CPC

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Submission to the Senate Economics Legislation Committee inquiry into the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020.

November 2020

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[redacted]

The Secretary
Senate Standing Committees on Economics
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Wednesday 11 November 2020

Dear Secretary,

Consolidated Pastoral Company appreciates the opportunity to make a submission to the Senate Economics Legislation Committee inquiry into the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020.

CPC would welcome the opportunity to appear before the committee to expand on this submission.

Yours sincerely,

[redacted]

Troy Setter

Chief Executive Officer
Consolidated Pastoral Company

Introduction
Consolidated Pastoral Company (CPC) is a foreign owned, Australian based and Australian managed Agrifood business.

CPC operates a portfolio of 7 cattle stations across northern Australia comprising around 3.5 million hectares with a carrying capacity of around 300,000 cattle.

CPC also operates, and 90 percent owns, two feedlots in Indonesia.

The company was sold by the Packer family to the British private equity fund, Terra Firma, in 2009. CPC recently was sold to a consortium of Terra Firma's major shareholder, the Hands family and CPC management.

Both sales were the subject of a review by the Foreign Investment Review Board [FIRB] and required formal approval by the Federal Treasurer.

The company is therefore well placed to provide the committee with an insight into how the current process works in practice and the potential impact of the proposed amendments.

The pastoral industry
The pastoral industry runs around 28 million cattle across 200 million hectares and its development has been underpinned by foreign investment.

The industry is a key sector of the Australian economy and, when first stage processing is included, a major exporter. The industry is worth $11 billion and exports around 60 percent of production which generates around $5 billion annually. Live exports are worth a further $600 million.

Australia is the third largest beef exporter behind the United States and Brazil.

The industry can be divided into northern producers and southern producers. Northern beef producers account for 75 percent of farming land in Australia dedicated to beef but just under half of the national herd.

Cattle in the northern region are of lower quality compared to southern beef and producers target the Asian market through live exports or cattle are sent south where they are fed grain before slaughter. The focus on international markets means Australian producers are forced to compete in international markets against competitors who are heavily subsidised.

Therefore, the only option available to the Australian industry to remain competitive is to increase productivity.

Lifting productivity requires investment and investment requires capital. In the case of the northern pastoral industry there are insufficient domestic savings to meet the industry's needs leaving foreign investment to fill the gap.

The role of foreign investment

Foreign investment has played an important role in the development of agriculture in Australia generally and the northern pastoral industry in particular since European settlement.

As stated in the Explanatory Memorandum [EM] to the Bills before the Committee, foreign investment creates jobs, improves productivity, enables the transfer of new technologies and connects Australian businesses to global supply chains.

The EM notes that Australia remains one of the world's most attractive investment destinations, with an overabundance of high-quality investment opportunities that cannot be realised from domestic savings alone.

It states that Australia's stable democracy, strong rule of law, highly-skilled and highly-educated workforce; and strong and well managed economy means it is a very attractive place to investment. Queensland, the Northern Territory and Western Australia account for close to 84 percent of agricultural land in which there is a foreign interest according to the Australian Taxation Office [ATO] registry of foreign ownership of agricultural land.

Area of agricultural land with a level of foreign interest – 30 June 2019

	000 ha	%
QLD	15,499	11.1
WA	13,855	18.3
NT	14,307	27.7
Total	52,126	13.8

Source: Register of Foreign Ownership of Agricultural Land Report of registrations as at 30 June 2019

The ATO registry shows that livestock production in the dominant activity on agricultural land where there is a foreign interest. Livestock production uses large areas of land that are predominately unsuitable for higher intensity agricultural production systems.

Queensland, the Northern Territory, South Australia and Western Australia are the key states where foreign investment and livestock production come together to drive productivity growth and expand production.

They accounted for 85 percent of the total area of land used for the production of livestock in 2019 which there was a foreign interest agricultural land.

Foreign interests in livestock production

State	Livestock 000 ha	Total 000 ha	Percentage
NSW/ACT	1409	2557	55.1
Vic	64	618	10.4
QLD	12,971	15,490	83.7
WA	11,997	13,855	86.6
SA	4778	4943	96.6
TAS	60	356	26.9
NT	13,329	14,307	93.2
Total	44,608	52,126	85.6

Source: Register of Foreign Ownership of Agricultural Land Report of registrations as at 30 June 2019

CPC: A case study
The UK Private Equity Fund, Terra Firma, acquired CPC from the Packer family in April 2009. Since that date the company has invested over $78 million in capital expenditure on station infrastructure, staff training to boost productivity and the natural environment to protect biodiversity.

Further, Terra Firma did not take a dividend, instead preferring to re-invest profit and additional capital into the business.

Following its sale CPC's foreign owners have committed to another major investment strategy built on the complementary goals of developing intensive agriculture production and expanding beef production. This focus will better use the company's land and water resources to increase productivity and kilograms of beef produced, including the production of irrigated fodder crops, improving branding, retaining the herd where possible (even in tough seasonal conditions) and continuing to invest in CPC – in its land, its people and its cattle.

The strategy is underpinned by a proposed A$21 million of capital expenditure to add 27,000 adult equivalent head of capacity in line with CPC's Five-Year Strategic Plan.

Funding the Plan also involves reinvestment of all cashflows from the Australian business operations. The CPC Five-Year Strategic Plan targets three areas:

- Current assets and productivity boost – CPC is forecasted to increase its operating returns and boost the value of its assets. That is, CPC's EBITDA is forecasted to grow from its current level at A$19 million to A$41 million in FY2025 by improving productivity, rebuilding its herd and increasing the utilisation of its asset base;
- Land development – the company proposes to increase the carrying capacity of the CPC Group entities, and consequently increase the value of its land assets. This increased carrying capacity is likely to drive further operating returns for the company. Specifically, CPC proposes to increase the value of its land assets on its balance sheet by A$108 million from 2020 through to 2025 through a combination of investments in development and conservative capital appreciation assumptions;
- Cropping – the company proposes to convert some of its pastoral land into cropping, utilising some capital expenditure for an expected increase in gross profits and land values on the asset side of its balance sheet as a result of this exercise. This exercise would unlock further potential from the land available and offer an opportunity for the diversification of incremental operating returns.

The operation of FIRB
CPC provides an insight into the effectiveness of marrying foreign capital, the northern pastoral estate and Australian management expertise.

The company also provides an insight into the strengths and weaknesses in the management of foreign investment by FIRB.

The CPC sales process began in 2018 and generated a significant amount of interest through traditional media outlets and social media.

In line with guidance from the Treasurer, CPC publicly advertised the sale and engaged with media and the public on numerous occasions to ensure that all Australians had the opportunity to consider an investment in CPC, or part thereof.

This process did not result in a buyer for CPC as an aggregation.

Consequently, CPC shifted its approach to favour the sale of assets in its portfolio (as opposed to the sale of shares in CPC).

This approach saw CPC succeed in selling 10 individual properties through 2018 and 2019 to buyers including:

- Three separate sales to Australian pastoralists in Queensland (3 properties);
- Australian Malcolm Harris and the family's Cleveland Agriculture (2 properties);
- Australian company Baldy Bay Pty Ltd owned by Northern Territory pastoralist Sterling Buntine (2 properties).
- Three properties were sold to a Vietnamese company requiring a FIRB application and the Treasurer's approval.
- In October the sale of the remaining 7 properties and the Indonesian feedlots to a consortium of Terra Firma's major shareholder – the Hands Family Office – and the CPC management team.
- CPC engaged heavily with FIRB in the lead up to the sale process commencing and throughout the sale process. The FIRB staff were supportive and communicated well with CPC. The variability in approval time and process for some sales was seen. Our sale of assets to the Vietnamese company showed the challenges that offshore operating investors can have with FIRB. The delays in FIRB approval also allowed the buyer to renegotiate the sale to terms at better supported them when the competition for the assets was removed. A slow FIRB approval takes competition out of the market and can leave Australian sellers stuck with a long sale process that the buyer can position to renegotiate terms.
- Potential and actual foreign investors in the CPC sale process reported that they were confused by the process of preparing and submitting a FIRB application. They also advised that delays in approval meant that their further investment would be delayed, this impacts the development of Australian jobs.

It should be noted that in addition to driving productivity through a program of continuous investment, CPC has engaged with its local communities to generate employment opportunities for young people particularly young Indigenous women and men.

Further, CPC was a founding partner of the National Farmers Federation's Diversity in Agriculture Leadership Program, with close to 50:50 male to female split in the Australian team.

CPC is concerned that the Government is seeking to address issues that are not features/risks associated with the purchase of agricultural land.

The key issues with the bills

Fees for applications
CPC draws to the Committee's attention the table contained on pages 9-11 of the attached explanatory material which accompanied the exposure draft to the Foreign Acquisitions and Takeovers Fees Imposition Act 2015.

That table sets out the fees applicable to acquisitions of interests in agricultural land based on transaction value.

We note that while these cap out at $500,000 the proposed amendments to the Foreign Acquisitions and Takeovers Act 1975 (Cth) released a few weeks ago increase the maximum fee to $1 million, so it is likely that the fees will increase to $1 million for agricultural land acquisitions with a value of more than $152 million. This amounts to approximately 0.65% of acquisition price and is effectively a federal stamp duty or a tax on investment.

CPC is of the view these FIRB application fees, as proposed in the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth), will discourage potential foreign buyers, decrease competition in the rural property market and drive down the capital wealth values of Australian farming families farms, their borrowing capacity and their prosperity.

To illustrate, while the FIRB application for CPC (dated 28 August 2020) was reviewed on the basis of acquiring a significant interest in an Australian entity, and a direct investment into an Australian agribusiness, as distinct from acquiring an interest in agricultural land, the application fees due and payable were $26,700 as per section 7(1) of the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth).

Under the revised framework, the amount of fee payable for notifiable actions is generally worked out by applying the relevant fee constant against the consideration for the acquisition in order to determine the applicable fee. The fee constant is a different value depending on the kind of action, being:

- AU$1 million for residential land;
- AU$2 million for agricultural land; and
- AU$50 million for other interest in commercial land and businesses.

The applicable fee increases by a flat amount (AU$13,200) for each multiple of the fee constant that the consideration for the acquisition exceeds. In CPC's case, , an application for a similar transaction would equate to ~$120,000, a four/five-fold increase.

CPC is concerned that, particularly in relation to acquiring interests in agricultural land, that the proposed fee increases will be detrimental to the capital wealth, borrowing capacity and prosperity of Australian farmers.

Exemptions certificate process and fees
CPC notes the new fees for exemption certificates are based on the fee that would be payable on individual acquisitions of land of that value, less 25%. However, the fee is calculated on the maximum value covered by the exemption certificate and does not allow for any refund or adjustment where the full cap it not utilised. For example, if the exemption certificate covers transactions in aggregate up to $100 million but only $10 million is utilised, there is no opportunity for a refund to reflect the lower transaction value.

Definition of national security land

The proposed amendments to the FATA now contain a definition of 'national security land' which is drawn from the regulations however the exposure draft of the regulations does not contain a definition of 'national security land'. CPC is advised that, based on changes to the definition of 'notifiable national security action' in the FATA that 'national security land' will encompass:

Australian land:

(i) that, at the time of acquisition, is defence premises (within the meaning of section 71A of the Defence Act 1903, excluding subparagraph (a)(iii) of the definition of that expression); or

(ii) in which an agency in the national intelligence community has, or will have, an interest if, at the time of acquisition, the foreign person could reasonably be expected to be aware of the agency's interest or prospective interest; or

(iii) that, at the time of acquisition, is covered, in whole or in part, by an area of Australian land declared by the Treasurer by legislative instrument;

We would hope that the definition remains limited to this but will not know until updated regulations are released. In any event, there remains the chance of further expansion of this definition at any time through changes to the regulations – with limited parliamentary scrutiny - and this could impact on agriculture land acquisitions.

Solar and wind farm exclusions from definition of primary production land

In response to the outbreak of Covid19, along with reducing all thresholds to $0 the Commonwealth Government removed certain exemptions to the classification as agricultural land resulting from the presence of a wind or solar power station. These provisions are being reinstated unchanged, which means that certain short comings in their practical application remain unchanged.

CPC is advised that currently the exemption (to be reinstated) at Regulation 44(7B) provides an exemption to the classification of agricultural land where *"an approval of a government authority is in force allowing a wind or solar power station to be established or operated on the land"*. The definition of "wind or solar power station" refers to the *Renewable Energy (Electricity) Act 2000* (Cth).

Registration under this act comes much later in the renewable energy project development life cycle, and not at the stage when projects are most likely to change hands or require investment. To make this exemption practically beneficial, it should be connected either to local government approval to construct a renewable energy development according to local planning law and no accreditation under the *Renewable Energy (Electricity) Act 2000* (Cth), or provide a carve out for the granting of options where it is for the sole purpose of obtaining land for the construction of a renewable energy development.

The call-in power

CPC is advised to the extent there are national security concerns, which are very broad, in relation to an action, the Treasurer can call it in and has 10 years to do so. We note that most of CPC's actions will be subject to compulsory FIRB notification regardless, but in any event, we still consider this 10-year time limit to be too long.

The last resort power

The last resort power as proposed means that there is no way for a foreign person to manage sovereign risk when investing in Australia. While it has been suggested that it is highly unlikely that the Treasurer will exercise this power, the spectre of this risk remains.