



AgForce Queensland Industrial Union of Employers

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GM/GG024

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Manager
International Investment and Trade Unit
Foreign Investment and Trade Policy Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Earle

Thank you for the opportunity to provide a submission on the '*Strengthening Australia's Foreign Investment Framework*' Options Paper.

AgForce is the peak lobby group representing the majority of beef, sheep and wool and grain producers in Queensland. The broadacre beef, sheep and grains industries in Queensland generated around \$4.5 billion in gross farm-gate value of production in 2012/13. AgForce exists to ensure the long term growth, viability, competitiveness and profitability of these industries. Our members provide high-quality food and fibre products to Australian and overseas consumers, manage more than half of the Queensland landscape and contribute significantly to the social fabric of rural and remote communities.

Foreign investment has long been a feature within Queensland agriculture and has contributed significantly to the economic development of broadacre industries within the State. Given the need to drive further economic growth, AgForce has a keen interest in the occurrence of further foreign investment into agriculture in a way that is open and transparent and aligns with our national interests. It is important that the oversight framework is effective, but also consistent and efficient so that it does not act as a barrier to further beneficial investment.

AgForce's policy position is that we are not opposed to commercially-motivated foreign investment in broadacre agriculture provided that it:

- 1 Does not compromise market transparency, competition or pricing mechanisms
- 2 Does not distort resource allocation or agricultural land use
- 3 Is effectively monitored and regulated, including industry-relevant investment disclosure thresholds, to ensure Australia's national interests are not compromised.

AgForce has supported efforts to increase the transparency of foreign investment in agricultural land, water and agribusiness assets, including the establishment of a national register and moves to lower the screening thresholds applied by the Foreign Investment Review Board (FIRB). This is consistent with the Government requiring prior approval for proposed acquisitions of interests in rural land where the cumulative value of land owned exceeds \$15 million (except for the US, NZ,

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Chile, Singapore and Thailand), as well as the proposed screening threshold of \$55 million for foreign investment into agribusinesses.

While water resources may be considered when assessing foreign investment proposals against our national interest, specifically including the oversight of agriculturally-important water resources would further strengthen the proposed framework, given the essential role of water resources to the future of Australian agriculture and lifting production of food and fibre.

Many of our views on the management and transparency of foreign investment in the agricultural sector were provided previously in our submission to the Treasury-led *'Development of a national foreign ownership register for agricultural land'* Consultation Paper of late 2012. Our submission therefore focusses on the specific questions posed within the current options paper relating to the implementation of the agricultural commitments and reiterates relevant points from the earlier 2012 submission.

PENALTY REGIME AND INTRODUCING FEES ON FOREIGN INVESTMENT APPLICATIONS

AgForce does not have a policy position concerning the proposed penalty regime apart from noting that the regime must be sufficiently robust to act as an effective disincentive to breaches of the rules. For consistency, it is unclear why heavier civil pecuniary penalties for serious breaches relating to agricultural land or agribusiness are not being proposed, in line with the 10% or 25% of the purchase price or market value penalties being contemplated for breaches of the rules surrounding residential real estate. Divestment without profit for the investor should be a serious disincentive to rule breaches, but to our knowledge divestment of an agricultural land asset has never been imposed.

In relation to fees for investment applications, given the broader public good outcomes from the economic activity driven by the inflow of foreign capital, AgForce supports a cost-sharing model where the costs of investment screening, compliance and enforcement activities is shared reasonably between the foreign proponent and the Government. In determining what is reasonable consideration should be given to ensuring costs are efficient, relate directly to the assessment of the investment itself rather than being a revenue stream for Government and that fees are not charged multiple times on the same application.

It is important that application fees do not act as a disincentive to overseas investment, relative to other nations also competing for the same investment dollars, as so should be set in consultation with affected parties and regularly reviewed. The fee rates proposed in the Options Paper seem high and without an obvious justification, particularly for land purchases whereby a \$10,000 incremental fee is applied for each \$1 million in rural land value. Thus an application for a \$15 million property purchase would cost \$150,000 and a \$100 million property purchase would entail a fee of \$1 million. It is hard to see how the subsequent screening, compliance and enforcement activities between such properties would differ sufficiently in practice to justify such a difference. The Options Paper indicates that in New Zealand the maximum rate is \$22,489. To avoid deterring genuine commercial investment the Government needs to be more transparent on included costs and how they will be reasonably shared.

IMPLEMENTATION OF AGRICULTURE COMMITMENTS

Inclusion of water resources important

Australia is an arid continent and water resources are an incredibly important element to productive and profitable agriculture in our country. With tradeable allocations of water goes significant control of productive potential. This asset class must also be monitored, particularly given the potential to further develop significant areas of arable soils for irrigated agriculture across northern

Australia. Water allocations for irrigation are a commonly recorded property right, as per land titles. In Queensland the Registrar of Land Titles is also the Registrar of Water Allocations and titles' records include:

- names of the holder(s) and tenancy arrangements
- description of the registered, resource-related attributes including location, purpose, conditions, nominal volume, priority group, etc
- identifiers such as lot, crown plan and title reference
- encumbrances and interests (eg, mortgages)
- administrative advices (eg, settlement notices)

Such water allocations and interests should be included in the national register and require FIRB scrutiny where purchases are above the cumulative threshold value.

7 Should the definition [*'agribusiness'*] capture all primary production businesses as well as certain first stage downstream businesses beyond the farm gate (for example, meat processing, sugar milling and grain wholesaling/storage/milling)?

In relation to the \$55 million screening threshold for investments in 'agribusinesses', AgForce supports the definition capturing both those businesses directly involved in the production of food or natural fibre or both (including finishing operations such as feedlots) as well as businesses and their subsidiaries in the supply chain that purchase products directly from those businesses.

While they may not strictly be 'agribusinesses', the key consideration in setting the outer boundary in the definition is capturing those parts of the supply chain (up and downstream) capable of exerting significant influence on profitable production and fair marketing of agricultural products. While concerns may focus more on any anti-competitive behaviour of 'first stage' downstream businesses in the marketplace, rather than the source of the investment per se, such transparency is important to public confidence that foreign investments in these first stage businesses is in line with our national interest. It is also clear that there is a role for ACCC involvement in oversight in this area.

The 2011 ABARES report into foreign ownership stated that 40 per cent of red meat processing is undertaken through foreign owned plants, namely JBS Australia (Brazil), Cargill (US)/Tey's and Nippon Meat (Japan) and this proportion may be greater in states such as Queensland. Given the market influence that can accompany control of local purchase and processing of agricultural goods, it is important that ownership of significant (regional, state or national) processing and agricultural transportation/logistics facilities in each sector be monitored across time and regulated to be in our national interest. Similarly, given the strong export focus of the grains industry and the importance of grains stocks information, foreign ownership of significant broadacre grains transportation and storage assets should also have appropriate oversight.

8 If it is decided that the ANZSIC codes be used, which divisions (or sub-divisions, groups) of the ANZSIC codes should be included in the definition for 'agribusiness'?

Of relevance to AgForce are the following suggested ANZSIC codes¹, although these are potentially not comprehensive:

¹ Codes sourced from 1292.0 - Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 2.0), [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1292.02006%20\(Revision%202.0\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1292.02006%20(Revision%202.0)?OpenDocument), accessed 5 March 2015.

Division A Agriculture, Forestry and Fishing:

- Subdivision 01 Agriculture
 - Group 014 Sheep, Beef Cattle and Grain Farming
 - Group 015 Other Crop Growing
- Subdivision 05 Agriculture, Forestry and Fishing Support Services
 - Group 052 Agriculture and Fishing Support Services

Division C Manufacturing

- Subdivision 11 Food Product Manufacturing
 - Group 111 Meat and Meat Product Manufacturing
 - Group 116 Grain Mill and Cereal Product Manufacturing

Division D Electricity, Gas, Water and Waste Services

- Subdivision 28 Water Supply, Sewerage and Drainage Services
 - Group 281 Water Supply, Sewerage and Drainage Services
 - Class 2811 Water Supply

Division F Wholesale Trade

- Subdivision 33 Basic Material Wholesaling
 - Group 331 Agricultural Product Wholesaling

Division I Transport, Postal and Warehousing

- Subdivision 46 Road Transport
 - Group 461 Road Freight Transport
- Subdivision 47 Rail Transport,
 - Group 471 Rail Freight Transport
- Subdivision 48 Water Transport
 - Group 481 Water Freight Transport
- Subdivision 49 Air and Space Transport
- Subdivision 52 Transport Support Services
 - Group 521 Water Transport Support Services
 - Class 5212 Port and Water Transport Terminal Operations
- Subdivision 53 Warehousing and Storage Services
 - Group 530 Warehousing and Storage Services
 - Class 5301 Grain Storage Services

10 The Government seeks feedback on the proposed definition for ‘agricultural land’:

- a. Is the proposed definition of ‘agricultural land’ consistent with common understanding of the term? Are there alternative approaches that should be considered?**
- b. Would the proposed definition provide sufficient clarity as to what constitutes ‘agricultural land’ for the purposes of Australia’s foreign investment framework?**

In our previous submission we stated that definitions of agricultural land could be on the basis of use or business activity supported. The FIRB defines agricultural or rural land as that used wholly and exclusively for carrying on a business of primary production (ie, occurring at a commercial scale). As identified however, this approach may also rule out diversified businesses that still retain a

significant primary production component. The definition from the *'Income Tax Assessment Act 1997'* seems to be comprehensive and applicable and was supported in our earlier submission. It could be improved by including land 'likely to be used' for agribusiness as well.

On page 20 the Options Paper proposes a definition of agricultural land as *'land that during the past five years has been used for carrying on a business of primary production'*. That is:

- *land used primarily for the purposes of carrying on, or otherwise supplying, an Australian 'agribusiness';*
- *land likely to be used primarily for the purposes of carrying on, or otherwise supplying, an Australian 'agribusiness'; or*
- *land which was, in the five years prior its purchase, used primarily for the purposes of carrying on, or otherwise supplying, an Australian 'agribusiness'.*

Improvements to that suggested definition would be to emphasise land likely to support primary production (that is with significant productive potential, such as identified in the Queensland Government's recent Agricultural Land Audit) and to be considered over a longer period than the past 5 years. This is to accommodate the movement of suitable land into and out of agricultural production over longer periods of time, such as during extended drought and its recovery period or when agriculturally-suitable land supports temporary resource sector or conservation activities, as well as capturing the new 'greenfield' development sites.

Land used for livestock agistment should also be included within a primary production business definition as it is not materially different from a cropping operation, but where the pasture is the crop being sold by the land owners and the 'harvesters' are the livestock owned by a third party.

11 The Government seeks feedback on the proposed definition of urban or 'residential land', including:

- a. Is the proposed definition of 'residential land' consistent with a common understanding of the term? Are there alternative approaches that should be considered?**
- b. Would the proposed definition provide sufficient clarity as to what constitutes 'residential land' and related subcategories (such as new and existing dwellings) for the purposes of Australia's foreign investment framework?**

A possible definition of residential land in the Option Paper on page 21 is *'land (that is not agricultural land) used, or to be used, for the purposes of one or more residential dwellings'*. How will current or likely agricultural land that is intended for use for subdivision for housing purposes to be categorised under the two definitions proposed? Urban encroachment on good quality agricultural land is a problem best avoided.

12 The Government seeks feedback on three possible options for the screening of 'other land':

- a. 'Other land' be defined as all land that is not 'agricultural land' or 'residential land' and continues to be screened from dollar zero;**
- b. 'Other land' is not defined and any land that is not 'agricultural land' or 'residential land' no longer requires foreign investment approval; or**

- c. **‘Other land’ is defined as a subset of what is left over from ‘agricultural land’ or ‘residential land’ capturing land that remains of interest while excluding some land from screening. If option (c) is pursued, what types of land should continue to be screened?**

If land with agricultural potential, or not under current agricultural use, is not included in the definition of agricultural land then AgForce would support the continuation of screening and approval of these land types, but applying from the \$15 million cumulative trigger proposed for agricultural land.

13 The Government seeks feedback on implementation issues around the foreign ownership of land register, including:

- a. **the foreign ownership details that would be collected and published by the register;**
- b. **the two-stage implementation approach to information collection (through self-reporting then through state and territory land titles processes); and**
- c. **how lawyers or register conveyancers would verify whether their client is a foreign person?**

In Queensland, under the *‘Foreign Ownership of Land Register Act 1988 (Qld)’*, all foreign entities are required to notify the Registrar of Titles of any acquisition or disposal of any land or an interest in land or water allocations. Building on Queensland’s Foreign Ownership of Land Register (FOLR) and AgForce discussions, the following is information that should be collected in a register with some indication of the priority of individual data items. This accords reasonably well with the items identified on page 22. Such information should link to FIRB processes in relation to judging the national interest and be used to inform government policy on foreign investment across time.

Table 1. Potential data that could be collected in a National Register

Data collected	Purpose	Priority*
Identity (name or business number) of investing entity or entities	To track cumulative interests over time towards applying FIRB assessment	H
Nationality of the foreign entities	To track trends in sources of investment and identify any national interest issues	H
Type of asset purchased (land, tradeable water allocations, processing facility, etc)	Important to track foreign capacity to influence production or marketing in certain areas of Australia	H
Geographical location, total value of asset and share purchased by foreign entity	Important to track investment locations and magnitude over time	H
Main intended use of the land (output type and average value of production)	Important to track impacts on industry viability in different areas over time	M
Whether further development is proposed or not (including capital amount to be invested, number of persons employed, time scale of investment intentions, etc)	Likely impacts on local socio-economic factors and further infrastructure needs	M

* H = High, M = Medium

In relation to implementation, the Options Paper proposes that the ATO start collecting data on existing foreign land ownership from 1 July 2015 with a requirement for this ownership to be registered by 30 September 2015 (3 months). From 1 July this year new purchases or divestments would have to be registered within 30 days of completing a transaction. From 1 July 2016 this process would be automated from state and territory land titles registration processes.

Queensland's FOLR provides up to 12 months for the initial registration of interests and then a period of 90 days subsequently for registration of acquisition or disposal of an interest or becoming or ceasing to be a foreign entity. In our previous submission AgForce supported an initial stocktake and proposed a similar staged approach to the stocktake and subsequent ongoing registration and if feasible for Government, supports the more expedient approach suggested in the Options Paper.

Under the *'Foreign Acquisitions and Takeovers Act 1975'* a foreign person is defined as:

- a) a natural person not ordinarily resident in Australia;
- b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest

It is unclear how a lawyer or conveyancer would be in a position to ascertain 'controlling interests' likely formalised in overseas jurisdictions and this proposed approach seems to simply move part of the burden of evidentiary proof to the facilitator of a transaction rather than the foreign investor themselves. Statutory declarations by those investors coupled with rigorous compliance and enforcement activity, including divestment in cases of misrepresentation, as well as imposing some obligations on lawyers and conveyancers may be the best pathway to ensure accurate information is provided.

16 Is the current regime for enforcement of FIRB conditions effective? What alternative measures could be considered?

Robust and well-resourced compliance mechanisms are necessary to ensure investments are and remain in Australia's interests and that any assessing agency or Government conditions placed upon approved investments are complied with and importantly, are seen by the Australian people as being complied with. Currently while the Australian Government monitors post-approval compliance with FIRB or assessing agency applied conditions such compliance is not publically reported, potentially due to concerns about commercial confidentiality. The Government should consider introducing this transparency as part of the FIRB role to the maximum extent that privacy considerations allow.

CONCLUSION

AgForce is supportive of the establishment of a national register that increases transparency around foreign ownership and contributes to an improved understanding of the level, nature and location of foreign ownership over time so that an informed debate can occur and our national interests

effectively protected. We also support proposed lower disclosure thresholds for FIRB scrutiny for land and agribusiness assets and would like that scrutiny extended to include significant agricultural water resources.

Contacts

For further information in relation to this submission please contact Dr Dale Miller, Senior Policy Advisor for AgForce Queensland, on _____ or via email _____.

Yours sincerely

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