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Via email: media@treasury.gov.au

Re: NSW Farmers' Comments on Evaluation of the 2021 Foreign Investment Reforms

The NSW Farmers' Association ('NSW Farmers') welcomes the opportunity to comment on the foreign investment reforms implemented in 2021.

NSW Farmers' is Australia's largest State Farming Organisation representing primary producers across all agricultural commodities. Farmers across New South Wales contribute significantly to the State and national economies with NSW food and fibre production representing around one quarter of Australia's annual total agricultural output.

As part of the foreign investment reform consultations in 2020, NSW Farmers identified support for a comprehensive initial review structure coupled with transparent and ongoing compliance, as applicable to foreign investments. NSW Farmers requires application of this process to all agricultural land, food-processing infrastructure, and water interests. It is important to Australian food and fibre production that there continues to be a diversity of farm ownership to ensure that there is a fair and equitable place for family owned farm businesses operating alongside corporate and amalgamated farm operations that may be owned by advantaged foreign investors.

Specifically, NSW Farmers supports a foreign investment review framework that includes:

- a public register of foreign investment that is publicly available and searchable;
- a (\$5 million cumulative) threshold for assessment of agricultural land;
- a well-resourced and dedicated unit within Treasury to ensure ongoing monitoring, compliance and enforcement of foreign investment approval conditions; and
- appropriate taxation of foreign entities.

In evaluating the foreign investment reforms implemented in 2021, NSW Farmers notes the establishment of a register of foreign investment of Australian assets as a step in the right direction. However, we reiterate that this register must be publicly available and searchable, and should be a single register including investment of agricultural land, water, food processing infrastructure and strategic national assets.

NSW Farmers also welcomes the reforms to improve compliance and regulation of foreign investment, designed to uplift Treasury's capability as regulator of foreign investment in Australia. However, whilst we

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note the introduction of new compliance and enforcement powers coupled and the associated increase in resourcing to implement them, foreign investment compliance needs further strengthening.

In addition to enforcing penalties for instances of non-compliance, it is critical that further resources are devoted to investigating and monitoring breaches of conditions in order to effectively ensure compliance. Whilst it is important that there are sufficient penalties in place to incentivise compliance, it is also critical that there be better understanding of the level of adherence to conditions to determine if the framework is working effectively. To achieve this, NSW Farmers reiterates the importance of establishing a well-resourced and dedicated unit within Treasury to ensure ongoing, monitoring, compliance and enforcement of foreign investment approval conditions.

NSW Farmers' stresses the need for this unit to be established within Treasury, rather than as an external body. This will ensure greater authority and integrity for monitoring and enforcement compliance a

Increased transparency through a public register of foreign investment, and independent compliance and review of investment conditions is crucial to achieving the right balance. This accompanied by compliance reviews to confirm that these investments continue to be in the national interest. Ideally, an independent and well-resourced unit within Treasury will be responsible for both the foreign investment register and for monitoring and compliance of the purchases.

NSW Farmers notes that the monetary screening threshold of \$15 million has been reinstated. We consider that this is inappropriately high for the assessment of agricultural land, and that it should be permanently lowered to \$5 million cumulative to ensure greater oversight of these important assets. Unlike other major investments, agricultural enterprises often comprise multiple assets on separate title. Individually they may not reach either our position of a \$5 million threshold, but collectively could reach the current \$15 million threshold – however, as individual transactions, they would not be screened.

NSW Farmers requires that foreign investment in Australian agricultural land, food processing infrastructure and water interests are taxed directly and indirectly at the same rate as domestic taxation, and that every effort be made to reduce and eliminate avoidance and transfer pricing by foreign investors on domestic taxation receipts.

There is increasing concern that foreign investment funds and corporations are leveraging tax advantages, such as exemptions and tax havens, to improve their financial position, gain material advantage and easily outbid potential Australian purchasers of land and water. Many Australian farmers are unable to compete with these low and no-tax entities utilising their significant tax advantages, including transacting between like entities. Whilst NSW Farmers recognises the value of foreign investment, it is critical that Australians are not disadvantaged and can compete and invest in agricultural assets in a fair investment environment.

NSW Farmers notes that the Australian Government applies varying criteria for foreign investment based on a regulatory definition of 'sensitive' businesses. It is unclear where agricultural land, food processing infrastructure and water interests may or may not be, identified as 'sensitive'. Without this clarification, NSW Farmers requires that safeguards be in place, through Australian Consumer Law, to guard against harmful monopolistic control of any part of the production or marketing chain.

NSW Farmers also recommends that further safeguards are put in place to manage foreign investment in Australia's strategic industries and primary commodity reserves to secondary positions behind controlling Australian interests.

NSW Farmers policy regarding foreign investment requires:

- support for the right of foreign interests to participate in equity ventures in Australian agriculture;
- safeguards in place, through Australian competition legislation, to guard against harmful monopolistic control of any part of the production or marketing chain;

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- a foreign investment test beyond national security considerations to assess social, environmental and economic impacts in line with community expectations;
- similar access available for Australians trading internationally or participating in foreign projects;
- restrictions on future foreign investment in land in Australia so that such investment is restricted to leasehold where appropriate, with suitable restrictions or controls where possible; and
- reciprocal rights with foreign countries in respect of investment in infrastructure, and agricultural land and water, in foreign countries where Australian residents seek it.

As primary producers rebuild following drought, bushfires and the COVID-19 pandemic, any impediments within the control of Government must be minimised to ensure opportunities for productivity gains and equitable access to markets – both new and established. To aid this recovery it will be critical that the foreign investment review framework is improved and strengthened to prevent detrimental impacts of inappropriate and unfair foreign investment, such as a failure to adhere to conditions on investment.

NSW Farmers seeks a public, transparent foreign investment register, and supports stronger monitoring and compliance measures to ensure that any conditions placed on foreign owned assets are adhered to as required. Such a

Should your staff require additional information, your office is invited to contact Kathy Rankin, Policy Director on 02 9478 1008 or rankink@nswfarmers.org.au.

Yours sincerely



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