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

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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 that there is not a sufficient understanding of the true level of foreign investment/ownership within Australia and certain 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 change in ownerships 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 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 water share).**

**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, foreign ownership should be defined as the majority of outright ownership of a commercial entity (50% or higher).**

**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 FIRB definition may be too relaxed with regard to foreign government control. The FIRB defines 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 is too low 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 threshold level for sovereign entities should be minimal.**

**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 that is to be collected will be used for and how it will be analysed before the data set is created. The VFF suggested that the following pieces of information will allow for credible analysis and improved understanding.**

- **Amount of Land owned – Allow for better understand on 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 –**
- **Is foreign ownership by foreign person/corporation or by sovereign entity**
- **Cumulative amount of land owned that 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 definition used should be a variation of the definition used in the U.S.A. – “Land used for farming, ranching or timber production”. The VFF suggests that the definition should be ‘Land used for agricultural, or timber production including land used for carbon sequestration’**

b) *Foreign ownership* –

**The definition from Foreign Acquisitions and Takeovers Act 1975 for Foreign Corporation and Foreign person would be appropriate for these purposes. The FATA states the following:**

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.

**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 is referred to as the ‘Water Share’. The water share ownership should be included in the register. Other water rights in Victoria (the water use license (permission to use the water) and deliver share (proportional expense for infrastructure upkeep) need not be included.**

**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 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 allowed for 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 United States 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.<sup>1</sup> 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 also be a punishment that is fitting of the

**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 United States, they require the Foreign Ownership report to be completed within 90 days of a transaction, therefore 90 – 120 days seem 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 that the following data is publicly available for analysis:

- Land Amount
- Land location (at the local government level)
- Specific organisation does not have to be released but should have an identifier for comparison
- Cumulative amount of land owned by a single organisation
- Each organisation should indicate if there any level of sovereign ownership/control

**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?*

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<sup>1</sup> Part 4, Section 24.1

After the initial stocktake, which will be largest piece of work associated with this register, the following 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 and if you wish to discuss further please contact Darryl Harrison, Policy Manager (03 9207 5522)

Kind regards,



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