

Dissenting report by Government Senators

1.1 This dissenting report reflects the views of Government senators to the issues raised in the majority's interim report and the majority's final report of the committee's inquiry into the Foreign Investment Review Board National Interest Test.

1.2 We acknowledge the work of the Committee in this inquiry and note the majority's report on this issue. Government senators have significant concerns with the assertions of the majority's report and its recommendations.

1.3 The Committee has received detailed testimony from a number of sources over the course of this inquiry. However, the majority's report does not adequately balance the weight of evidence before the Committee.

1.4 Foreign investment has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

1.5 The issue of foreign investment has received significant attention in the last few years and has been the subject of numerous inquiries from both the Senate and Australian Government agencies. These reports have provided significant amounts of information and analysis upon which Australia's foreign investment policy should be guided.

1.6 Government senators suggest that the majority failed to pay due regard to much evidence before the Committee and, most significantly, the findings of many of these thorough and well-researched reports in coming to its conclusions.

Regulatory regime for foreign investment in Australia

1.7 Australia has a rigorous and robust foreign investment screening regime. The *Foreign Acquisitions and Takeovers Act 1975* provides the legislative framework for the Government to review significant foreign investment proposals on a case-by-case basis. It enables the Treasurer to block proposals that he finds contrary to the national interest or impose conditions on an investor to address national interest concerns. All foreign governments and their related entities must notify the Foreign Investment Review Board and receive approval for direct investments, new businesses and land acquisitions, irrespective of the value of the investment.

1.8 This case-by-case approach under the screening process maximises investment flows while protecting Australia's national interest. In the agricultural sector, it helps ensure that investments do not adversely affect the sustainability of Australia's national agricultural resources, including their economic, social and environmental contribution to Australia.

1.9 It is also important to note that investors are not only subject to the national interest test under the *Foreign Acquisitions and Takeovers Act*, they are also subject to all Australian and State and Territory laws, including in regards to taxation, land use, the environment and competition.

1.10 There have been numerous inquiries into foreign investment, and in particular in the agriculture sector, over the last few years. These reports have consistently endorsed the current foreign investment screening process under the Foreign Acquisitions and Takeovers Act and administered by the Foreign Investment Review Board.

1.11 In 2009, the Senate Economics References Committee inquiry into Foreign investment by state-owned entities, Chaired by Liberal Senator Alan Eggleston, found that the current arrangements were adequate in protecting the national interest.

The Committee believes that the current regulatory framework for assessing foreign investment proposals, whether they are made by private commercial interests, sovereign wealth funds or state-owned entities, is sufficient.¹

1.12 The committee went on to say:

The Committee is also of the belief that, having considered all the evidence, the system of case-by-case assessment, based on the national interest, has also served Australia well.²

1.13 This view was reaffirmed in June 2011 when the Senate Economics Legislation Committee, looked at a bill to change the foreign investment rules in relation agricultural land. In its report, the Committee concluded that current laws, including the Foreign Acquisitions and Takeovers Act had served Australian well in protecting the national interest, stating:

The Committee continues to hold the view that the current regulatory framework for assessing foreign investment proposals is adequate. The combined powers of the *Foreign Acquisitions and Takeovers Act 1975*, the *Foreign Acquisitions and Takeovers Regulations 1989*, the *Competition and Consumer Act 2010* and the system of case-by-case assessment based on the national interest, has served Australia well.³

1.14 Finally, in 2010 the Government asked the Australian Bureau of Agricultural Resource Economics and Sciences to look at and report on foreign investment in agriculture. The report, released in January 2012, found that the current laws were providing a considerable level of scrutiny that was sufficient to protect the national interest.

These mechanisms amount to a considerable level of scrutiny of foreign investment proposals and operations of foreign-owned agribusinesses in Australia. With such scrutiny, it appears Australia's regulatory framework is likely to be sufficient to ensure Australia's national interest in relation to

1 Senate Economics References Committee, *Foreign investment by stat-owned entities*, September 2009, pp 61–62.

2 Senate Economics References Committee, *Foreign investment by stat-owned entities*, September 2009, p. 62.

3 Senate Economics Legislation Committee, *Foreign Acquisitions Amendment (Agricultural Land) Bill 2010*, June 2011, p. 41.

new foreign investment in agribusiness and the competitive behaviour of foreign owned agribusinesses in the Australian market.⁴

1.15 These three reports are a sample of the in-depth analysis that has looked at this issue. Their consistent findings illustrate the strong protections in place and the adequacy in protecting the national interest.

1.16 There are areas though where the Government can improve transparency around foreign investment and the foreign investment screening process. Much of the anxiety around foreign investment in agriculture appears to be based on misunderstandings of the levels of investment and the motives of foreign investors in Australia.

1.17 To address these concerns and provide the community with more information the Government has made a number of improvements to Australia's Foreign Investment Policy.

1.18 In 2008, the Treasurer released six national interest principles to apply to foreign government investors.

1.19 In 2010, the Government released a publicly available Foreign Investment Policy to provide guidance to investors and the community on Australia's foreign investment screening regime.

1.20 In 2011, the then Assistant Treasurer, the Hon Bill Shorten MP, commissioned a survey from the ABS on ownership of agricultural land and water. This survey showed that the overwhelming majority of agricultural land and businesses are Australian owned. This survey was conducted according to the Australian Bureau of Statistics' high standards of data collection.

1.21 In January 2012, the Government released a new policy statement on foreign investment in agriculture, which outlined the national interest considerations for foreign investments in the agriculture sector.

1.22 The Government has also announced that it will introduce a register of foreign ownership of agricultural land to provide even greater transparency over agricultural land holdings.

1.23 There is, however, a balance to be struck between providing greater transparency and the disclosure of private or commercially sensitive investor information, which may impact on investor perceptions of Australia as an attractive destination for investment. Transparency also needs to be balanced against trade obligations under international agreements. The Government should continue to look at ways to improve transparency, mindful that such measures should not discourage foreign investment or breach our international trade obligations.

4 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 36.

Recommendation 1

1.24 The Government should continue to look at ways to ensure the community has more and accurate information about foreign investment, particularly in agricultural land.

1.25 In considering these initiatives, the Government should be careful to avoid disclosing private or commercially sensitive information or breaching Australia's international obligations.

Motivations of investors in the agricultural sector

1.26 Government Senators note that there is concern in the community about the motivations behind investment from some state-owned entities.

1.27 Evidence presented to the Committee shows that this investment is commercially motivated, including the following testimony from Hassad Australia:

when they [Hassad Food company] put the plan together—and I have to advise that most of the key advisers within their company are actually Australian—they realised that it would not be successful if it did not have a commercial outcome. To invest just for the purposes of producing food is not sustainable in the long term.⁵

1.28 This statement is reinforced by the expert ABARES report, which found that suggestions that investors are coming to Australia to invest on a non-commercial basis does not stand up to scrutiny. Their conclusion was that such an approach would be unsustainable in the long term, much more expensive than alternative options and would need to take place on a scale that vastly exceeds present levels of investment:

But the suggestion that the purchase of farmland in a foreign country is an effective means of increasing the supply of food at home demands some analysis. Australia and many other world food suppliers have well-established and efficient marketing institutions for food exports, and bypassing these to make direct shipments from one or a few farms would be an expensive way to move produce abroad. To achieve economies in this process, and to have a significant impact on the food supply in the investing country, would require land purchases on a scale that vastly exceeds present levels. The cost would be extreme – purchasing food from the world market, even with the aid of government subsidies if required, is likely to be a significantly cheaper option. There is also considerable uncertainty as to whether such a strategy would be fiscally sustainable in the long term, if no consideration is given to profitability.⁶

Contribution of foreign investment to Australia

1.29 Government members are conscious that many of the recommendations from Coalition members would put at risk beneficial foreign investment in Australia. This

5 Mr Tom McKeon, Chief Executive Officer, Hassad Australia Pty Ltd, *Committee Hansard*, 16 November 2011, p. 40. See also paragraph 4.30 of the majority report.

6 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 25.

is because the further barriers on foreign investment will create uncertainty and increase risk for investors. In a competitive investment environment, this capital will flow to other nations, boosting their competitiveness and further disadvantaging the Australian agriculture sector.

1.30 According to the expert ABARES report,

Any measures that put further barriers in the way of foreign investors and reduce the flow of foreign capital into Australian agriculture would adversely affect the performance of the agricultural sector. Lower investment would result in lower output, exports and incomes than would otherwise be the case. Opportunities for improved efficiencies could be lost, and distortions, such as increased use of foreign credit, would be encouraged.⁷

1.31 This finding reinforces data from the Australian Bureau of Statistics, the Organisation for Economic Cooperation and Development, the Australian Bureau of Agricultural and Resource Economics and Sciences and private organisations. This data dispels many of the myths propagated in the community by opponents of foreign investment. Some of these key facts include:

- The overwhelming majority of businesses are entirely Australian owned - 96.8 per cent as at June 2011.⁸
- Our agriculture sector is overwhelmingly Australian owned - 99 per cent of agricultural businesses and 89 per cent of agricultural land was entirely Australian owned as at 2010.⁹
- Chinese investment is hugely overstated - out of a total of \$2.2 trillion of foreign investment in Australia in 2012, investment from China made up less than 1.1 per cent of that.¹⁰
- Our economy needs additional investment to keep growing – the gap between our national savings and our investment needs has averaged around 4 per cent of GDP over the past few decades, which means we need around \$50–70 billion of new capital from overseas every year to supplement this deficit.¹¹

7 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 48.

8 Australian Bureau of Statistics, ABS cat 8167.0, *Selected Characteristics of Australia Business 2010-11*, "Business Structure and Arrangements", 13 September 2012, www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8167.0Main%20Features32010-11?opendocument&tabname=Summary&prodno=8167.0&issue=2010-11&num=&view.

9 Australian Bureau of Statistics, *Agricultural Land and Water Ownership*, December 2010, released 9 September 2011.

10 Australian Bureau of Statistics, ABS cat 5352.0, *International Investment Position, Australia: Supplementary Statistics, 2012*, "Table 2 - Foreign Investment in Australia, Level of Investment by Country and Country Groups by type of investment and year: (\$million)", released, 2 May, 2013, www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5352.02012?OpenDocument.

11 2013-14 Budget, BP1 BS2 Box 5 Chart A, www.budget.gov.au/2013-14/content/bp1/download/bp1_bs2.pdf.

- The agriculture sector is one sector in particular that needs significant capital investment – an ANZ Research Report suggests that the agriculture sector could generate up to \$1.7 trillion in export revenue by 2050.¹²
- Businesses with foreign ownership make a huge contribution to the economy - 12 per cent of private sector employment, 25 per cent of gross fixed capital formation and 21 per cent of total value added in Australia, according to a 2004 ABS study.¹³
- Foreign investment brings innovation, a key factor in productivity – firms with foreign ownership spend more on innovation than the average Australian-owned firm. A 2010 ABS study found that firms with some foreign ownership accounted for 42 per cent of Australia's research and development spending.¹⁴
- Claims that we have the most liberal regime simply aren't true - at a national level, regulation of foreign investment in Australia is greater than that of most other OECD countries.¹⁵
- Raising barriers to foreign investment will hurt Australian farmers – places that do have high restrictions on foreign investment, like Alberta Province in Canada, generate lower incomes for farmers.¹⁶
- Limiting foreign investment will hurt wages and shrink the economy - Treasury analysis shows a reduction of investment of 1 per cent of GDP will see unemployment increase by 0.5 per cent in the first year and over a decade will see the economy 0.7 per cent smaller, wages 2.0 per cent lower, and investment 3.1 per cent lower.¹⁷

1.32 This data shows that foreign investment has been crucial to the Australian economy for a number of years. It provides significant benefits and will continue to do

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- 12 Jackson Partners (Commissioned by ANZ), ANZ Insight, *Greener Pastures: The Global Soft Commodity Opportunity for Australia and New Zealand*, Issue 3, October 2012, p. 1.
- 13 Australian Bureau of Statistics, *Economic Activity of Foreign Owned Business in Australia, 2000-01*, 5494.0, 9 January 2004
[www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B57862618642D2B4CA256E1500752AC7/\\$File/54940_2000-01.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B57862618642D2B4CA256E1500752AC7/$File/54940_2000-01.pdf).
- 14 Australian Bureau of Statistics, ABS cat 8104.0, *Research and Experimental Development, Businesses, Australia, 2010-11*, released 11 September 2012,
www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8104.0Main+Features12010-11?OpenDocument.
- 15 OECD, "FDI regulator restrictiveness index 2012", www.oecd.org/daf/inv/ColumnChart-FDI_RR_Index_2012.pdf.
- 16 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 43.
- 17 Jyothi Gali and Bruce Taplin, "The macroeconomic effects of lower capital inflow", Treasury Economic Roundup, Issue 3 2012,
www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2012/Economic%20Roundup%20Issue%203/Downloads/PDF/01.ashx.

so and the impact of raising barriers to foreign investment will be hard felt, particularly in agricultural communities.

Food Security

1.33 Australia has a high level of food security and there are steps being taken to further secure our food supplies and opportunities for Australia farmers to supply world food markets.

1.34 For a start, Australia produces enough to feed the country twice over. In fact, we are in the top five countries in the world for access to affordable food.¹⁸ The recently announced National Food Plan lays out a strategy for Australians to continue to have access to safe and nutritious food and contribute to global food security. Progress towards the goals laid out in the National Food Plan will be assessed every five years in a State of the Food System report. This will ensure Australians are kept well informed about food security issues.

1.35 As part of the National Food Plan, the government has also established the Australian Council on Food, a high-level policy advisory body bringing together Government Ministers and non-government members from a range of sectors. This Council will meet bi-annually and ensure that food policy issues – including food security issues – are placed at the centre of government policy making. Similarly, the government will also ask the Productivity Commission to identify priority areas for reform of food supply chain regulations looking from the paddock to the plate in Australia. This will make it easier for our farmers and food manufacturers to focus on what they do best – produce high quality food instead.

1.36 The greater risk to food security comes from barriers which will reduce investment in our agriculture sector. The expert ABARES report found that,

Australia's food security is likely to be further enhanced by ongoing foreign investment in agriculture.¹⁹

1.37 The ABARES report goes on to find that restrictions which lowered the level of investment '*would result in lower output*'(emphasis added).²⁰

1.38 The first ever National Food Plan will ensure our agriculture sector remains at the forefront of technology and innovation, and has access to the capital needed to grow and invest in the industry. It's clear from the evidence that cutting off reliable and stable sources of investment would have many impacts on our food security and our economy.

18 Department of Agriculture, Fisheries and Forestry, *National Food Plan, Our food future*, 2013, Canberra, p. 56.

19 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 13.

20 Mr Brian Moir, *Foreign Investment in Australian Agriculture*, RIRDC, Canberra, November 2011, p. 48.

Taxation

1.39 Tax revenues are an important way that foreign investors contribute to the Australian community. Tax can be a complex area of law and is easily susceptible to misinterpretation or misunderstanding.

1.40 There have been some concerns from the majority of the committee that foreign government investment in rural land could lead to Australia not receiving tax revenue related to the production that takes place here. There are a number of safeguards in place to prevent this. Most importantly revenue implications are an important element of the national interest test and the Australian Taxation Office is regularly consulted to advise on proposed investments.

1.41 Importantly, neither the Australian Taxation Office nor the Foreign Investment Review Board could point to a single case where investment in rural land by overseas entities has involved arrangements that potentially circumvent Australia's tax laws.

1.42 Australia's transfer pricing rules also play an important role in ensuring appropriate income is assessable in Australia. Australia's transfer pricing laws seek to ensure that Australia receives an appropriate return for the economic contribution made by Australian operations. There is currently a bill before the Senate, the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013, which implements reforms to ensure these important rules continue to be robust and effective.

1.43 The doctrine of sovereign immunity has also been raised as a possible area of risk in relation to the tax outcomes of proposed investment in rural land. The doctrine of sovereign immunity has very limited application and again the Australian Taxation Office could not point to a single case where farming activities have satisfied the criteria for concessional treatment under the sovereign immunity rules. Further the Government has released a discussion paper on reforms to the sovereign immunity regime that would specifically preclude concessional tax treatment of investments in land of any kind as a result of sovereign ownership.

Recommendation 2

1.44 The Senate should pass unamended the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 to ensure that Australia's transfer pricing rules are robust and effective.