



## **The Establishment of a National Foreign Ownership Register for Agricultural Land**

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## **1. Introduction**

The NSW Farmers' Association represents the interests of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the government and the general public. The Association is the key state representative body for both extensive and intensive industries ranging from broadacre, meat, wool and grain producers, to producers in the horticulture, dairy, poultry meat, egg, pork, oyster and goat industries.

NSW Farmers' welcomes the opportunity to provide feedback to the consultation paper on the establishment of a national foreign ownership register for agricultural land.

Recent land acquisitions by foreign entities in NSW and the increased public debate surrounding foreign investment have stimulated a large degree of concern amongst our membership. The establishment of a register of foreign owned land and water assets will offer greater transparency for the public and is a crucial step in informing the debate surrounding foreign investment.

NSW Farmers' acknowledges the historical involvement and importance of foreign investment to Australia's agricultural industries and the broader economy. This includes increasing the supply of capital available, contributing to industry innovation, fostering productivity and employment along with supporting regional communities. However, NSW Farmers believes that there needs to be a continuing assessment of whether particular investments are in Australia's national interests both now and into the future. A register of foreign owned land will help inform the national interest requirements of the Foreign Investment Review Board (FIRB) and more broadly lead to better informed policy making.

The commercial nature of such a register and Australia's international trade obligations will invariably mean the information requirements and compliance measures associated with the register will need to be balanced with the commercial integrity of foreign investors and the attractiveness of Australia for investment.

## **2. NSW Farmers' Association Policy**

In relation to foreign investment, NSW Farmers' Association seeks that the New South Wales and Federal Government establishes a public register of foreign controlled investment in agricultural land and water, food processing infrastructure and strategic national interests. This should include both foreign sovereign and private ownership.

In addition to this, NSW Farmers believes that such ownership and acquisition must pass a public interest test that includes an assessment of social, environmental and economic impacts in line with community expectations. NSW Farmers believes that the FIRB threshold for purchases of agricultural land be set at no more than \$5 million cumulatively.

These measures should be taken to ensure the integrity of foreign investors and the future food security of Australian citizens, identifying any foreign control of production, processing and marketing in the agricultural supply chain.



### 3. Scope and Definition of the National Register

#### 3.1 Scope

The national foreign ownership register for agricultural land should be comprehensive to include all foreign owned land and water assets. This may be in the form of a single register or where possible a coordinated register which takes advantage of jurisdictions such as Queensland which already have a register in place.

Although the register will be post-acquisition in nature recording actual transactions, it should initially include a stock take of all foreign owned agricultural and water holdings. This stock take will act as an important baseline to determine change and trends in foreign investment and divestment.

Broadly, the register should seek to capture country of origin, land size, location and contact details. Land size should include cumulative totals and the individual parcels of land owned. It should also aim to get information on current land use and land use change. Additionally, the register should include the quantity of water entitlements along with the catchments from which the water is sourced.

The register should identify both direct and indirect ownership by foreign entities which includes foreign individuals, corporations, trusts along with state owned enterprises and sovereign wealth funds.

The register should be updated on a continuing real time basis and published in the form of an annual report deliverable to the public at the end of each financial year. Commercially sensitive information collected in the register, may not necessarily be published for public observation rather be kept confidentially and used to inform policy development.

The information contained in the register should play a central role in the FIRB process and future policy development surrounding foreign investment. Allowing for a more informed assessment of whether proposed investments are in Australia's national interests.

#### **Recommendation 1:**

***That the scope of the national register should encompass***

- ***A comprehensive assessment of all foreign owned agricultural land and water assets***
- ***Both direct and indirect foreign ownership and control***

#### 3.2 Definitions

The accuracy of the foreign register is underpinned by the definitions surrounding agricultural land and foreign ownership. These definitions will determine what is classified as 'agricultural land' and what constitutes 'foreign ownership', affecting what actually appears on the register.

##### **Agricultural Land**

The definition of agricultural land needs to encompass land that is used for the purposes of primary production. However, it should not be a requirement that land be wholly and exclusively used for primary production as this may exclude businesses which have more diversified operations. The definition of a primary production business can be taken from the *Income Tax*



Assessment Act 1997 and refers to production resulting from the cultivation of land, animal husbandry, horticulture, fishing, forestry, viticulture or dairy farming.

A potential issue for the register is how it deals with a foreign owner who holds land that subsequently ceases to be agricultural land. Therefore, the register should include land that was used for primary production at the time of purchase by a foreign entity, even if such land ceases to become agricultural land or where production becomes temporarily idle. This requirement is similar to the foreign ownership register in the United States. Applying this definition, the register should make specific note of whether or not the land is currently being used for primary production, updating on an annual basis. If not agricultural, the current alternative use of the land should also be noted.

### **Foreign Ownership**

NSW Farmers agrees with the definition of 'foreign owner' as set out in the *Foreign Acquisitions and Takeovers Act 1975*. As outlined in the consultation paper, the *Foreign Acquisitions and Takeovers Act 1975* treats a foreign corporation as a:

*'foreign corporation to which paragraph 51(xx) of the Constitution is applicable or a corporation that is an external Territory to which this Act does not extend'.*

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.

The register should also encompass those enterprises which are owned by foreign nation states, including sovereign wealth funds.

#### **Recommendation 2:**

***That the definition of primary production as set out in the Income Tax Assessment Act 1997 be applied to define agricultural land for the purpose of this register.***

#### **Recommendation 3:**

***That the register should include land that was classified as agricultural land at the time of purchase, even if such land ceases to become agricultural land or primary production is temporarily idle.***

#### **Recommendation 4:**

***That the definition of foreign owner as set out in the Foreign Acquisitions and Takeovers Act 1975 be applied to define foreign ownership for the purpose of this register.***

#### **Recommendation 5:**

***That the register should ensure it encompasses those enterprises which are owned by foreign nation states, including sovereign wealth funds.***

#### **4. Information and Data Requirements**

The register should gather the appropriate amount and type of information to ensure its value in informing the public debate and fostering better policy development surrounding foreign investment. In particular, the register will be an important tool in assessing whether current or future investments are in the national interests of Australia. NSW Farmers believes that the following information should be included in the register.

- **The price paid for land and year of purchase** – this will allow for an assessment of the magnitude of foreign investment along with assessing the productivity of the land when this data is combined with land area, land use and location. Purchase price/year will also offer an indication of whether the land was purchased at a market price.
- **The total area of land** – assisting in identifying the extent of foreign interests and land productivity.
- **The location of land** – identifying the location of land by local government area will give an indication of the magnitude of foreign ownership in particular areas and land productivity.
- **The total parcels of land (by owner and by nationality)** – allowing for the identification of trends of investment and the cumulative interests of particular foreign entities.
- **The nationality of the land holder** – allowing for an assessment of investment and divestment trends by country of ownership, potential motivations of such investments and whether there are any strategic considerations.
- **Subsidiary, parent or associated company details (Contacts, ABN)** – allowing for an accurate indication of investment pathways and structure of company involved. Assist in the tracking of other investments in agricultural or associated industries. This information will also be crucial in identifying any issues of supply chain control.
- **The nature of the company of ownership** – whether the company is a sovereign wealth fund, private equity firm, agribusiness firm or involved in other ventures such as mining will help form an assessment of the motivations behind investment.
- **The quantity of water entitlements, associated catchment, water use, purchase price** – allowing for an accurate indication of the magnitude of water controlled, the current purpose for which the water is being used and whether the entitlement was purchased at a market price.
- **The land use at time of purchase and any change in land use** – Land use should gather information on the type of agricultural operation such as broadacre cropping or intensive livestock as well as whether the use has change from agricultural to another use such as mining or housing/industrial development. This will allow for an assessment of the impact of foreign investment on agricultural industries, as well as identifiable trends in the change of land use.

There are additional pieces of information that could be useful with the establishment of a national register including business details such as inputs and outputs, labour requirements and other management practices such as bio-security compliance and information on the company's intended use of land. This information would allow for a more in depth analysis of foreign investment in Australian agricultural land and a better assessment of whether the operation is in the national interest. NSW Farmers believes that for the most part the register should be accessible to the public. However including sensitive information raises questions about access and privacy. NSW Farmers suggests that an annual report similar to Queensland would be suitable for public consumption however more of the sensitive detail might be reserved and



collated to avoid any unnecessary disclosure of commercial sensitivities. It is noted that the Queensland Government charges a fee for access to additional information in the foreign investment register.

NSW Farmers also submits that water should be included in the national register. Until 2005 water and land were considered to be part of the same title. However with the establishment of the national water market the titles were separated. While this facilitates trading in the water market, water is still a relatively inflexible tradable good. That is, its physical tradability is limited to the same catchment and therefore NSW Farmers argues that similar to land it is a national resource and therefore it is important to know the ownership of this resource. Registers of water ownership currently exists in the different states and similar to land ownership NSW Farmers does not believe that it would be overly burdensome to extend this to a national register of foreign ownership of water entitlements. It should be noted that water entitlements should not be limited to water used for agricultural purposes. As water is a critical agricultural asset it is important to capture foreign ownership of all water assets used for either agricultural or some alternate purpose. The purchase price for the water entitlement will also offer an indication of whether the foreign entity bought the water at the market price. It will also help identify potential trends of water being purchased and diverted to alternative uses such as mining.

**Recommendation 6:**

***That the information set out in the above dot points is collected and included in the national register of foreign owned agricultural land.***

**Recommendation 7:**

***That the Land Registers Consultation Working group consider additional pieces of information such as business information including farm inputs and outputs, labour requirements and other management practices such as biosecurity compliance and the intended use of land.***

**Recommendation 8:**

***That as a critical agricultural asset, all foreign owned water entitlements be included in the register with details of the quantity of the entitlement, price paid for the entitlement, catchment and current use of the entitlement.***

## **5. Threshold and Stocktake of Agricultural Land and Water**

NSW Farmers submits that the register should include the purchase of all agricultural land and water. Requiring all purchases of agricultural land and water would remove the administrative process of having to identify cumulative purchases or isolate smaller holdings. Further it is expected that all land purchases are currently collected at the state level for land title purposes and having to administer the removal of some of the purchases in collating them into a foreign ownership register is seen as an unnecessary administrative requirement. This requirement is consistent with the current register which exists in Queensland which does not exclude investments based on the size or value of the holding.

NSW Farmers also supports an initial stocktake of land and water assets currently owned by foreign entities. It is important that such a stocktake is undertaken to get an accurate indication of the current scale and composition of ownership which will act as a baseline to determine trends of investment and divestment. NSW Farmers acknowledges the administrative and compliance requirements associated with such a stocktake, and believes that this stocktake should be completed as soon as practicable.



An effective way of conducting an initial stocktake would be through reporting avenues that already exist. Additional questions requiring foreign owned entities to disclosure information of agricultural land and water ownership through reporting authorities such as the Australian Securities and Investments Commission (ASIC) or the Australian Taxation Office (ATO) may be appropriate.

**Recommendation 9:**

***That the register includes all agricultural land and water entitlements with no minimum threshold for reporting.***

**Recommendation 10:**

***That the register includes an initial stocktake of land and water assets currently owned by foreign entities as soon as practicable. This should be done through current reporting mechanisms such as ASIC and ATO.***

## **6. Compliance and Confidentiality**

As detailed earlier, NSW Farmers believes that there needs to be a balance between the compliance measures associated with the register and the commercial integrity of foreign investors along with the continued attractiveness of Australia for investment.

As in the United States it should be compulsory for foreign entities that transfer and acquire an interest in agricultural land and water to report such transaction within 90 days. Compliance should be reinforced through random assessments to ensure the credibility of information disclosed. Financial penalties should also be used for those who do not comply or provide false or misleading information. In Queensland the penalty equates to \$85,400 for the first offence, increasing to \$167,000 for the second offence.

Confidentiality may be one mechanism to deal with commercially sensitive information. NSW Farmers supports the publishing of information in an annual report as done in Queensland at the end of each financial year. This will allow for identification of trends and assist with transparency. While such a report would be suitable for public consumption, more of the sensitive detail might be reserved, collated and used for internal assessment by the appropriate authorities.

**Recommendation 11:**

***That it is compulsory for foreign entities which transfer and/or acquire an interest in agricultural land and water to report such transaction within 90 days.***

**Recommendation 12:**

***That compliance is reinforced through random assessments to ensure the accuracy and credibility of information disclosed and that financial penalties be used against those who do not comply or provide false/misleading information.***

**Recommendation 13:**

***That the information contained in the register is published in the form of an annual report deliverable to the public at the end of each financial year. That commercially sensitive information may be collated and used for internal assessment by the appropriate authorities.***





## **7. General Comments**

The function of the Foreign Investment Review Board is closely related to the proposed register. As such, the design of the register should reflect its future usefulness in policy development surrounding foreign investment. This will allow for an informed assessment of proposed foreign purchases and the identification of a clear net benefit to Australia.

