

Submission in response to the establishment of a National Foreign Ownership Register (NFOR) for agricultural land by AAG Investment Management Pty Ltd.

The Federal Government, through its November 2012 paper entitled “Establishing a national foreign ownership register for agricultural land” has called for feedback in regard to certain questions relating to the scope, definitions, content, start points, collection of data, release and use of collected data. AAG Investment Management (AAGIM) provide this response to that call for feedback.

AAGIM was established in 1997 and since 2005 has specialised in the acquisition, management and sale of farmland for Australian and international professional investors and institutions. AAGIM has acquired farmland valued at over \$400m, the vast bulk of which has been for foreign investors. Less than 12% has been acquired for institutions which have been required to seek the permission of the Foreign Investment Review Board (FIRB). At present, AAGIM holds mandates for the management of over \$250m of farmland and timberland in Australia, of which less than 3% is for Australian investors.

Since 2006, the annual average gross return generated on investors' funds has been over 9.35% p.a., which is likely the highest return by any corporate agricultural land manager, and substantially above the returns generated by the overwhelming majority of Australian superannuation funds over the same period. Despite this, until very recently, Australian funds have been reluctant or disinterested in this investment class, whilst foreign investors have been aware, focussed, decisive and committed.

AAGIM strongly supports the creation of a *comprehensive* NFOR. Our view is that a NFOR should be broadly based, inclusive, accurate and investor managed. It should not however, be universally accessible. Nor should a NFOR require substantial administrative structures, or create significant costs or continuing significant obligations on either the foreign investors or the Federal Government. The key stakeholders are in fact the foreign investors, who ought to be given the key role in the management of and access to the NFOR.

Responses to Questions

QUESTION 1: What should be the scope of a national foreign ownership register for agricultural land, including definitions?

Our view is that the scope should be all inclusive: any foreign owned property which is not actually in use as commercial, industrial or residential should be included in the register. The NFOR must include “hobby” or lifestyle blocks, which in some cases are purchased by foreigners for reasons other than farming.

The definition of agricultural land, for the purposes of the NFOR can therefore be deduced from the above: any land, regardless of its size, which is not *actually in use* as residential, commercial or industrial land. “Actually in use” is specifically included to ensure that land which may be zoned residential, but foreign owned as a “land banking” exercise is included.

Property includes any land and any water rights: surface, bore, temporary, supplementary, flood release rights, stock and domestic allocations...*any* right to either access or use water.

There is no point in having a NFOR which is anything other than all encompassing.

QUESTION 2: What interests should or should not be included when defining foreign ownership?

A foreign owner or a foreign interest should be defined as any person or entity which is any of:

1. not based in Australia,
2. not 100% owned by an Australian citizen
3. Is owned by an Australian holding dual citizenship
4. Is beneficially owned by 1 to 3 above

“Entity” means any corporate, trust, family office, fund, pooled investment or similar.

“Beneficially” owned means that if the asset is held by an Australian citizen on behalf of someone or something which is items 1 to 3 of the list above, then it is classed as foreign owned.

We accept that this is the broadest of definitions, and we also accept that there are graduated levels of ownership, particularly where listed entities own agricultural property. The NFOR ought to provide for the current degree (percentage determined by the weighted average of land area and most recent valuation plus the most recently traded value of the water interest) of foreign interest ownership under the above definition, which might then allow for more granular information to be extracted. The participants in the NFOR should be obliged to update their status annually (if it has changed). Australian based and managed investment funds would therefore be classed as foreign owners of property, if they had any foreign investment, which would then be noted as the percentage of foreign ownership in the annual return provided.

In order to be efficacious, a NFOR needs to be comprehensive in its coverage.

QUESTION 3: What do you view as the most important data requirements of a national foreign ownership register for agricultural land, and why?

The data collected in the NFOR should be limited to only the following:

1. The name and contact details of the entity or person who is the actual or beneficial owner. This would specifically include nationality.
2. The location of the property, as a .kml file locator (Google Earth or similar file)
3. The area of the property
4. The title details of the property (including water as defined)
5. The most recent valuation of the property and the date of same
6. A selection from the following as to land and water use:
 - a. Farmed or used by the actual or beneficial owner or employee/contractor
 - b. Leased to another farmer, or in the case of water, the sale of an annual access right
 - c. Share farmed by another farmer
 - d. Not actually used for farming
7. The date of purchase (or if sold, the date of sale and sale value)

Items 1 to 7 ought to be updated annually, where they have changed.

QUESTION 4: How do you think the following terms should be defined for a national foreign ownership register for agricultural land, and why?

a) Agricultural land

b) Foreign ownership

These matters have been addressed at questions 1 and 2 above.

QUESTION 5: What additional information could a national foreign ownership register for agricultural land collect, and why? For example, what types of water access rights (such as a water access entitlement) could be included?

This question has been addressed at questions 1 to 3 above.

QUESTION 6: Is it desirable to exclude from a national foreign ownership register of agricultural land some smaller transactions? If so, what threshold is appropriate, and why?

This question has been addressed in our response to question 1 above. Excluding property because of its scale creates a blurring of definition, and therefore the ability to create loopholes, collect incomplete data, cast doubt on the veracity of the data and generate unreliable reporting. Each of those things leads to a loss of confidence in the data collected and makes the point of a NFOR less valid. The suggestions we have made above will allow for a great deal of specific data analysis: comprehensive data always allows for exclusions, but incomplete data will always allow for questions about accuracy and value.

Excluding some transactions on the basis of scale, or the degree of foreign ownership will also create potential argument about the need to comply, and that in turn will add to the complexity, and cost, of data collection. If the definition is that it's "any property, and any level of foreign ownership" then there can be no doubt about "what's in and what's out". That makes compliance easier, makes the NFOR truly comprehensive and keeps the cost of management and compliance low.

QUESTION 7: Do you consider it important that the national foreign ownership register for agricultural land should include an initial stocktake of land holdings by foreign persons noting the potential compliance and other costs that may be involved? Why?

It is essential that a NFOR include an initial “stocktake”. To not do so would make the NFOR little more than a joke – as the cumulative amount of foreign owned property since 1788 would not be covered.

Our view is that NFOR should require a return to be provided within one year of the establishment of the NFOR. The process of compliance should be entirely on line, using a standardised format. The compliance cost is not onerous, as all of the data would be held by any competent foreign owner. What would be created would be a data base, populated by foreign owners of Australian property, and then maintained annually with a single, simple on line return.

In the case of AAGIM, with over 50 properties under management, and over 300 titles to land and or water, we estimate that the initial time cost would be in the order of 4 hours for an analyst. The annual compliance time cost would be up four hours, depending on acquisitions or disposals. This is a cost of less than \$200 per annum.

QUESTION 8: What is the most effective way to undertake an initial stocktake?

This question is deal with within our response to question 7 above.

QUESTION 9: What specific rules or other arrangements do you consider important to include in any compliance framework?

The data which we suggest ought to be collected is not difficult for a competent property owner to collect. The method of populating an on line form is well known to most people and, if introduced as suggested, would be simple and not costly.

Compliance need only be limited to two matters:

1. That a foreign owner is obliged, without reservation, to provide accurate and precise details for the NFOR – initially and annually.
2. That the foreign owner is obliged to provide those details on or before the due date.

The fact that the entire process would be electronic would mean that non-compliance of annual updates would be simple to identify. Initial compliance would be more complex, but ought to be backed with good communications to key gatekeepers (lawyers, accountants, funds managers, asset managers, asset consultants, property valuers and the plethora of professional representative organisations).

Failure to comply ought to be backed by an exponential scale of penalty. A fine for a short period of non-compliance, rising to compulsory sale of all non-compliant property if the non-compliance extends to longer than one year.

The basic principal which we promote is therefore maintained: a NFOR ought to be comprehensive, every foreign property owner must participate and the system ought to be simple and not costly to work within.

QUESTION 10: Having regard to arrangements in Australian jurisdictions and overseas, what timeframe for the provision of registration information do you consider appropriate?

The answer to this question is dealt with within our response to question 7 above.

QUESTION 11: How should information collected in the register be reported and disclosed, and in what level of detail, while meeting privacy and confidentiality obligations?

This is possibly one of the most contentious elements of the NFOR.

Our view is that data **should not be publically available**.

The data is confidential and commercially sensitive. The media and the general public do not have a “right to know” such information, just as they have no right to know who might be the buyer of a house in their street. The NFOR register data set has the potential, if misused, to increase Australia’s sovereign risk, make Australia less attractive for foreign investment, creates opportunities for racism or discrimination and potentially even criminal activity.

The data ought to be encrypted and controlled by a secure Government agency. The release or use of data ought to be controlled by a board of five members, three of which (including the Chairman) ought to be nominated by foreign investors. The other members ought to be from the Federal Departments of Agriculture and Statistics. The exception to such specific release would be an annual report, which would include the following details:

1. The current level of any foreign ownership of property
2. The current level of 100% foreign ownership of property
3. The value of property (split between land and water) acquired or divested by foreign owners
4. The area of land (the volume of water by type) acquired or divested by foreign owners
5. The State in which the property is held
6. Trends in items 1 to 5 above.

We don’t think that the source of the foreign investment is appropriate for public release. Country of origin would be held within the data base, but its release managed by the Board described above.

Those who believe they have a “need to know” or a legitimate need to have access to the data within the NFOR could apply to the Board of the NFOR for access. Such persons could be for example, academics, researchers or policy makers.

QUESTION 12: How could the data collection processes underpinning a national foreign ownership register for agricultural land be coordinated with other related data collection processes?

In general terms, the co-ordination of data sets leads to their contamination and provides for wider and often unintended accessibility.

We have set out a process above where the Board of the NFOR could consider release of data to be used with other data sets. The Board would have the capacity to manage that data release, and maintain the security and confidentiality of the database.

QUESTION 13: Do you have any suggestions or comments on how to minimise the regulatory burden associated with a national foreign ownership register for agricultural land?

We have made a series of suggestions in this regard through this response. Please refer in particular to our responses to questions 3 to 5, and 11 above.

QUESTION 14: Please consider providing any general or additional feedback to the working group to assist in developing a national foreign ownership register for agricultural land.

Structurally, this is not a difficult process. The collection of data is something that every competent property owner does daily. Filling in on-line forms is common place. Building an on line survey form is student level complexity only. The assembly of a data base of information is hardly new or unusual.

The key to the NFOR is to make it comprehensive, simple and low cost to use and comply with. Our view is that the entire process, done outside of government by say a commercial share registry, would cost less than \$500,000 to establish and populate. Keeping the data secure and managing access is a more complex process, because getting that right will reassure investors that Australia is a sound investment destination.