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Land Register Consultations Working Group
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ESTABLISHING A NATIONAL FOREIGN OWNERSHIP REGISTER FOR AGRICULTURAL LAND

The Victorian Farmers Federation

The Victorian Farmers Federation (VFF), Australia's largest state farmer organisation and only recognised consistent voice on issues affecting rural Victoria, welcomes the opportunity to comment on the National Penalties Framework.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our State's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

Introduction

Thank you for the opportunity to comment on establishing a national foreign ownership register for agricultural land; the Victorian Farmers Federation is supportive of the establishment of such a register. Our policy regarding foreign ownership is as follows:

The threshold trigger for assessment (by the Foreign Investment Review Board) of a purchase of agricultural land or water by foreign persons or enterprises should be reduced to \$5m.

There should also be a comprehensive registry developed of all agricultural land and water assets owned by foreign persons or enterprises.

We are concerned there is not a sufficient understanding of the true level of foreign investment/ownership within Australia and certainly not a 'real-time' accounting of the changes on foreign ownership of food and fibre producing assets in Australia.

As representatives of farmers in Victoria, we get firsthand accounts of changes in ownership of land and the impact on the local communities – both the good and bad experiences.

We feel that the development of a register will help lift the mystery associated with foreign ownership of agricultural assets and also serve to better the understanding of the contributions of foreign investment into the agricultural sector.

The VFF will take this opportunity to provide our perspective on the 14 questions raised in the consultation paper.

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

The register should include the food and fibre primary production assets of land and water (the entitlement volume or water share – for more detail see Question 5).

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

The VFF considers that there should be two approaches when defining foreign ownership. In the case of a strictly commercial entity, without government links, the threshold for foreign ownership should be set at 15 per cent or higher. This threshold will ensure the register provides a full picture of foreign investment.

An entity with any sovereign ownership should be subject to the register, regardless of level of foreign government interest or control. We feel that the Foreign Investment Review Board (FIRB) definition may be too relaxed with regard to foreign government control. The FIRB defines foreign governments and their related entities as including: a body politic of a foreign country; companies or other entities in which foreign governments, their agencies or related entities have more than a 15 per cent interest; or companies or entities that are otherwise controlled by foreign governments, their agencies or related entities.

We feel that the 15% threshold for sovereign ownership is too high to accurately measure the control a government may have on an organisation. There may be other, significant, sources of influence in the operations of a related entity that may not be directly a result of financial control; it is for this reason that we feel the ownership threshold for sovereign entities should be 0%.

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

It is important to determine what the information to be collected will be used for and how it will be analysed before the data set is created. The VFF suggests the following pieces of information will allow for credible analysis and improved understanding:

- The amount of land owned – Allow for better understanding of local impacts
- Where land is located – Will provide inferences of productive capacity of land and improve understanding of possible local impacts
- Who owns the land
- Whether the asset is owned by a foreign person/corporation or by a sovereign entity
- Cumulative amount of land owned by that entity
- Country of residence of owners

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 –

The discussion paper identifies the definition of agricultural land used in the United States, which is land used for farming, ranching, or timber production. This includes land where production is temporarily idle.

The VFF suggests this definition could be adapted for the Australian context. Agricultural land should be defined as: 'Land used for agriculture, or timber production including land used for carbon sequestration'.

b) Foreign ownership –

The definition from Foreign Acquisitions and Takeovers Act 1975 (FATA) for Foreign Corporation and Foreign person could be adapted to cover ownership interests for strictly commercial entities.

The FATA 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'.

An adapted definition of a foreign person would be:

- (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 an interest of 15 per cent or more;
- (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 interest of 15 per cent or more;
- (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds an interest of 15 per cent or more; 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 interest of 15 per cent or more.

However, this definition does not cover organisations with sovereign ownership. An amended version of the FIRB definition of foreign governments and related entities could be used:

"A body politic of a foreign country; companies or other entities in which foreign governments, their agencies or related entities have any interest; or companies or entities that are otherwise controlled by foreign governments, their agencies or related entities."

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?*

Access to water assets and the understanding of water ownership in Australia is just as important to the agricultural sector as land ownership. Ownership of actual water volumes should be a part of the register. In Victoria, the actual volume of water owned in an unbundled irrigation region is referred to as the 'water share'. The water share ownership should be included in the register. Other water rights in Victorian unbundled irrigation districts (the water use license (permission to apply the water to land) and delivery share (proportional expense for infrastructure upkeep) need not be included.

For unregulated systems, such as the Victorian groundwater network and some ephemeral streams, a take and use licence is issued to an irrigator, by power of the Minister for Water. This licence provides the user access to a set volume of water, sometimes subject to management rules. Take and use water licences are also a vital component of irrigated agriculture, and some oversight should be enabled to monitor their acquisition by foreign interests.

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?*

If the register is set up appropriately with low administration costs and simple processes there should be no need to impose a threshold. If the proposed FATA definition is used, it will already exclude many of the smaller purchases. The FATA defines a foreign person as 'A natural person not ordinarily resident in Australia', in the case of individuals moving to Australia to purchase and operate a farm as an individual or family they would not be subject to the register.

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?

Yes, following an effective communication strategy, there should be a deadline for self-identification. The completion of the self-identification would not need to be too burdensome if the administration of register was user friendly and the register asked the appropriate questions

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

As above, the way to do the initial stocktake would be to imposing a deadline for self-identification. As stated in the consultation paper, the United States (USA) allowed 6 months for self-identification after the introduction of their legislation. Queensland allowed for self-identification within 12 months of the introduction of their legislation.

Considering the process to self-identify under the register should not be unacceptably onerous, a period of 6 to 12 months would be appropriate.

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

There will need to be sufficient incentive to comply with the requirements under the register. There should be consideration given to the compliance framework used in the USA and Queensland to ensure their system is adhered to.

The VFF suggests there should be a fine associated with non-compliance of the register requirements. For example, the Queensland foreign ownership legislation (Foreign Ownership of Land Register Act 1988) refers to penalties for non-compliance to be 835 penalty units.¹ With a Queensland penalty unit at \$110 the penalty for non-compliance is over \$90,000.

The penalty that is imposed under this new national regime should strike a balance between being a sufficient incentive to follow the requirements of the Act and being a punishment that is fitting of the infringement.

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

In the USA the Foreign Ownership report must be completed within 90 days of a transaction. Similarly the Queensland Foreign Ownership of Land Register Act requires notification of foreign interests within 90 days of the relevant transaction. The VFF suggests a timeframe of 90 – 120 days seems appropriate, especially following the initial stocktake.

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?

The VFF considers it imperative the following data on foreign ownership is publicly available for analysis:

- Land area under foreign ownership (by municipal council)
- Water volume under foreign ownership (by river or groundwater basins)
- The level of sovereign ownership/control

¹ Part 4, Section 24.1

The details of specific organisations do not have to be released. However, information should be made available on the cumulative interests in land and water and the level of sovereign ownership/control of individual organisations. This could be achieved using unique codes or identifiers for anonymous organisations.

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?*


After the initial stocktake, which will be largest piece of work associated with this register, the subsequent changes to the register can be done through the process of the sale of land. There could be an obligation of the purchaser to forward the proper paperwork to the federal agency responsible within the agreed timeframe after a land transaction.

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?*

See above.

Thank you for the opportunity to comment on the proposed Foreign Ownership Register for Agricultural Land. If you wish to discuss this submission further please contact Darryl Harrison, Policy Manager, on 03 9207 5522.

Kind regards,

A handwritten signature in black ink, appearing to read 'P.T.' with a stylized flourish at the end.

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