

30th January 2013

Land Register Consultations Working Group
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

RE: Submission on the consultation paper (November 2012) on "Establishing a national foreign ownership register for agricultural land"

This is a personal submission in response to the consultation paper and is based on over 30 years experience as a valuer in the agricultural property market, including 8 years with the Valuer Generals in NSW Department and over 22 years as a senior valuer and Director of one of Australia's largest property consultancy practices. My personal agricultural property valuation experience covers Victoria, NSW, Queensland and the Northern Territory/Kimberleys.

The proposal to establish a national foreign ownership register for agricultural land is very appropriate and has my support. However the usefulness and relevance of the register will depend on three key components:

- (1) Transparency: the data must be available to all interested parties;
- (2) Accuracy: the data on the register must be accurate and up to date so that the public has confidence in it;
- (3) Sufficiently Descriptive: adequate appropriate data is required so that a meaningful analysis of the types of land owned and any cumulative ownership and property type ownership trends can be properly analysed.

Below are my specific responses to a selection of the 14 questions posed in the consultation paper. I have only provided responses to those questions that I am qualified to do so, and my responses also elaborate on the three key components outlined above:

Question 1: It must include all land, either held as freehold or leasehold that is currently used or capable of being used for commercial agricultural production. It must include all water entitlements that are currently used or capable of being used for commercial agricultural production.

Question 2: All interests which demonstrate that 50% or more of the land is effectively owned and/or controlled by a foreign person or entity, whether directly or indirectly.

Question 3: I propose the following data be recorded:

- Property name; address including real property and water entitlement description; Local Government Area – required to specifically identify land parcels as base data and allow for amendments to the register when divestment or additions occur;
- Land Area and water entitlement (expressed as annual available megalitres by the various categories of licence (eg. regulated river, aquifer, supplementary etc): fundamentally important to establish the extent of foreign ownership in the context of the total land and water ownership
- Owners/Lessees names, equity percentage and nationality: important base data so that future divestments or additions can be accurately traced and recorded;
- Primary land use types – this is very important to assist in the analysis of potential trends in concentrated ownership of particular types of agricultural land, which may or may not have an impact on a particular industry sector and future public policy. These trends can be assessed by independent industry experts on an as needs basis in conjunction with the above base data, provided the land use data is sufficiently categorised and accurate. Examples of land use types are: dairy; forestry; irrigated cropping; dryland cash cropping; sugar; horticulture; orchard; aquaculture; pastoral; equine; viticulture; sugar; water entitlement. Where two or more land uses occur (eg. on a mixed farm) it should be a requirement that an approximate percentage of each use (by land area) be provided (eg. 40% irrigated cropping and 60% dryland cash cropping) when a land use comprises 20% more of the total land uses of the subject property.

Question 4:

- (a) Agricultural Land – definition: “All land, either held as freehold or leasehold that is currently used or capable of being used for commercial agricultural production. Commercial agricultural production is defined as any production of agricultural product (food, crop, plantation, fodder, fibre, animal, fish or related by product) from the subject land which currently has, or the immediate potential of, a gross annual sale value of \$100,000 or more. It also includes all water entitlements that are currently used or capable of being used for commercial agricultural production”

This definition limits the register burden to only those land parcels/foreign owners which are considered to reasonably be “commercial” and not have a majority rural lifestyle component. Using land area as the sole criteria is considered to be much less reliable, particularly for high intensity land uses (eg. glass house vegetable production or aquaculture).

- (b) Foreign Ownership -- definition: "Where the land or water entitlement is at least 50% owned or controlled, directly or indirectly, by a foreign person or entity who is not classified as a permanent resident of Australia." "Ownership" should also extend to agricultural land or water entitlements which are held as long term commercial leases of 15 years or more.

It is possible that to circumvent ownership reporting requirements that a market may develop whereby an Australian landholder vendor "leases" the land to a foreign investor for an extended period, after the foreign investor has paid a substantial upfront lease payment/premium (approaching the full value of the property), followed by nominal lease payments over an extended period. This would be a "defacto" form of land ownership which would need to be recorded.

Question 5: see above

Question 6: yes, see above, to limit the reporting burden and to only have data relevant to commercial agricultural land.

Question 7: yes, this is essential and can be done by legislation requiring all existing foreign land owners who fall within the above criteria to complete the register within 9 months of the commencement date. It important to have an accurate set of base data to allow for an informed debate about the current level of foreign ownership and the analysis of emerging ownership trends..

Question 8: Legislate and an education program. Media releases specifically targeting the accounting profession and perhaps with the inclusion of the reporting requirement within ATO returns/correspondence.

Question 10: 9 months -- this is not considered to be particularly onerous and is consistent with exiting timeframes in other jurisdictions.

Question 11: To achieve the required transparency, I suggest that the maximum amount of information, as outlined above, be available on a public register, wherever it is consistent with privacy/confidentiality obligations.

Question 12: It needs to be a federal government coordinated project. The initial data would need to be a one off collection process. Subsequent foreign acquisitions could perhaps be lodged with and administered by the FIRB. This would enable the FIRB to also better understand the cumulative impact of foreign investment in agricultural land, if they have "ownership" of the process/data.

Question 14: The register needs to include agricultural land held as either freehold or leasehold title. It is very important that adequate accurate data is recorded so that industry experts are able to confidentially analyse what property/industry types are impacted. It is too simplistic to just analyse what percentage of the total land area of Australia is majority foreign owned. The public and property professionals are seeking to know for example, if our "most productive" agricultural land is becoming increasingly foreign owned; or if our dairy or sugar land is being impacted, and to what extent and by whom. It is only then that the community and our policy makers can effectively formulate new policy, if any policy change is deemed necessary. There does not appear to be a need to record the purchase price of any transactions by foreign entities as this information is already accessible on the public record, as it is for most transactions, unless shares in a company are purchased.

To ensure that the data provided for inclusion in the register is reliable, there is perhaps a role for an independent agricultural property expert who has a high level understanding of the Australian rural property market to assist in checking the accuracy and completeness of the data provided.

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