

# Chapter 3

## Foreign investment—information gaps

3.1 Over recent years there has been increasing level of community and industry concern regarding the level of foreign ownership of agricultural businesses and the acquisition of agricultural land by foreign companies. The committee heard evidence that these concerns have been exacerbated because the current levels of foreign ownership are poorly documented, and the impact of foreign investment is poorly understood. This chapter begins by outlining some of the evidence received on the lack of accurate data about foreign investment in Australia.

3.2 In acknowledging the information gaps on foreign investment in agriculture, there have been several steps taken by the government over the last two years to address this issue. Therefore, the chapter examines the three key government initiatives to address the paucity of information: the Australian Bureau of Statistics (ABS) agriculture survey, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) report, and the national register on foreign investment in agricultural land.<sup>1</sup>

3.3 Specifically, the chapter notes the evidence received showing the significant limitations of the ABS agriculture survey and the ABARES report which were intended to improve the level of knowledge about foreign investment in agriculture. Finally, the chapter outlines the information available to date about the agricultural land register and puts forward the committee's recommendations about what should be included as the register is developed.

### Concerns about lack of information

3.4 The committee heard evidence from many submitters and witnesses that while they were supportive of foreign investment in Australian agriculture that could provide significant ongoing benefits to the industry, they were also strongly concerned about the dearth of information about levels and trends of foreign investment in Australia. For example, the lack of information on the level of foreign acquisitions in Australian agriculture was raised by one submitter as a constraint in responding to this inquiry. The Western Australian Farmers Federation (WAFF) noted specifically that it had not attempted to address all the inquiry's terms of reference:

...as we believe that there is a lack of detailed and reliable information on the level of foreign investment in not only Western Australian, but in Australian, agricultural businesses, and further, the Foreign Investment Review Board's assessment criteria has precluded its investigation of much of the investment that has already occurred. As such, the relative

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1 For the purposes of this report the ABS Agricultural Land and Water Ownership Survey, Australia 2010, is referred to as the ABS agriculture survey. In addition, the ABARES report is the abbreviated term used for the following report: Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011.

effectiveness of the national interest test in respect of agriculture investment is difficult to comment on.<sup>2</sup>

3.5 The South Australian Farmers Federation (SAFF) indicated its belief that the majority of agricultural land in South Australia is still locally owned. However, it acknowledged that, at present, there is no data available on the level and nature of foreign investment in South Australia's agriculture industry.<sup>3</sup>

3.6 SAFF argued that whilst investment (domestic or foreign) is vital for the growth and success of industry, foreign investment needs to be scrutinised 'in order to ensure maintenance of the national interest test'.<sup>4</sup> SAFF also argued that the government should increase its scrutiny of proposed foreign purchases of Australian agricultural land, and recommended that:

- there is a need to assemble much needed data on foreign acquisitions (and current governance of them local and globally) and assess any potential changes;
- all foreign purchases should be detailed in a register (enabling Australians to see who owns and is buying prime agricultural land); and
- there be a requirement for information about foreign acquisitions of agricultural to be published online.<sup>5</sup>

3.7 The NSW Farmers' Association (NSW Farmers) also indicated support for foreign investment generally, and noted that it would encourage productive investment within agriculture that will 'benefit the national economy and is in the best long term interest of the nation'.<sup>6</sup> In addition, NSW Farmers stressed the importance of being able to monitor foreign investment and argued strongly in favour of a foreign investment register:

NSW Farmers welcomes the Government's decision to collect data on foreign investment in agriculture, which has been partially released. This information will give a greater understanding as to the scope of investment across the country. However, a one-off survey is not adequate in this situation. NSW Farmers believes that a register is required that records all foreign investment in Australia's agricultural assets in order to guide future policy decisions. Information is an imperative when composing an informed policy response to a perceived change in circumstances. This register would be particularly useful in clearly demonstrating when or if creeping acquisitions are occurring. NSW Farmers believes that the

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2 Western Australian Farmers Federation, *Submission 7*, p. 1.

3 South Australian Farmers Federation, *Submission 11*, p. 4.

4 South Australian Farmers Federation, *Submission 11*, p. 3.

5 South Australian Farmers Federation, *Submission 11*, pp 3–6.

6 NSW Farmers' Association, *Submission 17*, p. 1.

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establishment of a national register is far more important initially than the alteration of the national interest test.<sup>7</sup>

3.8 The information gap was also acknowledged by the commonwealth government. Indeed, in a paper supplied to the committee as part of its submission, the Department of Agriculture, Fisheries and Forestry (DAFF) noted that it was constrained in its ability to respond appropriately to community and industry concerns about foreign investment because of the 'limited available data on the current level of foreign ownership'.<sup>8</sup>

3.9 The paper also noted that in November 2010, the government attempted to address the lack of information and 'strengthen the transparency of foreign ownership of rural land and agricultural food production'.<sup>9</sup> The result was that the government requested the ABS to collect more information about rural land and water ownership.<sup>10</sup>

### **ABS agriculture survey**

3.10 In November 2010 the government announced that the ABS would undertake a survey to review foreign ownership of agricultural business, agricultural land and water entitlements. The ABS worked with the Treasury, ABARES and DAFF to identify the key data requirements.<sup>11</sup>

3.11 The information gathered in the ABS agriculture survey was collected under the *Census and Statistics Act 1905*. The ABS agriculture survey was undertaken to provide an 'up-to-date view of ownership of business operating in agriculture in Australia and their land and water entitlements'. It was also designed to deliver 'Australian level estimates' with data by state/territory or by industry group provided where available.<sup>12</sup>

3.12 In undertaking the survey, a sample of roughly 11 000 businesses was selected to represent the approximately 165 000 businesses which currently undertake agricultural activity across the country. The ABS argued that, with a sample of 11 000

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7 NSW Farmers' Association, *Submission 17*, p. 2.

8 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 40.

9 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 40.

10 Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, June 2011, p. 40.

11 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 65.

12 Australian Bureau of Statistics, *Agricultural Land and Water Ownership*, Explanatory Notes December 2010, p. 1.

agricultural businesses, the survey was a large one, and one which was representative of the Australian farming industry.<sup>13</sup>

### **Summary of the ABS results<sup>14</sup>**

3.13 The ABS agriculture survey achieved a response rate of 92 per cent of the approximately 11 000 agricultural businesses selected. There were three key findings:

- 98.5 per cent of agricultural businesses in Australia were entirely Australian owned;
- 88.6 per cent of agricultural land area was entirely Australian owned; and
- 91 per cent (12 500 gigalitres) of water entitlements for agricultural purposes were entirely Australian owned.

3.14 There was little variation of Australian ownership in agricultural businesses across sub-industries, with all sub-industries (including mushroom and vegetable farming, dairy cattle farming and sheep, beef cattle and grain farming) having more than 96 per cent of businesses entirely Australian owned. There was also little variation across the states and territories.

3.15 In terms of agricultural land ownership, 5.5 per cent of agricultural land had levels of foreign ownership between 10 per cent and 50 per cent. In addition, 5.8 per cent of agricultural land was majority foreign owned.

3.16 There was some variation in foreign ownership of agricultural land across industry classifications, with 88.3 per cent of sheep, beef cattle and grain farming land being entirely Australian owned. The remaining industries had at least 92 per cent of agricultural land entirely Australian owned. The extent of Australian ownership in agricultural land varied across states from 76.2 per cent of land in the Northern Territory to 98.5 per cent in Victoria entirely Australian owned.

3.17 Foreign ownership of agricultural water entitlements represented, in the committee's view, perhaps the most troubling results. An amount of 1169 gigalitres of water entitlements had some level of foreign ownership and of this, 915 gigalitres of water entitlements were owned by businesses with majority foreign ownership.

3.18 There was significant variation in the levels of full Australian ownership of water entitlements for agricultural purposes across states.<sup>15</sup> There was also significant variation of the level of foreign ownership of water entitlements for agricultural purposes across industry classification. Just over 50 per cent of the water entitlements

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13 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 65.

14 The information in the following section is summarised from information contained in ABS, *Agricultural Land and Water Ownership*, December 2010 (the ABS agriculture survey). The information presented in terms of Australian ownership (unless otherwise stated) because of the differing levels of statistical confidence that apply to the results regarding foreign ownership. The ANZSIC 2006 classification was used for categorising businesses.

15 The potential sample error for the different levels of foreign ownership was too large for precise figures in all states.

for the beef cattle feedlots (specialised) classification were entirely Australian owned. All other industry classifications had more than 80 per cent of water entitlements entirely Australian owned.

### ***Concerns about the ABS methodology and results***

3.19 The committee's questioning of the ABS raised significant concerns about the usefulness of the ABS agriculture survey data. According to the survey, the measure of business size 'was based on the ABS' Estimated Value of Agricultural Operations [estimated value of agribusiness] or a derived value based on Business Activity Statement (BAS) turnover.'<sup>16</sup> Businesses were included in the survey if they had an estimated value of \$5000 or more.

3.20 The ABS's use of businesses valued as low as \$5000 raised questions about whether the survey results might give a misleading impression of the levels of foreign ownership in Australia. This is because very small businesses are likely to be of little or no interest to foreign investors.

3.21 The ABS defended its selection of businesses based on the estimated minimum value of agribusiness of \$5000. The ABS stated that the sampling focused on gaining significant coverage of large businesses. As one official explained:

...based on our proportional methodology, that the final sample selection resulted in 54 per cent of all large businesses with an estimated value of agricultural operations greater than \$5 million, on the survey frame being selected. Only six per cent of the microbusinesses, which are those that have less than \$125,000, were selected, and seven per cent of small businesses, which are those between \$125,000 and less than \$500,000. So the majority of the actual sample that we selected were large businesses.<sup>17</sup>

3.22 However, this evidence can paint an inaccurate picture. While the survey sample selected a much higher percentage of large businesses from the total large business pool than small and micro businesses from the total small and micro business pool, the proportion of large versus small/micro businesses in the ABS agriculture survey sample is significantly different.

3.23 The following table illustrates an approximate percentage of number of businesses by size (micro, small, medium and large) making up the survey sample of approximately 11 000 businesses.

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16 Australian Bureau of Statistics, *Agricultural Land and Water Ownership*, Explanatory Notes December 2010, p. 3. Note the ABS use the acronym EVAO for Estimated Value of Agricultural Operations.

17 Ms Jacqueline (Jacky) Hodges, Regional Director, Tasmania, and Program Manager, Environment and Agriculture Business Statistics Centre, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 67.

**Table 3.1—Percentage of businesses by size selected in the ABS agriculture survey<sup>18</sup>**

<b>Business size</b>	<b>Range of Business Estimated Value</b>	<b>Number of businesses in sample</b>	<b>Percentage of total survey sample</b>
<b>Large Businesses</b>	Greater than \$5 000 000	330	3
<b>Medium-sized Businesses</b>	\$500 001 to \$5 000 000	1870	17
<b>Small Businesses</b>	\$125 001 to \$500 000	3080	28
<b>Micro Businesses</b>	\$5000 to \$125 000	5720	52
<b>Total</b>		<b>11 000</b>	<b>100</b>

3.24 With micro or small businesses (i.e. businesses with an estimated value of agribusiness of between \$5 000 and \$500 000) comprising 80 per cent for the ABS agriculture survey, the committee considers that the survey does not appropriately target the businesses of foreign investment interest which are likely to be large or even medium sized businesses.

3.25 The ABS also acknowledged that the value of agricultural land was not covered in the survey:

**Senator XENOPHON:** Okay, but in terms of the overall value of agricultural production owned by partially or wholly foreign owned businesses, do we go to the 11 per cent figure [of agricultural land with some level of foreign ownership]... In terms of the actual value of—

**Dr Charker:** Value is a different concept.

**Senator XENOPHON:** Yes. Was that covered in this survey?

**Dr Charker:** No. What we have reported on here is number of businesses; proportion of land owned and proportion of water entitlements, not value of production.<sup>19</sup>

3.26 The absence of information in the survey about the *value* of agricultural land under foreign ownership further undermines the usefulness of the survey for determining the level of foreign investment in Australian agriculture. As the following exchange with the ABS indicates:

18 Note: the number of businesses is approximate and based on the percentage figures and approximate sample size provided in ABS, answer to question on notice, 16 November 2011, (received 8 December 2011).

19 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 71.

**Senator NASH:** Can I just follow up on the value issue, because this is spot on the money. As you say, you did not do it on value. The 99 per cent of businesses being Australian owned could, hypothetically, be only 30 per cent of the total value of the 100 per cent of businesses.

**Dr Charker:** It could be. We do not know what their contribution is in a financial production sense.

**Senator NASH:** That is the point. Just so I am clear, a very small per cent of businesses that are not Australian owned could own a significant portion of the overall percentage value of the 100 per cent?

**Dr Charker:** They may or they may not. We have no information to inform that.<sup>20</sup>

### *Self-reporting and company structures*

3.27 Another criticism regarding the ABS agriculture survey was that it was a self-reporting survey that had potential weaknesses in terms of compliance and in uncovering complex company ownership structures, or alternative uses of agricultural land, such as mining. For example, the committee heard evidence that there were limitations to the extent to which responses were independently verified as the following exchange suggests:

**Senator JOYCE:** In following any of this [the survey] up, did you ever go out and say, 'Righto, I'm going to take a sample of this section of country in northern New South Wales'? Why? I can think right now of 10 farmers who have been approached in extremely good farms in northern New South Wales—right now. Did you ever go and take a sample and say, 'Right, let's go for a wander around Moree. Drive up and down the road and actually go in and knock on the door and say g'day to people and do some on-the-ground assessment'? Did you ever do that?

**Dr Charker:** For this collection, no. There was certainly not the time nor the funding available to support that. But, as I said, we do maintain field visits for our broader agricultural collections, and to the extent that we had any information at all from that or other statistics we have got which indicated to us that a particular area or a particular company may have had a degree of foreign ownership, then automatically we made sure that that area or that company was included and received a survey form.<sup>21</sup>

3.28 The committee also heard evidence that complex ownership structures, that may have had significant foreign investment component, were not covered in the survey. The ABS told the committee that for the survey it was 'unable to track all the

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20 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 72.

21 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 69.

way back through complex chains of ownership'.<sup>22</sup> This was further explained by the ABS in the following exchange:

**CHAIR:** Not included in your survey were the title details, not included in your survey were trusts, and not included in your survey were mining companies.

**Dr Charker:** It is not as black and white as that. The situation is that we—

**CHAIR:** That is your own advice to us.

**Dr Charker:** were unable to track back to really complex chains of ownership. What we were able to do was go back a certain way, so that, where a respondent indicated that they themselves were not the owner, we asked them who the owner was and we went back to the owner. But if that owner in turn were owned by another sovereign fund, or there was some sort of situation beyond that, we were not necessarily able to track back as far as that.<sup>23</sup>

3.29 A related issue was that the ABS agriculture survey only covered those companies that continued to use the purchased agricultural land for agricultural production. As the following exchange shows, it is likely that, for example, companies that transferred the use of the land from agriculture to mining were not included:

**CHAIR:** They [surveys] were sent to the minimum turnover you had of an ABN that was agriculture related?

**Mr Hockman:** Yes, or you had to have indicated in registering for your ABN that you had either primary or secondary agricultural activity.

**CHAIR:** So the 42 farms that were bought around the Shenhua mine [in the Liverpool plains region] were not in the register, were they?

**Mr Hockman:** We cannot talk about specifics, but if those businesses had an ABN—

**CHAIR:** If the business is a mining business, it would not have been included—put it that way.

**Mr Hockman:** If they were under the \$5,000—

**CHAIR:** No. Shenhua is 68 per cent owned by a provincial government. It is a mining company that bought 42 farms. That company would not have been included in your survey, because it is a miner—it does not have an ABN that relates to agriculture.

**Mr Hockman:** No. However, if they were—

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22 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 70.

23 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 67.

**CHAIR:** No, that is the answer—that is all I want: 'No, it wasn't included'.<sup>24</sup>

3.30 The ABS clarified the scope and coverage of the ABS agriculture survey in an answer to question on notice:

The frame or list of businesses which were potentially in scope for this survey was drawn from the ABS Business Register. Examples of types of business included in the list of businesses surveyed in the ABS agriculture survey are listed below:

- A mining company which purchased land or an agricultural business, and conducts some agricultural activity was in scope for the ABS agriculture survey;
- A blind trust that has an Australian shelf company which owns agricultural land or operates an agricultural business was in scope for the ABS agriculture survey. There were a number of examples of these identified and their level of foreign ownership confirmed;
- A company that owns agricultural land but does not operate was in scope of the ABS agriculture survey. There were a number of these identified by farming businesses which provided details of the owners of the agricultural land they were leasing in their survey form. Subsequent action was taken to despatch survey forms to those land owners.
- A company which was only leasing agricultural land but did not own it was in scope of the ABS agriculture survey for the purposes of business counts. The owner of the leased land was also in scope of the ABS agriculture survey, as per the point above.<sup>25</sup>

*Information on the regions, farmland type and industry type*

3.31 The ABS summarised the survey's information as 'providing quality estimates of foreign ownership at the Australian and state levels'.<sup>26</sup> However, the limitations of the survey were clearly outlined by the 'agreed output specifications' that ABS received for the survey from Treasury, DAFF and ABARES:

- Foreign ownership of agricultural businesses:
  - Count and percentage of businesses by level of foreign ownership by State;
  - Count and percentage of businesses by level of foreign ownership by agricultural industry at the Australian level only;

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24 Mr Bruce Hockman, First Assistant Statistician, Business, Industry and Environment Statistics Division, Australian Bureau of Statistics, *Committee Hansard*, 10 August 2012, p. 2.

25 ABS, answer to question on notice, 10 August 2012, (received 31 August 2012).

26 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 68.

- Foreign ownership of Australian agricultural land:
  - Area of holding (Ha) and percentage of agricultural land by level of foreign ownership by State;
  - Area of holding (Ha) and percentage of agricultural land by level of foreign ownership by agricultural industry at the Australian level only;
- Foreign ownership of water entitlements (used for agricultural purposes):
  - Water entitlement (megalitres) by level of foreign ownership by State;
  - Water entitlement (megalitres) by level of foreign ownership by agricultural industry at the Australian level only;<sup>27</sup>

3.32 In addition, the ABS representatives told the committee at a private briefing that levels of foreign investment in 'prime agricultural land', as opposed to marginal land, could not be determined from the survey.<sup>28</sup>

*Comparison with previous information*

3.33 The committee also heard evidence that compared the results of the ABS agriculture survey with the ABS's agricultural census in 1983-84 which also examined levels of foreign ownership. At the committee's hearing held on 16 November 2011, Dr Jill Charker, Acting First Assistant Statistician, ABS, told the committee that:

The businesses reporting that they were not fully Australian owned may have been either partially or entirely foreign-owned and, as such, the survey provides information about business land and water entitlements by the extent of their foreign ownership. The survey results are broadly comparable with levels of foreign ownership of agricultural businesses and land collected in the ABS's agricultural census of 1983-84, and I note that the ABS has not previously collected data on foreign ownership of agricultural water entitlements.<sup>29</sup>

3.34 The committee is therefore concerned by seemingly contradictory evidence provided by the ABS at a hearing held on 10 August 2012. At the hearing Ms Helen

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27 Senate Economics Legislation Committee, answer to question on notice, Treasury Portfolio, *Supplementary Budget Estimates*, 19–20 October 2011, question no. 214.

28 ABS representatives, *Private Briefing with the Senate Rural Affairs and Transport Committee*, 21 September 2011. The ABS was asked to comment on the above text regarding prime agricultural land. The ABS noted that '[the] delineation between 'prime' and 'marginal' agricultural land was not identified as an information requirement of the ALWOS [ABS agriculture survey] and therefore estimates could not be produced to inform the level of foreign ownership in these land types.' ABS, correspondence received 9 May 2013.

29 Dr Jill Charker, Acting First Assistant Statistician, Australian Bureau of Statistics, *Committee Hansard*, 16 November 2011, p. 65. This comparison was also reflected in the ABS agriculture survey as published on the ABS website: ABS, *7127.0 - Agricultural Land and Water Ownership (December 2010)*, September 2011.

Baird, Director, Rural Environment and Agriculture Statistics, ABS, stated that the methodology used for the 1983-84 Agricultural Census was significantly different:

**Senator Gallacher:** Your final statement on the summaries of key Australian reports, says that, according to the ABS, these levels of foreign ownership for agriculture businesses and land are broadly comparable to that found in the 1983-84 agricultural census and water entitlements were not measured.<sup>30</sup> What is the difference between what you have done now and what you did in 1983-84?... You are saying that the conclusions are about the same, and I am interested in whether the methodology of calculation was the same. How was the agricultural census working out compared to what you have done now?...

**Ms Baird:** ...I would make the comment that the frameworks under which each of the surveys – a census being a very large survey, I guess – were undertaken was different. So the list of businesses of interest was constituted differently [in the 1983-84 census] than the one with respect to 2010. The methodology also for understanding the area of land, for example, was more on an equity basis than as a single [asset] then attributable to a level of ownership within ranges.<sup>31</sup>

3.35 This response was elaborated on in an answer to question on notice:

Data has been collected by the ABS on foreign ownership in agriculture in respect of 1983-1984 and 2010. The two sets of data are not directly comparable for two main reasons.

- The entity from which information was collected, and to which the ownership status pertained, were different in the two collections. In 1983-1984, data were collected in respect of farms – that is the entity which was operating the agricultural land. The survey did not seek to understand the ownership status of the owner of the agricultural land if that owner was not also the operator of the land. In the 2010 ABS agriculture survey, the survey addressed the question through the business operating the agricultural land and also sought to understand the ownership status of the owner of the land if they were not operating the land.
- The methodology used to report the area of agricultural land with a level of foreign ownership was fundamentally different. In 1983-1984, an equity methodology was used whereby the percentage of foreign ownership of the operating entity was applied to the area of operated land to provide an area of foreign operated agricultural

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30 Senator Gallacher was quoting from the comparison made in the media release by the ABS about the agriculture survey. See ABS, Media Release, 'Agricultural businesses almost entirely Australian owned', 9 September 2011, [www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/7127.0Media%20Release1December%202010?opendocument&tabname=Summary&prodno=7127.0&issue=December%202010&num=&view](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/7127.0Media%20Release1December%202010?opendocument&tabname=Summary&prodno=7127.0&issue=December%202010&num=&view).

31 Ms Helen Baird, Director, Rural Environment and Agriculture Statistics, Australian Bureau of Statistics, *Committee Hansard*, 10 August 2012, p. 8.

land. In the 2010 ABS agriculture survey, the land was treated as a single asset and the level of foreign ownership (in ranges) was identified for that asset.<sup>32</sup>

3.36 In January 2012, the government announced that it would fund future ABS agriculture surveys in 2013 and 2018. This would be complemented by an expansion of the agricultural census in 2016 and 2021 to provide more information on foreign ownership of agricultural land and water entitlements.<sup>33</sup> The ABS also made a submission to the consultation paper on the foreign ownership register (discussed below) and noted that the working group should consider ways that the register information could link with other sources, including the ABS agriculture survey. However, the ABS also stated in this submission that 'the [ABS agriculture survey] information could not provide a substitute for [an initial] stocktake [of foreign ownership], as it produces only aggregate, point-in-time statistics which would not allow for tracking of flows in acquisitions and disposals of land between surveys.'<sup>34</sup>

#### *Committee view*

3.37 The committee is highly concerned by the significant limitations of the results from the ABS agriculture survey. Three key problem areas make the committee very weary of the characterisation of the results as a reliable indicator of the level of foreign investment in agricultural land and businesses in Australia.

3.38 First, foreign investment is likely to be directed towards medium and large farming enterprises. The committee is therefore concerned that the ABS has included a very large number of very small farming enterprises in the sample selection. In the committee's view this significantly undermines the credibility of the survey. The use of an estimated value of agribusiness of between \$5000 and \$125 000 is far too low as it captures over half of the businesses surveyed. These are micro businesses that are likely to be highly irrelevant to the interests of foreign investment, as the committee believes that it is highly unlikely that a foreigner buyer would consider a business valued as low as \$5000.

3.39 It appears to the committee that either 52 per cent or potentially 80 per cent of the businesses included in the ABS survey were irrelevant to the question the ABS was seeking to report on. The inclusion of these businesses is likely to have significantly skewed the findings of the ABS study.

3.40 Second, the committee considers that the self-reporting aspect of foreign ownership in the questionnaire undermines the veracity of the survey results as it clearly relies on the goodwill of companies to report foreign ownership. The committee is conscious that it would be tempting for some companies to not fully

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32 ABS, answer to question on notice, 10 August 2012, (received 31 August 2012).

33 See ABS, Survey of Agricultural Land and Water Ownership, [www.abs.gov.au/AUSSTATS/abs@.nsf/DOSSbytitle/7D1341AF14A92E5ECA257829007BA6D0?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DOSSbytitle/7D1341AF14A92E5ECA257829007BA6D0?OpenDocument) (accessed 3 May 2013).

34 ABS, *ABS Submission to the consultation paper: 'Establishing a national foreign ownership register for agricultural land'*, January 2013, p. 5.

report the levels of either direct or indirect foreign ownership. In the case of large companies, this would only need to happen on a few occasions to distort the results in the survey.

3.41 Third, the committee is concerned by the lack of ability of the survey results to drill down to regional levels, quality of farmland, and Australian and New Zealand Standard Industrial Classification (ANZSIC) groups. The committee is aware that farmlands differ greatly in their productive and agricultural value. The ABS agriculture survey provides virtually no ability to analyse its data in a way that could shed light on the levels of foreign ownership of prime farmland, for particular rural communities, or the beyond the most cursory examination of different agricultural industries.

3.42 Due to these problems the committee is disturbed by public references to the ABS agriculture survey to dismiss the concerns about the levels of foreign investment in Australian agriculture. In addition, given the significantly differing methodologies that were used for the ABS agriculture survey and the survey published in 1983-84 regarding foreign ownership, the ABS's claim that the two surveys show 'broadly comparable' results significantly misleads the public debate on foreign investment in Australian agriculture.

3.43 Finally, the committee considers that the major concerns noted above seriously undermine the value of the ABS agricultural survey in informing public debate about the levels of foreign investment in Australian agriculture. The committee also notes that the government has committed to implementing a national register of foreign ownership of agricultural land (discussed below). In light of this, the committee considers that there is little value in the ABS conducting future agricultural surveys. However, in regard to the agricultural census, the committee considers that it has and will continue to provide important information about the agricultural industry. Therefore, the committee agrees with the government's proposal to collect additional data about foreign investment in future agricultural censuses.

## Recommendation 5

**3.44 The committee recommends that the ABS does *not* conduct future ABS agricultural surveys on foreign investment. The committee considers that the national register for foreign ownership of agricultural land should be the primary mechanism for collecting and publishing information about foreign investment in Australian agriculture (as per the recommendations below).**

## ABARES' study

3.45 As noted above, on 23 November 2010, the government announced an 'information-gathering process to address some emerging community concerns about foreign ownership of agricultural land and agricultural food production'.<sup>35</sup> As part of

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35 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. iii.

this process, the Rural Industries Research and Development Corporation (RIRDC) commissioned ABARES to undertake an evaluation of the economic impact of foreign investment in Australian agricultural industries and agribusiness. ABARES was also asked to review of the extent to which some other countries monitor and regulate foreign investment in agricultural land.

3.46 It was the government's intention that this work would complement the data being collected by the ABS in relation to foreign ownership of rural land and water.<sup>36</sup> The result was the ABARES report, entitled *Foreign investment and Australian agriculture*, which was released in January 2012.

3.47 Some of the key findings of the report that are relevant to the committee's inquiry are:

- 1.6 per cent (worth \$2.33 billion) of foreign direct investment approvals in 2009/10 were in agriculture, forestry and fishing.
- Since 2008 (with deregulation of wheat export arrangements) there has been an increased foreign investment interest in grain bulk handlers and exporters, e.g. Viterra (Canadian) acquiring ABB Grain and Cargill (US) now owning AWB Ltd. Half of the 23 licensed wheat exporters in Australia are foreign owned.
- Since 2000 (with deregulation of the dairy industry) about half of Australian milk production is processed by foreign owned firms (e.g. Fonterra (NZ), Lion (Japan), and Parmalat (France)).
- Three foreign owned milling groups make up almost 60 per cent of Australia's raw sugar production (the foreign companies involved in sugar refining are Finasure (Belgium), Wilmar (Malaysia, Singapore) and COFCO (China, state owned)).
- About 40 per cent of Australian red meat production is processed by foreign owned firms (based on throughput).<sup>37</sup>

3.48 These examples highlight some important recent changes in foreign investment in Australian agriculture. However, it should be noted that the report does not undertake major new data collection but relies on other data sets and publicly available information. These information sources included: the ABS agriculture survey and other ABS data sets regarding foreign investment; the Queensland State Government's register of foreign ownership of land and water entitlements; other reports and case studies of various companies and sub-industries in agriculture.<sup>38</sup>

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36 Department of Agriculture, Fisheries and Forestry, *Submission 1*, p. 2.

37 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, pp 26–34.

38 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, pp 1–5 and 18–25.

3.49 Indeed the report conceded that while some sources were accessible to develop the conclusions of the report:

...there is no systematic source of data on the foreign ownership of agribusiness companies. Nor is there regular information on the nationality of foreign investors or about the type of entity involved. The extent of investment by foreign government entities is also not known.<sup>39</sup>

#### *Committee view*

3.50 Given that the ABARES study was one of the key announcements of the government to improve the information regarding foreign investment in agriculture, the committee is disappointed that ABARES were not directed to collate significant new empirical information.

3.51 The report certainly brought together some useful existing information about foreign investment in Australian agriculture, and the case studies discussed above help confirm some of the anecdotal evidence that the committee has received elsewhere about significant levels of foreign investment.

3.52 However, the committee is concerned about the reliance on the ABS data for parts of the report, given the concerns outlined with it above. The ABARES report, therefore, was not able to provide the in depth information of foreign investment that stakeholders and rural communities are desperately seeking.

### **The national register of foreign ownership of agricultural land**

3.53 The most promising development from the government to address the information gaps in foreign investment in agricultural assets was the commitment to, following consultation with stakeholders, establish a national register of foreign ownership of agricultural land. The committee strongly supports its establishment, based on the overwhelming evidence received through submissions and witnesses, as outlined above.

3.54 The committee discussed the development of the consultation for the register at a public hearing on 16 August 2012. The process at that staged was outlined by one Treasury official as:

The government issued a press release on 15 June [2012] to say that they wanted a working group to consult on the development of a Commonwealth foreign ownership register for agricultural land. Realistically, the purpose of all of this is to give greater transparency on the ownership of agricultural land in Australia and what is described as a more comprehensive picture of the specific size and locations of foreign agricultural land holdings, over and above what we know at the moment.<sup>40</sup>

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39 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 1.

40 Mr Jim Murphy, Executive Director, Markets Group, Treasury, *Committee Hansard*, 16 August 2012, p. 22.

3.55 In November 2012, a discussion paper for public consultation was released by the Treasury. The paper sought submissions on the following issues:

- The scope of the register in terms of information collected and the definition of relevant terms such as agricultural land;
- The use of a threshold to exclude small transactions;
- The need for an initial stocktake of foreign investment;
- The monitoring of divestments as well as investments;
- Australia's international obligations;
- Compliance issues, including the timeframe for registration; and
- Public access to the information.<sup>41</sup>

3.56 Submissions under the Treasury consultation process have closed. Treasury received 33 submissions and all but 6 (which remain confidential) are available on the Treasury website.<sup>42</sup> The committee notes that these submitters indicated broad support for a register and that more information about levels of foreign investment would be beneficial. However, some submitters were also concerned about cost, administrative burden, privacy issues and potential disincentives to foreign investment. There were also varying views on the extent to which the information should be collected and made public.<sup>43</sup>

#### *Committee view*

3.57 The committee strongly supports the development of the register for foreign ownership of agricultural land. The committee also believes that the register should be as streamlined as possible to avoid unnecessary costs and administrative burdens. Where appropriate, it should protect personal privacy and commercial confidentiality.

3.58 However, the committee also believes that if established properly, the register will not cause a disincentive to legitimate and commercially orientated foreign investment. Consistent with the issues outlined above regarding the agricultural survey and in later chapters regarding the definition of 'rural land' in the FATA, and the importance of transparent management of water entitlements, the committee recommends that the register incorporate the following recommendations.

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41 The Treasury, *Establishing a national foreign ownership register for agricultural land, Consultation paper*, November 2012, [www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2012/agricultural%20land/key%20documents/pdf/Consultation\\_Paper.ashx](http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2012/agricultural%20land/key%20documents/pdf/Consultation_Paper.ashx) (accessed 7 November 2012).

42 [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/agricultural-land](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/agricultural-land).

43 See, for example, submission by AAG Investment Management, the Institute of Chartered Accountants Australia, the Macquarie Group, the National Australia Bank, the National Farmers Federation and state based farmers' federations. Some individual submitters opposed foreign ownership, in general, and therefore the register, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/agricultural-land](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/agricultural-land).

3.59 Finally, the committee is mindful of the significant lack of information regarding foreign investment in agriculture (discussed in this chapter). The committee also considers that in addition to improving the knowledge of current circumstances, modelling of future circumstances is needed to inform the public debate. To this end, the committee considers that it is essential that the public is provided with modelling that shows the possible costs to the agricultural industry should current arrangements (including current regulation and barriers to domestic investment) regarding foreign investment in Australian agriculture remain unchanged.

### **Recommendation 6**

**3.60** The committee recommends that when establishing the agricultural land register, the government conduct an initial stocktake of foreign ownership of agricultural land, agribusiness and water entitlements. In addition to numbers of businesses, land size and volume of water entitlements, the value of foreign investment acquisitions should be captured. The initial stocktake should be comprehensive, as far as possible consistent across states, and take into account complex company structures including foreign trusts, "shell companies", ownership of agricultural assets by foreign mining companies, and debt structuring and ultimate liability.

**3.61** Furthermore, on the basis of this initial stocktake, the government should commission independent modelling of the level of foreign investment in Australian agriculture in 20 years' time if current trends and regulatory arrangements are assumed to remain. The modelling should also include estimated costs to the industry over the same period based on current constraints to domestic capital investment in Australian agriculture. Finally, the modelling should have regard to the future opportunities provided by the growing global food task over this period.

### **Recommendation 7**

**3.62** The committee recommends that the ongoing information collected in the register include the information that the committee recommended be included as part of the stocktake of foreign ownership (as per recommendation 6).

### **Recommendation 8**

**3.63** The committee recommends that the register include divestments as well as investments. This will ensure that the information from the register remains current and can reflect changes over time.

### **Recommendation 9**

**3.64** The committee recommends that participation in the register be a legal requirement for foreign investors and that appropriate mechanisms for compliance apply in cases where such participation is avoided.

### **Recommendation 10**

**3.65** The committee recommends that the register *not* use the current definition of 'rural land' in the FATA. Instead the definition adopted should be that which results from the update of 'rural land' as per recommendation 25. This would maintain consistency with the regulatory framework for foreign investment in Australian agriculture.

### **Recommendation 11**

**3.66** The committee recommends that there be no minimum threshold for reporting and that all foreign investment should be captured in the agricultural land register. However, this data should be collected in a manner that can clearly delineate foreign investments in terms of value and business size.

**3.67** Although the committee is mindful of privacy and the need for business transactions to be protected by certain levels of commercial confidentiality, it also considers that the information collected be as accessible to public and parliamentary scrutiny as possible. In general, the committee considers that the public debate on this issue will benefit greatly with the availability of significantly more information about the levels and nature of foreign investment in agriculture.

### **Recommendation 12**

**3.68** The committee recommends that the register's data be held in a manner that is centralised and can provide comprehensive information about all foreign ownership that is recorded.

### **Recommendation 13**

**3.69** The committee recommends that levels and trends of foreign ownership of land, agribusiness and water entitlements should be published annually by the national register for foreign ownership of agricultural land. Aggregate level data about the respective value and level of interest of foreign government investors and private foreign companies should be included. The data should also be made available in categories such as state, sub-industry (ANZSIC levels), water catchment areas, and local shires.

### **Recommendation 14**

**3.70** The committee recommends that country of origin of all foreign government investors and specific foreign government investments should be published annually by the national register for foreign ownership of agricultural land.

### **Recommendation 15**

**3.71 The committee recommends that, in order to prevent possible disincentives for foreign investment, the country of origin details for private foreign companies should be published by the national register for foreign ownership of agricultural land at aggregate levels only. However, country of origin details for specific private foreign investments should be made available to parliamentarians, parliamentary committees, and any relevant government agency upon request.**

