to seek foreign investment approval in certain circumstances. Some of these may include:

- Acquisitions of interests in securities, assets, a trust or Australian land that is acquired by devolution by operation of law.
- Acquisitions of interests in Australian businesses carried on by, or land acquired from, an Australian government.
- Compulsory acquisitions and compulsory buy-outs.
- Certain interests acquired under a rights issue or under a dividend reinvestment plan.
- Acquisitions of Australian land by Australian citizens not ordinarily resident in Australia.
- Foreign nationals purchasing residential property as joint tenants with their Australian citizen, New Zealand citizen, or permanent resident spouse (does not include purchasing property as tenants in common).
- Investors ordinarily in the business of moneylending.

Some exemptions do not apply to foreign government investors. However, certain other exemptions are available only to foreign government investors, such as an exemption for interests acquired in residential land or commercial land to be used for diplomatic purposes.

## Other legislation

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

- Foreign ownership in the banking sector must be consistent with the [Banking Act 1959](#), the [Financial Sector \(Shareholdings\) Act 1998](#) and banking policy.
- Aggregate foreign ownership in an Australian international airline (including Qantas) is limited to 49 per cent (see [Air Navigation Act 1920](#) and [Qantas Sale Act 1992](#)).
- The [Airports Act 1996](#) limits foreign ownership of some airports to 49 per cent, with a 5 per cent airline ownership limit and cross-ownership limits between Sydney airport (together with Sydney West) and either Melbourne, Brisbane, or Perth airports.
- The [Shipping Registration Act 1981](#) requires a ship to be majority Australian-owned if it is to be registered in Australia, unless it is designated as chartered by an Australian operator.
- The [Telstra Corporation Act 1991](#) limits aggregate foreign ownership of Telstra to 35 per cent, and individual foreign investors are only allowed to own up to 5 per cent.

Once a foreign person holds an interest in an Australian entity, land or asset, they may also need to register that holding (generally within 30 days of acquiring the interest):

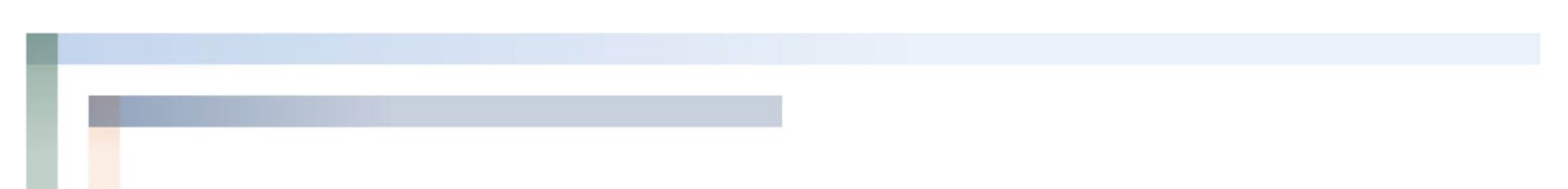
- In accordance with the [Register of Foreign Ownership of Water or Agricultural Land Act 2015](#), foreign persons holding interests in Australian water entitlements or agricultural land must register those interests with the ATO.
- In accordance with the [Broadcasting Services Act 1992](#), foreign persons holding interests of 2.5 per cent or more in an Australian media company must register those interests with the Australian Communications and Media Authority.
- In accordance with the [Security of Critical Infrastructure Act 2018](#), foreign persons holding interests of 10 per cent or more in a critical infrastructure asset must register those interests with the Department of Home Affairs.
- Foreign persons who acquire an interest in Australian residential land must also register that interest with the ATO.

## How are proposed investments screened?

Australia's foreign investment review framework balances the need to welcome foreign investment against the need to reassure the community that the national interest is being protected.

The Act empowers the Treasurer to prohibit an investment if satisfied that it would be contrary to the national interest (or national security, as the case requires). However, the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy. For this reason, where risks to the national interest or national security are identified, the more common approach is to approve the investment subject to conditions designed to protect the national interest or national security.

Proposed foreign investments may be screened under a 'national interest test' or a narrower 'national security test'. Most investments will be assessed under the national interest test,



provided they satisfy the monetary and control thresholds described above. Certain investments that do not meet these thresholds but nonetheless pose national security concerns may still be screened under the national security test.

## The national interest test

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest.

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

The Government considers a range of factors, and the relative importance of these can vary depending upon the nature of the target being acquired. For example, investments in enterprises that are large employers or that have significant market share may raise more sensitivities than investments in smaller enterprises. However, investments in small enterprises with unique assets or in sensitive businesses may also raise concerns.

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

The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces.

The Government typically considers the following factors when assessing foreign investment proposals:

### National security

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

### Competition

The Government favours diversity of ownership within Australian industries and sectors to promote healthy competition. The Government considers whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia.

For example, the Government will consider a proposal that involves a customer of a product gaining control over an existing Australian producer of the product, particularly if it involves a significant producer.

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

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



## Other Australian Government policies (including tax)

The Government considers the impact of a foreign investment proposal on Australian tax revenues. Investments must also be consistent with the Government's objectives in relation to matters such as environmental impacts and critical technology. Further information on the Government's strategy for protecting and promoting critical technologies can be found at [www.pmc.gov.au](http://www.pmc.gov.au).

## Impact on the economy and the community

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

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

## Character of the investor

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

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

The Government considers whether the investor complies with Australia's laws, including following both the spirit and the letter of Australian law, and acting in good faith in complying with any conditions imposed by the Government.

## Investments in the agricultural sector

In addition to the factors above, when examining foreign investment proposals in the agricultural sector, the Government typically considers the effect of the proposal on:

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



The Australian Government also expects Australian investors to have been offered an equal opportunity to purchase a title of agricultural land, before it is acquired by a foreign person.

## Investments in residential land

The Government's policy is to channel foreign investment into new dwellings, as opposed to established dwellings, as this creates additional jobs in the construction industry and helps support economic growth. It can also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from the additional investment.

Foreign investment applications are therefore considered in light of the overarching principle that the proposed investment should increase Australia's housing stock (by creating at least one new additional dwelling).

Consistent with this aim, different rules apply depending on whether the property being acquired will increase the housing stock or whether it is an established dwelling.

## Investments by foreign government investors

Where a proposed investment involves a foreign government investor, the Australian Government also considers if the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest. This includes assessing whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government including through the investor's funding arrangements.

Proposals from foreign government investors operating on a fully arm's length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

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

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

Mitigating factors that assist in determining that such proposals are not contrary to the national interest may include:

- the existence of external partners or shareholders in the investment;
- the level of non-associated ownership interests;
- the governance arrangements for the investment;
- ongoing arrangements to protect Australian interests from non-commercial dealings; and
- whether the target will be, or remain, listed on the Australian Securities Exchange or another recognised exchange.

The Government will also consider the size, importance and potential impact of such investments in considering whether or not the proposal is contrary to the national interest.

## The national security test

If an investment does not require screening under the national interest test, it will still require mandatory screening under the national security test if the investment relates to a national security business or national security land.

An investment that does not require mandatory screening under the national interest test or the national security test may still be 'called in' for national security screening – either while the investment is still proposed or within 10 years of it being taken – if the Treasurer considers it raises national security concerns. To provide transparency and investor certainty, this power is subject to significant safeguards, and a range of additional guidance is provided in the Guidance Notes on the [Foreign Investment website](#).

Under the national security test, the Treasurer is empowered to prohibit an investment if satisfied that it would be contrary to national security, or approve the investment subject to conditions that are imposed to ensure the investment is not contrary to national security.

As with the national interest, the Act does not define Australia's national security, nor what would be contrary to it. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to national security.

As national security is a subset of the national interest, the national security test considers a narrower range of factors than the national interest test. In assessing investments under the national security test, the Government considers the extent to which the investment will affect Australia's ability to protect its strategic and security interests. The Government relies on advice from relevant national security agencies for assessments as to whether an investment raises national security concerns.

## Applications

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

The Government encourages potential investors to engage with the Treasury or ATO (as relevant) prior to lodging applications on significant proposals to allow timely consideration of the proposal. The Government will treat proposals in-confidence.


Applications are submitted electronically on the [Foreign Investment website](#).

## Fees

A fee is payable for all foreign investment applications. Fees are payable at the time of application. The timeframe for the Treasurer to make a decision on an application will not start until the correct fee has been paid. Detailed information about fees is provided in the *Fees Guidance Note* available on the [Foreign Investment website](#).

## How long before a decision is made?

Once proper notice is given and the correct fee is paid, the Treasurer has 30 days to consider an application and make a decision.



The Treasurer may extend this period by up to a further 90 days by notifying the investor in writing, as well as a further 90 days by publishing an interim order. Interim orders are registered on the *Federal Register of Legislation*. Investors can also voluntarily extend the time period by providing written consent.

Applicants will be informed of the Treasurer's decision within 10 days of it being made. That decision will either raise no objections to the proposed investment, allowing the proposal to go ahead; impose conditions on the investment, which will need to be met if the investment goes ahead; or prohibit the proposal.

## Confidentiality and privacy

The Government may share an investor's application with Commonwealth, state and territory government departments and agencies for consultation purposes as permitted under the Act. The Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the [Privacy Act 1988](#) and the [Freedom of Information Act 1982](#). The Government is also subject to confidentiality requirements under the Act.

## Penalties

Foreign persons that do not comply with the foreign investment review framework may be subject to significant penalties, including infringement notices, civil and criminal penalties.

## Enquiries

Further information is available on the [Foreign Investment website](#) or by contacting the Treasury or the ATO.

### General enquiries – Residential

Phone: 1800 050377 From overseas: +61 2 6216 1111  
Email: [FIRBresidential@ato.gov.au](mailto:FIRBresidential@ato.gov.au)  
Website: [www.foreigninvestment.gov.au](http://www.foreigninvestment.gov.au)

### General enquiries – Non-residential

Phone: 02 6263 3795 From overseas: +61 2 6263 3795  
Email: [foreigninvestmentenquiries@treasury.gov.au](mailto:foreigninvestmentenquiries@treasury.gov.au)  
Website: [www.foreigninvestment.gov.au](http://www.foreigninvestment.gov.au)

### Compliance

To report a suspected breach of Australia's foreign investment framework, please refer to the information on the FIRB 'Contact us' webpage:  
<https://foreigninvestment.gov.au/contact-us>

**Important notice:** This policy document provides a summary of the relevant law. As this policy document tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This policy document is therefore not a substitute for obtaining your own legal advice.