

Senate Rural and Regional Affairs and Transport References Committee

**Questions on Notice – Thursday, 21 March 2013
CANBERRA**

Inquiry into the Examination of the Foreign Investment Review Board National Interest Test

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 21 March 2013

Questions Taken on Notice – Foreign Investment Review Board

1. HANSARD, PG 11

CHAIR: ... It would be interesting for the committee to see if the rules and regulations that apply are being enforced. From the evidence we took earlier from your predecessor, Mr Wilson, it was: yes, there is a set of rules there, there is a hotline and all sorts of things. But if someone does not fulfil their obligations under the foreign investment review act then there did not appear to be a penalty.

Would it be too difficult, or do you not have the information available today?
Could we put that on notice and have the answer in camera?

Ms Gerathy: Can we take that on notice?

CHAIR: Yes.

Ms Gerathy: I can say that foreign government entities are required under the policy to come to the Foreign Investment Review Board in relation to acquisitions of agricultural land. I guess that the second part of your question is if we were aware. We were certainly aware that Hassad is acquiring agricultural land. If we became aware of an instance where a company was not coming to us, then we would approach them.

CHAIR: Could you note the time and the day, for if you receive an application after this minute! I would be interested to know about the recent acquisitions in our shire. You have to pick somewhere—I have no particular reason, and I can provide you with the recent acquisitions to see if they actually did come to the board for approval.

Senator NASH: Can I just follow on with that as well? Again, just taking that snapshot of places: as Senator Edwards would well know there was the purchase of a property by Hassad in Bordertown in South Australia. Could you take that one on notice as well?

2. HANSRAD, PG 16–17

CHAIR: There was a nicely worded announcement from Treasury on 23 October 2012 of the development of a national foreign ownership register for agricultural land. The government announced that written submissions should be provided to the working group secretariat by close of business, Friday, 1 February 2013. Would you care to update us on those submissions and how many you received?

...

Ms Gerathy: As of yesterday [20 March 2013], we had received around 30 submissions. We received the majority of them by 1 February, but we did receive some after that time. The process that we are going through at the moment is with the working group. There is quite a number of government agencies involved in the working group. We are analysing the submissions and considering the feedback that we have received, and we are working with the working group and will be providing advice to the government in due course.

CHAIR: Would it be too difficult, because we are an inquisitive bunch, to make those submissions available, either in camera or whatever way is suitable, to this committee?

Ms Gerathy: Can I ponder that and get back to the committee?

CHAIR: Yes. You can take that on notice.

3. HANSRAD, PG 17

CHAIR: ... Recently, Cubbie was acquired and there was a requirement under the deal to sell down to 51 per cent from 80 per cent. You may have to take this on notice. Was there any penalty regime in that agreement if they do not do that? You may care to take that on notice if you do not know the answer.

Ms Gerathy: I probably have the press release here, but it will take me a while to find it.

CHAIR: You can take it on notice.

Ms Gerathy: Our expectation, though, is that foreign investors do that, and they are required to report to us regularly. So, if there are any issues in relation to foreign investors meeting conditions or undertakings, then we would expect them to tell us well in advance. Sometimes that could be because circumstances change, but our expectation is that they would meet that.

CHAIR: Is there the capacity to have a penalty regime if they do not?

Ms Gerathy: Under the act there is. I think that Mr Wilson referred to the penalty arrangements earlier. But, once again—

CHAIR: You can take that on notice. I would be interested in whether there was a 'sixpenny fine' or a leave-the-country sort of arrangement. You may respond appropriately in time to that.

4. HANSRAD, PG 17

CHAIR: ... As you may or may not be aware—and if you follow this place you will know this—for many years I have been talking about the licensing water arrangements on Cubbie, which is on the Culgoa system, the Condamine-Balonne, which has a mean variation annually of 835 per cent, and that means that it is highly variable. They acquired licences for the water of overland flow which were based on the size of the storages they built without an environmental plan. They have allowed them to build 1,500 gigalitres of storage on the river system on the mean flow of 1,200 gigalitres, so, if you are downstream, you get nothing.

But I note that there is a proposition which does not surprise me. I said at the time that they should not have issued the licence because I thought it was a fraud of the public purse, because in issuing the licence they knew that whoever got the joint was going to sell the water back. There is now a proposition, as I understand it, to sell some of the water back to the taxpayers, the taxpayers having provided the licence for nothing. I think it would be fair to say that my question would be on notice. These overland flow licences that were issued to Cubbie were issued after the sale of Cubbie for nothing. The overland flow licences did not cost them anything, because most of the water that Cubbie used was unlicensed, unmetered, unregulated and free and was what we call a right to the water without a licence to the water. It was a sort of vagary which came out of the Joh Bjelke-Petersen time, and it was Russ Hinze type thinking. If that water is now sold in the national interest, given the tax regime, could you answer the question of what the capital gains tax, or the tax treatment, would be for the water whose licence is issued for zero dollars and will now be sold will be? If it is sold at the rate of the buyback on the Toorallie, which is on the Warrego River, for \$350 a megalitre, could you give some thought to what the tax treatment of that might be? This is sort of getting on the edge of the page for you, I realise, but—

Ms Gerathy: It would dangerous for us to answer a tax question, so—

CHAIR: But you might take it away. One of the good things that this committee has been able to do is just send little messages. So you might give some consideration to that. I think it is pretty regretful the way they have gone about that.