7 September 2011

Committee Secretary
Senate Standing Committees on Rural Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

Senate Inquiry - Rural Affairs and Transport References Committee
Foreign Investment Review Board (FIRB) National Interest Test

Please find enclosed the following submission to the Inquiry examining the application of the Foreign Investment Review Board National Interest Test with respect to recent foreign acquisitions of Australian owned agricultural assets.

Terms of reference
The terms of reference for this Inquiry include the following:

An examination of the Foreign Investment Review Board (FIRB) National Interest Test (the Test), including:

(a) how the Test was applied to purchases of Australian agricultural land by foreign companies, foreign sovereign funds, and other entities in the last twelve months;

(b) how the Test was applied to purchases of Australian agri-businesses by foreign companies, foreign sovereign funds, and other entities in the last twelve months;

(c) the role of Government, regulators and receivers, including their obligations under the Corporations Act 2001 and/or the Foreign Acquisitions and Takeovers Act 1975 (including the role of the Australian Securities & Investments Commission) in upholding the Test;

(d) in the context of sovereignty, the global food task and Australia's food security;

(e) the role of the foreign sovereign funds in acquiring Australian sovereign assets;

(f) how similar national interest tests are applied to the purchase of agricultural land and agri- businesses in countries comparable to Australia; and

(g) any other related matters.

In conducting this inquiry, the Committee will examine ways of improving the transparency of decisions made by the Foreign Investment Review Board under the Test and all other rules which govern its operation.

This submission particularly addresses the Terms of Reference (a) – (c) and (e) in relation to the sale announced in January 2011 of approximately 250,000 hectares of prime agricultural land, of which a significant proportion was sold to Canadian pension fund manager AIMCo Pty Ltd.

The framework of this submission is set out below:

i. background to the relevant events in the lead up to the Great Southern Plantations land sale that resulted in the land being sold to a consortium headed by Canadian public sector pension fund AIMCo and New Forest Pty Ltd, an Australian based investment firm specialising in private equity-style funds and separate accounts for timberland and associated environmental markets

ii. the alleged failure of the receivers involved with the land sale (McGrathNicol) to properly obtain market value through the sale process (first limb of s 420 Corporations Act 2001)

iii. exclusion of Australian farmers from participating in the bidding process involving the sale of agricultural <u>land</u> under receivership to overseas interests

iv. the alleged failure of the regulatory authorities (ASIC) to instigate action or enquiry directly with the Receivers under s 420 of the Corporations Act 2001 when advised prior to the completion of the sale process that it would not realise market value

v. the alleged failure of the Federal Government to acknowledge the concerns and interest expressed by Australian farmers (via the letter dated 28 June 2010 from the National Farmers Federation) relating to future sales of Agri-MIS land sales and in particular the proposed sale of the Great Southern plantation land

vi. the alleged failure of the Federal Treasurer and Assistant Treasurer to appropriately apply the National Interest Test in approving the sale of Great Southern plantation land to AIMCo Pty Ltd under s 19 of the Foreign Acquisitions and Takeovers Act 1975 (FATA)

vii. Impact of other receiverships controlling the sale of agricultural land assets in Australia

viii. Impact on unsecured creditors

ix. remedial action to direct the Federal Treasurer under s 19 4 (b) of the FATA to order the disposal of the asset held by AIMCO Pty Ltd

x. recommendations for appropriate amendments to the law and regulations to ensure:

- the Australian farming community is appropriately consulted on proposed future sales of Australian agricultural assets to overseas interests, including assets under the control of receivers and administrators

- that Australian farmers be given every opportunity to compete for purchasing of such assets.

Supporting documents and arguments in relation to (i) – (viii) above are enclosed with this submission.

In summary the key propositions outlined in this submission are as follows:

- Plantation forestry land owned by Australian companies now in receivership was originally farming land and as an asset is more highly valued by farmers seeking to acquire such assets through the various sales process managed by various receiver managers than that of corporate investors seeking to leverage from the capital appreciation of the land

- Australian farmers have made it clear that they are interested in making competitive bids for agri forestry land being offered for sale by receivers but are being ignored by the Federal Government, receivers and ASIC

- Sales of forestry plantation land to overseas consortiums or investors is not in the national interest where Australian farmers seek to compete to acquire the land on competitive terms but are denied the opportunity to compete

- More accountability is required of receivers, ASIC and where the FIRB is involved, the Federal Government to ensure that any sales processes adopted by receivers actively seeks to obtain and consider the commercial merits of farmer interest in acquiring agricultural assets (including forestry plantation land) under receivership

- In the matter involving the recent sale of over 250,000 hectares of plantation land to overseas interests (AIMCo Pty Ltd) the Federal Government should acknowledge the sale was not in the national interest and that the Treasurer exercise his powers under s 19 (4) of the Foreign Acquisitions and Takeovers Act 1975 to recover the asset sold to AIMCo Pty Ltd

- That the asset be readvertised to the market, ensuring that Australian farmers are given equal opportunity to bid for the available parcels of land (650 individual lots)

- With respect to food security, it should be Federal Government policy to ensure that investment in Australian agriculture is encouraged where it adds value and support to the productive base of agriculture in this country. Selling agricultural land to overseas interests to the exclusion of Australian farmers only increases the risk of Australian farmers becoming less profitable and being unable to scale up sufficiently to meet the needs of the local market and to capitalise on the demands and opportunities that export markets present.

1. Background to the relevant events in the lead up to the sale

Appendix 1 summarises key events that led to the sale of the Great Southern Plantation land to AIMCo/NewForests. The summary includes the date (s) when each key event occurred from the time McGrathNicol announced in April 2010 that it had commenced scoping options for selling the land through to the final land sale completed late December 2010.

A number of important facts relating to these events should be noted by the Inquiry:

1.1 ***there is no evidence that the scoping study undertaken by Gresham Partners on behalf of McGrathNicol or McGrathNicol itself <u>actively</u> sought expressions of interest from Australian farmers or their representatives eg: either directly through contact with farmer organisations and associations or through advertising in rural newspapers where the land is located (eg Weekly Times, Stock & Land, Farm Weekly)***

1.2 ***the VFF and Elders Rural Services jointly submitted a proposal to McGrathNicol that would have accommodated expressions of interest from a wide cross section of the market, including Australian farmers and corporate interests from Australia and overseas***

1.3 ***McGrathNicol did not seek to undertake further due diligence or any meaningful assessment of the VFF/Elders proposal (letter dated 29 September 2010 – refer to Appendix 2), as evidenced by the date of its response to the VFF (letter dated 1 October 2010 - refer to Appendix 3)***

1.4 ***approximately 3 months had transpired between the date McGrathNicol received the VFF/Elders submission for consideration and the date of announcement of completion of the land sale***

1.5 ***the Federal Government was alerted by the NFF in June 2010 to the interest from farmers to acquire the Great Southern Plantation land but failed to reply or respond to the letter or act in any way to ensure Australian farmers were not excluded from the bidding process (refer to Appendix 4)***

1.6 ***prior to the sale being announced ASIC was unaware that the major buyer of the asset was overseas based and has no jurisdiction with respect to the operations of s 19 of FATA. ASIC was made aware on 13 October 2010 that the sale price was likely to be around $500 million and was informed of the view that based on the VFF/Elders proposal a sale of this value would result in the receivers obtaining less than market value (refer to Appendix 5). The subsequent sale price accepted by the Receivers was $415 million***

1.7 ***the sale price of $415 million has been returned to the Secured Creditors to retire debt and it is unlikely that any remaining asset sales will result in funds being available to pay unsecured creditors, share holders or note holders of Great Southern or former staff their outstanding entitlements***

1.8 ***the current Chief Executive of AIMCo Pty Ltd, Mr Leo de Bever, held the position of Chief Investment Officer with the Victorian Funds Management Corporation (VFMC) between late 2006 – April 2008. The Victorian Government is presently conducting an Inquiry into the VFMC's investment dealings including those involving investments in Wholesale Life Settlement Funds during the time Mr de Bever was CIO. While the Inquiry is still to be completed it is alleged that in committing the VFMC to this investment decision Mr de Bever had not followed due processes or conducted sufficient due diligence to justify the investment decisions in WLSFs. By the end of 2008 WLSFs were experiencing losses in the order of 20% and it is alleged that the Corporation has lost between $200 - $500 million dollars over the failed investment strategy (refer to Appendix 6).***

Coincidently, the Assistant Treasurer, the Hon. Bill Shorten, was a board member of the VFMC at the time a number of these investments were undertaken.

2. **The alleged failure of McGrathNicol to properly obtain market value – alleged breach of s 420A of the Corporations Act 2001**

s 420 A of the Act describes the responsibilities of a receiver (controller) in disposing of an asset through a sale, as per:

CORPORATIONS ACT 2001 - SECT 420A

Controller's duty of care in exercising power of sale

(1) In exercising a power of sale in respect of property of a corporation, a controller must take all reasonable care to sell the property for:

(a) if, when it is sold, it has a market value--not less than that market value; or

(b) otherwise--the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.

(2) Nothing in subsection (1) limits the generality of anything in section 180, 181, 182, 183 or 184.

Under the Corporations Act it is submitted that **receivers in control of an asset have a higher duty of care** with respect to due diligence and preparation of the asset for sale under their control. With respect to the first limb of s 420 A, it is suggested that 'Market Value' of the asset can only meaningfully be assessed by one of the following methods:

- **obtaining independent valuations or**
- **undertaking a proper and thorough testing of the market.**

With respect to the sales process undertaken by McGrathNicol it is submitted that neither of these methods was utilised. This is evidenced by the following:

i. the 'scoping study' by Gresham partners did not make any known approaches to farmer groups or individual farmers and appears to have focused on market interest for the asset as a forestry asset as opposed to agricultural land asset, from companies that are actively involved in forestry operations or a past history of investing in forestry assets

ii. no independent valuations of the value of the land were undertaken, particularly in terms of its value as farming land to prospective interested farmers.

It is alleged from what transpired that neither Gresham Partners nor McGrathNicol contemplated engagement of farmers in the sale process nor was the sale process constructed to even allow this to occur.

It is an irrefutable **fact** that the emergence of forestry MIS companies antagonised the farming community for the reasons that these companies were acquiring valuable, productive farming land, opportunistically, at a time when the rural sector was experiencing a sustained period of depressed prices, drought and rising costs. It should have been obvious that the first opportunity available to the farmers to reclaim this land would have been eagerly embraced.

In preparing an asset for sale unless receiver managers can point to undertaking independent valuations or a thorough testing of the market it cannot be said that any subsequent sale of an asset has been sold for market value (that is, not breached s 420A of the Corporations Act). In this context, it is both obvious and logical that a receiver manager in control of *agricultural* land should seek expressions from interest from the farming community. Without seeking to be prescriptive as to the approach, it is suggested that discussions with the National Farmers Federation or relevant State based farmer bodies would be a reasonable starting point. Alternatively, valuations obtained by reputable, experienced rural real estate agents would also ensure transparency that genuine attempts are being made to obtain fair market value for what is essentially agricultural, farming land.

This is equally important when the farming land asset under receivership is to be purchased by foreign investors, as any sale price *less than market value* cannot be said to be in the national interest. Obtaining a fair market price ensures the maximum return for unsecured creditors; at present, the sale price has resulted in no return for unsecured creditors, virtually all of which are Australian.

Further, <u>by excluding Australian farmers from the bidding process, overseas interests are effectively being given preferential treatment</u> to benefit financially from asset sales offered at a substantial discount to market. In addition, these same overseas interest will benefit substantially from the resale or capital gain from appreciation of the asset over time, at the expense of Australian farmers benefitting from the appreciation in value of their farms had they been able to acquire additional land through the Great Southern plantation sale process.

3. The exclusion of Australian farmers from participating in the bidding process involving the sale of agricultural assets to overseas interests

The Great Southern Plantations land bank included over 250,000 hectares of prime agricultural land purchased by Great Southern from local farmers since the early 1990s. The land is largely situated in high rainfall regions of south west Western Australia, the Green Triangle and Otways regions in south west Victoria and the Gippsland region to the east. The high natural rainfall (over 900 mm annually), its unique soil types that can support various types of farming systems including dairying, beef, sheep and cropping, coupled with the many thousands of farmers that operate across these regions, make this land highly sort after by farmers.

One of the key requirements for Australian farmers to remain viable, be profitable and compete with their overseas counterparts is to be able to expand their operations, including making land acquisitions.

It is a fact that Australian farmers have not been involved in the sale of prime agricultural land owned by Great Southern. The actions of the receivers in this instance, together with the inaction of the Federal Government ensured that this would be the case.

It is unacceptable that the system administered under the Corporations Act and the political process available to all Australians can simply ignore the interests of both Australian farmers and unsecured creditors (through the Committee of Inspection). It is particularly shameful that the Government of the day would simply ignore repeated requests for support and intervention from their Australian constituents seeking to engage in the sale process while at the same time accommodating the interests of an overseas investor in the same process.

The Inquiry should be made aware of the following:

3.1 The Victorian Farmers Federation wrote to the receivers McGrathNicol on 29 September 2010 with a proposal supported by Elders Rural Services that would have enabled the receivers to conduct a sale process that accommodated both existing expressions of interest from corporate buyers and Australian farmers. Both the commercial proposition outlined in the VFF letter and the copy of the NFF letter to the Federal Government (dated 28 June 2010) included in the correspondence should have provided sufficient evidence that the VFF proposal was a genuine, commercial expression of interest on behalf of Australian farmers that would deliver a competitive bidding process for the forestry land

3.2 The VFF's letter included estimates provided by Elders Rural Services on the value of the agricultural land as a rural real estate (farming) asset. The valuation ranges of $3,000 - $7,000 per hectare were considered by the VFF to be realistic prices that farmers would be prepared to pay for the land. **The valuations and price ranges acknowledged by the VFF took into account that the much of the land was encumbered, that is, was still under plantation management and would only be available following harvest (between 1 – 8 years)**

3.3 Elders Rural Services is the rural land sales division of Elders. Established in 1839, Elders has built an unmatched record and reputation as a trusted advisor, supplier and agent for Australian primary producers for over 170 years. Its experience and professionalism in assessing the value of the Great Southern land and identifying an appropriate mechanism to extract fair market value for the land as outlined in the VFF proposal ought to be respected

3.4 Equally, the NFF and VFF should be acknowledged as the appropriate authorities representing the interests of Australian farmers and their direct representations on behalf of Australian farmers seeking to acquire agricultural land sold under receivership and should not be ignored by Governments, regulators or receivers charged with the responsibility of disposing of agricultural land

3.5 The one page response the VFF received from McGrathNicol on 1 October 2010 indicates that McGrathNicol did not conduct sufficient or genuine investigation to determine whether the proposal was bone fide or if the process proposed by Elders would deliver a significantly better return than the $415 million sale price McGrathNicol ultimately accepted **(refer to Appendix 3)**

3.6 There were approximately 650 individually titled farm lots that made up over 250,000 hectares of Great Southern Plantation land, largely situated in regions highly populated by farmers where multiple farming uses are prevalent. There are approximately 140,000 farmers in Australia – meaning that <u>not more than 0.25% of farmers were required as successful bidders for the entire parcel of Great Southern Plantation land to have been sold to Australian farmers</u> or a maximum of 650 farmers Australia wide.

3.7 Great Southern established its first Eucalyptus MIS project in 1994. Each year there after up to 2008, Great Southern purchased additional land and planted mostly Eucalyptus Globulus species to be grown and harvested on approximately a 10 year rotation cycle. For example trees planted in 1994 would be removed from the land at harvest time around 2004/2005. At the time of the land sale announcement most of the land from the 1994, 1995, 1996, 1997, 1998, 1999 and 2000 Project years would have been harvested and the trees effectively removed from the land. In addition, the 2008 Project has been wound up (that is no replacement Responsible Entity (RE) has been found for this project) and the land belonging to the 2007 project year is in dispute in relation to the proposal by Black Tree to replace Great Southern Managers Australia Limited (GSMAL) as the RE for this Project. Initial estimates obtained from Great Southern suggest the total area of 'unencumbered land' amounts to approximately 80,000 of the 250,000 hectares sold.

Based on the VFF/Elders proposal, had the 80,000 hectares of land been sold as 'unencumbered land' it may have achieved a 'market value' in the order of $7,000/hectare or approximately $560 million.

3.8 Land for Project years 1998 to 2006 remains encumbered, as the trees are under management by Gunns Plantations following its appointment as the new RE replacing GSMAL. The encumbrance would be removed following harvest for each Project year (approximately 10 years from the initial year of planting)

3.9 In announcing their purchase of the Great Southern Plantation land, the successful Canadian purchasers, AIMCo (Alberta Investment Management Corp.), indicate that they had <u>acquired rural assets which had multi purpose value</u> and <u>signalled their intentions to resell some of the land for use in animal or cropping production</u> **(refer to Appendix 7).**

If AIMCo consider that they acquired forestry assets that have land use for more traditional farming purposes, why then did the Receivers not canvass expressions of interest directly from Australian farmers to buy the land for this same purpose and determine through this process whether it could have obtained higher indicative prices for the land?

3.10 The large discrepancy between the price range estimated by Elders ($3,000 - $7,000/hectare) and the price McGrathNicol accepted for the land (equivalent to $1,647/hectare) raises serious questions as to whether McGrathNicol obtained a fair market price or even best return from the sale of the land

3.11 Over 80,000 hectares of the land sold is located in the Green Triangle in South Western Victoria. Current market values for unencumbered rural land in the Green Triangle, have achieved prices in excess of $10,000/hectare. It is difficult to conclude that accounting for the time remaining to harvest trees planted on land in the same region and the cost of restoration of paddocks would justify a discount to $1,647/hectare. Further, in a competitive auction system, competition between farmers would have lessened the size of the discount.

4. **The alleged failure of the regulatory authorities (ASIC) to instigate action or enquiry directly with the Receivers under s 420 of the Corporations Act 2001**

On the 25 October 2011 the author raised his concerns with representatives of ASIC regarding the receivers refusal to consider the VFF/Elders proposal and that any subsequent sale would be at a substantial discount to the value that would otherwise have been achieved through the inclusion of Australian farmers in the bidding process (as outlined in the VFF/Elders proposal).

The advice provided by ASIC (in its letter dated 28 October 2011) proposed that it would not take any action on the matter unless further information was provided in support of the allegation that the receivers would be in breach of s 420 A of the Corporations Act **(refer to Appendix 5).**

It is submitted that prima face there was sufficient evidence presented to ASIC in October 2011 to warrant an investigation into the sale process undertaken by the receivers, particularly as it was apparent at the time that the Receivers had no intention of engaging Australian farmers in the sale process. Given that the Administrators Ferrier Hodgson will not have full access to relevant information until after the receivers are retired from their duties, it is an absurd proposition for ASIC to suggest that it would be prepared to take action if further information was provided to it in relation to the matter, as this action would of itself could only have been instigated after the sale process was concluded. This would defeat the purpose of raising the matter with ASIC in the first place.

It is submitted that it is merely common sense that most sales of Australian agricultural land generally involve farmers in the transaction and that there was nothing prohibiting the receivers to support the contention that inclusion of expressions of interest by Australian farmers in the sale process would be problematic, overly expensive or undermine existing expressions of interest from corporate interests.

It is alleged that ASIC failed in its responsibilities as the regulator to ensure that the receivers would not be breaching s 420 A of the Corporations Act. It is of little comfort to shareholders and of no benefit to Australian farmers that ASIC take action after the event, as any recovery of losses would largely be limited to the professional indemnity cover that may be held by McGrathNicol. In view of the potential size of such a claim is unlikely to fully compensate unsecured creditors and of itself does not address the issue that Australian farmers were effectively shut out from bidding process for the land.

5. **The alleged failure of the Federal Government to acknowledge the concerns and interest expressed by Australian farmers (via the letter dated 28 June 2010 from the National Farmers Federation) relating to future sales of Agri-MIS land sales and in particular the proposed sale of the Great Southern plantation land**

It is submitted that none of the relevant Federal Government Ministers had acted appropriately or responsibly in relation to the issues raised by the NFF or by the Author over the period that the receivers had contemplated the process for selling the Great Southern Plantation land. This is particularly evident during the period of June 2010 and October 2010 based on the following events:

28 Jun 2010 NFF letter to the then Minister for Corporate Law and Assistant Treasurer

Given the importance of the issue relating to foreign acquisition of agricultural assets (as evidenced by the November 2010 Federal Government announcement of a study into foreign ownership of agricultural assets) it is inconceivable that the Federal Government did not respond to the letter from the National Farmers Federation dated 28 June 2010 expressing interest by Australian farmers to be given the opportunity to participate in the proposed sale of the Great Southern plantation land. In addition, as a matter of courtesy and respect for the NFF and its role as the national body representing the interest of Australian farmers it is proper that Federal Government ministers respond to matters raised directly with it by the NFF, particularly on the sensitive issue relating to the involvement of MIS companies in acquiring rural land for the purposes of forestry activities and the opportunities available to the farming community to acquire land held by MIS companies (in receivership) that is being sold back into the market.

8 & 30 Oct 2010 correspondence involving the Federal Minister of Agriculture, Fishery & Forestry

On the 8 October 2010 the author emailed the Minister for Agriculture, Fisheries and Forestry the Hon. Joe Ludwig expressing concern that the receivers may be breaching s420A of the Corporations Act should the sale of the Great Southern Plantations Land not realise market value for the asset, particularly as the receivers had advised the VFF on the 1 October 2010 that it would not be considering the farmers proposal in the sales process. On the 30 October 2010, the Minister responded to the authors email and advised that as the matter related to the portfolio of the Hon. Bill Shorten, he (Minister Ludwig) had referred the correspondence to the Treasury for consideration **(refer to Appendix 8).**

8 Oct 2010 correspondence involving Tony Windsor MP

5 May 2011 reply from the Parliamentary Secretary, the Hon. David Bradbury

On the 8 October 2010 the author forwarded a similar email to the Hon. Tony Windsor MP which Mr Windsor forwarded to Treasury for consideration.

On 8 May 2011, the Parliamentary Secretary, the Hon. David Bradbury wrote to the Author acknowledging receipt of the correspondence forwarded by Tony Windsor **(refer to Appendix 9).**

While the Author acknowledges the detailed response from Mr. Bradbury the Author submits that there are a number of important principles and actions which Mr. Bradbury failed to adequately consider in his response, namely:

- the Author was not seeking that the Government or ASIC 'interfere' with the role of a receiver conducting their role in managing assets under their appointment as receivers. The Author was merely stating the fact that the receivers had chosen not to engage with the farming community in the conduct of the sale process for disposal of the Great Southern Plantation land and that this would impact the market price that would be obtained from the sale. That of itself should have been sufficient information for the Government to make appropriate enquiries via ASIC as to why this had happen, **particularly as the NFF has expressly requested the Federal Government's support in June 2010 for farmers to be able to purchase land assets arising from the liquidation of the Great Southern Group of companies.**

  The term 'interfere' is an emotive one; what was being requested of the Government was entirely reasonable and an appropriate role of Government to make enquiries of the regulator given the seriousness and implications of the issues raised by the Author.

  Even ASIC is accountable to the Federal Government. We can accept a system that regulates the corporate world and makes it accountable at levels – why not the regulators?

- the Author does not accept that there is no role for Government in such matters, and that it is the easy option for Governments to hide behind the veil of the regulatory regime within which receivers and ASIC operate where there was clear evidence that the system was not functioning as it was intended. In the matter of the receivership of ABC learning the Federal Government quite correctly and responsibly involved itself in supporting the receivers to minimise the impact of the threatened closure of the learning centres. **While the subject matter and facts surrounding the case of Great Southern Plantations are different, the scale of the economic and social implications of selling value farm assets to overseas investors at the expense of Australian farmers and Australian investors warranted that the matter should have been treated with equal concern by the Federal Government**

- Mr. Bradbury's letter acknowledges that the Government had the power to block certain proposals that are determined to be contrary to the national interest (refer to last paragraph of the letter). However, he provides no explanation behind the Government's decision to ratify the AIMCo Pty Ltd bid – that is, he **offers no explanation as to how the bid by AIMCo Pty Ltd could not be considered contrary to the national interest.**

6. The alleged failure of the Federal Treasurer and Assistant Treasurer to appropriately apply the National Interest Test in approving the sale under s 19 of the Foreign Acquisitions and Takeovers Act 1975 (FATA)

It is the authors view that the Federal Treasurer and Assistant Treasurer, were negligent in their duties and responsibilities under FATA and the Foreign Investment Review Framework guidelines published by Treasury dated January 2011, in accepting the offer by AIMCo Pty Ltd.

In support of this claim, the following should be noted by the Inquiry:

- AIMCo Pty Ltd's Chief Executive, Leo de Bever is currently the subject of an investigation by the Victorian Government relating to his involvement in the VFMC's investment in Life Settlement Funds between 2007 -2008 as Chief Investment Officer of the VFMC.

  During this period, the Assistant Treasurer the Hon. Bill Shorten was a Board member of the VFMC and would have been aware of the issue, if not the investigation, which alleges Mr de Bever was instrumental in arranging for the VFMC to invest heavily into so called 'Life Settlement Funds' without appropriate procedures and due process for approval. The VFMC has reportedly lost around $500 million from the failure of the investment in the Funds, the failure of which has been attributed to the inherent high risk of the investment and miscalculations relating to life expectancy of policy holders **(refer to Appendix 6).**

  In the light of the VFMC investigation and given the Assistant Treasurer was a VFMC Board member at the time Mr de Bever arranged a number of the WLSF investments on behalf of the VFMC, it should at the very least have raised concerns with the Federal Government as to whether any future dealings involving Mr de Bever in relation to investment in Australian assets would be in the national interest at this point in time.

  While the Author stresses that he is not seeking to implicate Mr Shorten in any of the actions that Mr de Bever may have unilaterally undertaken on behalf of the VFMC, the Senate Inquiry should make enquiries to ascertain whether Mr. Shorten, given his knowledge as a former board member of the VFMC, raised any concerns regarding Mr de Bever's involvement in the AIMCo bid presented to Treasury as part of the requirements under the FIRB review process viz a viz the national interest.

- AIMCo Pty Ltd's investment in the plantation land adds little or nothing to the productive capacity of the asset for the benefit of Australians or that of Australian farmers and is more about foreign investors capitalising on purchasing a distressed asset for their own capital gain benefit at some future point in time. The Treasurer cannot reasonably make claim to the investment adding value to Australia's agricultural capacity or improving food security for the benefit of Australians. The Treasurer should have realised that had Australian farmers been able to acquire the land they would have converted it to more productive land uses than that achieved from the harvesting of woodchips (which generally is a 1 in 10 year harvest cycle) as well as Australian farmers capturing the benefit of the appreciation in value of the land over time.

  In addition, **the sale of the land to Australian farmers under a competitive bidding process as outlined in the VFF/ Elders proposal was more likely to realise a higher return from the sale of the land** and increase the likelihood of existing Australian investors in Great Southern (ie the share holders and note holders) from receiving some return from the asset they own and provide former employees of Great Southern reasonable prospects of receiving their entitlements. **The sale price accepted by the Receivers and ultimately the Treasurer ensured this could never happen. How could this be considered in the national interest?**

- The Treasurer has not provided any supporting arguments that the investment by AIMCo Pty Ltd passes any national interest tests. Contrast this to the Treasurer's public announcements relating to his rejection of the Singapore Stock Exchange proposal to merge with the ASX. His decision was accompanied with detailed analysis of the reasons why the proposal was rejected. Surely, in the matter relating to the sale of more than 250,000 hectares of **prime agricultural land** to AIMCo Pty Ltd, the Australian public can be afforded a detailed explanation as to why this investment was not contrary to the national interest.

7. Impact of other receiverships controlling the sale of agricultural land assets in Australia

Currently 3 other forestry companies are under receivership. These represent an area in excess of 117,000 hectares of agricultural land under forestry plantation land under the control of receivers for Wilmott Forests Ltd, Forestry Enterprises Australia ("FEA") and the Rewards Group.

In each instance the receivers for each of these companies are conducting a sale process that is likely to exclude consideration of expressions of interest by Australian farmers in purchasing the land.

Below is an extract of an Affidavit filed in the Federal Court on 7 February 2011 on behalf of the receivers to Wilmott Forests Ltd. On page 4 of the Affidavit, section 3.1 'Potential Purchasers & Risk Profile', the following is stated:

> *"The likely purchaser for the portfolio in this configuration is a Special Opportunities Fund with the equity to treat on the portfolio without any short term investment return. The portfolio has a weighted average time to realisation (by Estimated Unencumbered Value - December 2010) of 19.3 years and purchasers will therefore have an expectation of a significant discount in recognition of the absence of a rental income for that term.*
>
> *The absence of a rental return means that the purchaser assumes a neutral position for the term of encumbrance and relies solely on the expectation of potential capital growth via exposure to the rural property market or that the land at reversion will be sought after as "timberland" by a Timber Investment Management Organisation or "TIMO" (an organisation that seeks out and invests in both land and trees (timberlands) on behalf of institutional investors). There is also the potential for an "alternate land use play" at the end of the term certain.*

Potential purchasers may include, but are not limited to the following;

- *Alberta Investment Management Company (AIMC0);*
- *Deutsche Asset Management;*
- *Global Forest Partners (GFP);*
- *GMO Renewable Resources;*
- *Harvard Management Company;*
- *Hancock Natural Resource Group (HTRG) I Rural Funds Management;*
- *Macquarie Forestry Fund;*
- *New Forests Asset Management; and*
- *Various European, Asian and Middle Eastern Sovereign Funds"*

It would appear in this instance, the Receivers are not contemplating land sales to Australian farmers. With respect to the reference to encumbrances on the land, this assumes that all the land under receivership has active MIS projects leasing the land for the remaining term of the relevant Project. A number of these projects and other MIS projects under receivership are at risk of being wound up should a replacement Responsible Entity (RE) not be found to take over management responsibilities from the original RE in receivership or liquidation. **Where this occurs, the land will become unencumbered and the 'wait time' for utilisation of the land would be in the order of months rather than years.**

In these instances, it would make economic sense for receivers to enter into discussions with farmers to ascertain expression of interest in acquiring the land. Based on the experience involving the Great Southern Plantation land sale unless there is some form of directive or regulatory requirement within which receivers are obliged to consider farming interests it is unlikely that farmers will be consulted or be allowed to compete for land on a similar commercial basis as corporate interests.

Ironically, as with virtually all plantation forests in Australia, the land was originally in farmer hands prior to acquisition by agri-MIS operators and was converted into forestry plantation by them.

It is submitted that this is a matter of national significance and the Government must treat it with the utmost urgency and importance. The receiverships of Great Southern Plantation and now Wilmott Forests, FEA and the Rewards Group will see massive areas of prime, valuable farming land being sold without consideration of Australian farmer interests. There are not many opportunities afforded to Australian farmers to improve viability, productivity and profitability in their operations. We should not be negatively impacting farmers through inaction in not ensuring Receivers consider farmer interests in purchasing forestry land.

It is submitted that the national interest should never be compromised by the actions (or inactions) or receivers and/or the regulators with respect to the approach taken by receivers seeking to sell agricultural assets under receivership.

The national interest should remain be a key threshold test that must be satisfied in any subsequent sale of such assets.

If the Federal Government is serious about its determination to improve productivity in all industries across Australia, including the farm sector, then it should acknowledge that the sale of large areas of valuable and productive agricultural land to corporate investors may substantially diminish Australian farmers' capacity and ability to improve farm productivity and is inconsistent with the Federal Government's own stated objectives to help industries improve productivity.

8. Impact on unsecured creditors

In relation to the unsecured creditors of Great Southern Plantation, Wilmott Forests, FEA and Rewards Group, many tens of thousands of shareholders and note holders may well be denied any chance of recovering anything from their investments, where the underlying agricultural assets are being sold to consortiums and large corporations without any coordinated or concerted effort to engage interest from Australian farmers in those assets.

While the medium to longer term economic opportunity cost to Australian farmers would run into billions of dollars in terms of being denied access to agricultural land that would otherwise support expansion and improved productivity or through paying higher capital costs for purchasing land resold by consortiums at a premium, the immediate economic loss to shareholders and note holders who invested in Agri-MIS companies would well be in excess of $1 billion. Based on the land value estimates presented in the VFF/Elders proposal the Great Southern land sale could have realised between $750 million and $1.75 Billion. Allowing for the return of secured creditors loan funds, the economic loss to the unsecured creditors of Great Southern would be in the order of $250 million to $1 billion.

The Federal Government's failure to act has also exposed it to the risk of legal challenge and class action as a result of the Receivers being allowed to proceed with the sale to overseas interests at a substantial discount to market and the sale being deemed not to be in the national interest.

The impact that these developments has had on the future viability and sustainability of Australian farmers, the shortcomings of our current laws in failing to protect the national interest with respect to control of agricultural assets under receivership and the economic impact this has had on Australian investors in agriculture, justify remedial action and changes to the law and regulations pertaining to the sale of agricultural assets under receivership and for sales of agricultural assets or businesses involving overseas interests.

9. Remedial action to direct the Federal Treasurer to order AIMCo Pty Ltd to dispose of the asset under s 19 4 (a) and (b) of the FATA

Section 19 (4) subsection (a) (i) of the FATA states:

(4) Where a person has acquired ***assets*** *of an Australian business carried on solely by a prescribed corporation or prescribed corporations, and the Treasurer is satisfied that:*

(a) the acquisition has had the result that:

(i) in the case of a business that, before the acquisition, was not controlled by foreign persons—the business is controlled by foreign persons;

(b) that result is contrary to the national interest;

the Treasurer may make an order directing the person who acquired the assets to dispose of those assets within a specified time to any person or persons approved in writing by the Treasurer *(emphasis added).*

Based on the facts that the sale process involving over 250,000 hectares of prime agricultural land to AMICo Pty Ltd:

- was conducted without involvement of Australian farmers
- did not genuinely attempt to extract a fair market price for the land and
- ignored the Treasurer's own Foreign Investment Policy (Jan 2011) guidelines with respect to applying appropriate National Interest tests as evidenced by the lack of consideration of Mr de Bever's previous dealings as CIO of the VFMC **(refer to Appendix 10)**;

it is recommended that the Inquiry instruct the Federal Treasurer to exercise his powers under section 19 (4) of FATA and make an order directing AIMCo Pty Ltd to dispose of their ownership of the land.

It is recommended that this be arranged under the control of the current Administrators of Great Southern, Ferrier Hodgson and that the mechanism under which AIMCo Pty Ltd dispose of the asset be through the original proposal to sell the land as outlined by the VFF/Elders proposal. The VFF Elders proposal is the only fair, objective and commercially sound proposal that would ensure that fair market value would be extracted from the sale process and that farmers Australia wide can participate in sales.

This will ensure the following outcomes:

i. that Australian farmers have an equal opportunity to purchase the land at fair market value

ii. that the sales process is both transparent and market driven

iii. that any interested parties can participate in the transaction in a transparent, 'market driven' sales process, whilst remaining anonymous

iv. that sale proceeds raised through the sale process up to $415 million can be returned to AIMCo Pty Ltd to compensate it for relinquishing ownership of the asset under s 19 (4) of FATA

v. that the sale process can be undertaken in a more timely manner than that experienced under the regime of a receivership and not compromise the outcome of extracting a fair market return for the land

vi. that the balance of sales proceeds can be disbursed by the Administrators in accordance with their obligations. This would ensure any surplus funds can be returned to unsecured creditors, existing share holders and note holders and staff who are owed entitlements prior to the appointment of the receivership.

10. Recommendations for appropriate amendments to the law and regulations pertaining to the sale of agricultural assets under receivership and for sales involving overseas interests

The lessons that can be learned from the sale of the Great Southern Plantation land are self evident and changes to regulations governing the role of receivers, ASIC and where overseas interest in agricultural assets are involved, the role of the Federal Government, are both desirable and necessary to protect the interests of Australian farmers and the broader community and that of secured and unsecured creditors where the assets are under control of receivers.

It is of little value to impose regulations that merely 'close the stable door after the horse has bolted', as evidenced by the inaction or unwillingness of the Federal Government and ASIC to take direct action in relation to the conduct of recent agricultural asset sales conducted by receiver managers. Notwithstanding their obligations under s 420 A of the Corporations Act receiver managers are primarily looking after the interests of those who appoint them, the secured creditors (banks) and not the broader interests of unsecured creditors or in the case of agricultural assets, Australian farmers. Nor is there any regulatory requirement imposed on receiver managers to demonstrate that any proposed sale of agricultural assets to foreign investors is not contrary to the national interest. Rather, it appears that this responsibility falls ultimately on the FIRB and the Federal Treasurer.

There are clear inconsistencies with the approach taken by the Federal Government to restrict access to residential property investments from overseas interests while over one quarter of a million hectares of valuable agricultural real estate can simply be sold to an overseas buyer at the stroke of a pen.

In reality, in relation to the Great Southern Plantations land sale, all the NFF and VFF sought from the Government and the receivers was a level playing field. This is entirely consistent with any measure of good Government policy and is not inconsistent with what is in the National interest.

It is proposed that appropriate amendments be introduced to the Corporations Act that where receivers are appointed to take control over Australian owned agricultural assets that the receivers must submit any proposed sale process to ASIC and the peak farmer body in Australia, the National Farmers Federation.

In addition, where it is proposed by receivers to enter into negotiations with overseas interest seeking to acquire Australian companies or assets that receivers be required to set out supporting arguments to the FIRB that such proposals are not contrary to the national interest.

These amendments should ensure that the following standards are placed on receiver managers and that of the regulator, ASIC and the FIRB where agricultural assets under receivership are to be sold, namely:

(i) that receiver managers be require to submit their proposed asset sale process to ASIC for it to determine whether the process is transparent and thorough in accordance with the higher duties and responsibilities that the Corporations Act should generally impose on receiver managers, that is;

- obtaining independent valuations or
- undertaking a proper and thorough testing of the market

(ii) that Australian farmers are made aware through direct contact with the NFF of any proposed sale process, ensuring this is done in a timely manner, where Australian farmers can give informed consideration to expressing interest to acquire agricultural assets offered for sale

(iii) the receivers demonstrate that the sales process undertaken was of itself not contrary to the national interest

It ensure greater transparency and accountability is proposed in relation to the application of Section 19 of FATA that the Federal Treasurer and/or Assistant Treasurer be required to table in Parliament reasons for accepting or rejecting recommendations of the FIRB with respect to proposed acquisition by foreign interests of Australian agricultural assets.

With respect to the current threshold levels requiring FIRB and Government approval for foreign investment in Australian agricultural assets it is suggested that it is more important to establish principles around supporting Australian farmers and Australian agriculture generally through appropriately channelled investment funds or direct capital investment (whether this is sourced from Australian or overseas investors and/or companies), where it can be demonstrated that such investment(s):

- **enhance the productivity of Australian farmers**
- **opens new markets for the benefit of Australian farmers**
- **creates opportunities for new entrants into Australian agriculture and**
- **encourage confidence in long term investment in Australian agriculture particularly by Australian investors.**

Where this can be demonstrated, any concern regarding food security for Australia with respect to the impact of foreign acquisition of Australian agricultural assets will largely be diminished.

This submission is respectfully submitted to the Inquiry for its consideration. The Author would be pleased to appear before the Inquiry as required.

Phillip Capicchiano B. Agricultural Science
Member Committee of Inspection - Great Southern Group of Companies (in liquidation)
Former employee – Great Southern plantations
Former employee – Victorian Farmers Federation
Share holder of Great Southern Ltd

Encl.

APPENDIX 1

Summary of key events leading up to the sale of the Great Southern plantation land

16 May 2009	Ferrier Hodgson appointed Administrators of the Great Southern group of companies.
18 May 2009	McGrathNicol appointed receiver/manager of the Great Southern group of companies.
April 2010	Gresham Partners appointed by Great Southern receiver McGrathNicol to conduct a scoping study on the best way to sell approximately 250,000 hectares of Great Southern plantations land and forestry assets.
10 June 2010	McGrathNicol ASX announcement re: the commencement of a sale process for the entire Great Southern Blue Gum land estate (over 250,000 hectares). The ASX announcement refers to no specific time limit other than an indication that McGrathNicol expects the sales process would be concluded by the end of the year.
28 June 2010	National Farmers Federation wrote to the then Minister for Financial Services, Superannuation and Corporate Law, The Hon. Chris Bowen, requesting that Australian farmers are given the opportunity to engage in the Great Southern land sale process being undertaken through McGrathNicol. The letter is copied to then Assistant Treasurer, The Hon. Nick Sherry and Matthew Collett, Corporations & Financial Services Division, Department of Treasury.
19 Aug 2010	At the request of the VFF, Elders Rural Services prepare a proposal on how farmers could participate in the sale of Great Southern forestry land. The proposal is essentially an internet based 'auction 'system, conducted in stages, initially to sell enough land to raise the funds required to clear the secured creditors debt. If required, the sale mechanism would enable the transaction (s) to be completed within an agreed timeframe. The proposal accommodates bids from consortiums, as per the work under consideration by McGrathNicol.
27 Sept 2010	Victorian Farmers Federation endorses the Elders proposal and writes to Tony McGrath, McGrathNicol, to formally request farmers be given the opportunity to bid for the plantation land, as per the Elders proposal. The letter is copied to the banks belonging to the secured creditors ('Club banks').
1 Oct 2010	Letter from Tony McGrath, McGrathNicol advising the VFF that because the sales process is significantly advanced, McGrathNicol was unable to engage with the VFF on its proposal.
Oct 2010	McGrathNicol grant 4 week exclusivity to New Forests before making a formal offer for the Great Southern plantation forestry assets.
Oct 2010	On 13 October 2010 ASIC was advised of concerns that the receivers had ignored the VFF proposal and appeared not seeking to engage farmers interest in the sale process and that this would result in a sale price less than a fair market price for the land (breach of s 420A). On 28 October 2010 ASIC advised it would not be pursuing the matter unless evidence of breaches of s 420 A were provided to it. On 30 October 2010, the Hon Joe Ludwig advises that the matters raised in an email by COI member Phillip Capicchiano dated 8 October have been referred to the Assistant Treasurer, the Hon Bill Shorten.
24 Nov 2010	The Federal Government announces a cross-agency research project to gather information about the extent of foreign ownership in the agricultural sector.

Late Dec 2010	Foreign Investment Review Board gives approval to the sale of Great Southern land under forestry to Alberta Investment Management Corp (AIMCo), a Canadian based fund manager. Approval signed by the Federal Treasurer, the Hon Wayne Swan. Approval given less than a month after the Federal Government announces the studies into foreign ownership of Australian rural assets. McGrathNicol execute and exchange contracts with AIMCo and New Forests, a Funds manager based in Sydney with overseas connections, selling over 250,000 hectares of prime agricultural land under forestry plantation for a total of $415 million or approximately $1,650/hectare.
5 May 2011	Letter from the Hon David Bradbury to Phillip Capicchiano (member of the Great Southern Plantations Committee of Inspection) acknowledges the Government's power under the Foreign Acquisitions and Takeovers Act 1975 to block proposals to sell assets to foreign persons where the proposals are determined to be contrary to the national interest. The letter is in response to an email Mr Capicchiano sent to Tony Windsor MP in October 2011, subsequently forwarded by Mr Windsor to Mr Bradbury.

Appendix 2

Victorian Farmers
Federation

27 September 2010

Mr T McGrath
Receiver and Manager
Great Southern Limited and its Subsidiaries
C/- McGrath Nicol
GPO Box 9986
SYDNEY NSW 2001

Dear Sir

Great Southern Limited
(In Liquidation) (Receivers and Managers Appointed)
ACN 052 046 536

We understand that you and a number of your partners have been appointed receivers and managers of the assets of the Great Southern Ltd Group of Companies ("**Great Southern**"). As part of this recovery process, you are now seeking to receive offers with respect to the forestry assets (the "**Properties**") of Great Southern.

Further, we understand that Gresham Advisory Partners Limited ("**Gresham**") has been retained by you to assist in the realisation process and that non-binding indicative offers have been requested from perspective purchasers as part of the first stage process. After a review of offers received, you will consider narrowing this field to a suitably financially qualified number of interested parties to continue through the realisation process.

The Victorian Farmers Federation (the "**Federation**") has observed the realisation process of land assets conducted by a number of managed investment schemes ("**MIS**"). As an organisation, we represent Victorian farmers who actively own and operate farms in areas where plantations have been established to meet the requirements of various MIS and, in particular, the areas planted by Great Southern in the Green Triangle and Gippsland area.

As you may be aware, we are the largest state farmer organisation in Australia, representing over 10,000 members who live and work on more than 15,000 farm businesses situated across Victoria. The Federation is also a member of the National Farmers Federation ("**NFF**"), which represents the interests of over 140,000 farmers in Australia.

We understand that the NFF has already written to the Federal Government seeking its support to ensure Australian farmers are given an equal opportunity to purchase land owned by MIS companies in liquidation (please refer to the enclosed letter to Minister Bowen, dated 28 June 2010).

As a representative body of farmers, we have received numerous queries and approaches with respect to how our members are able to acquire land formally cultivated by Great Southern. As you would appreciate, these individual farmers lack the financial capacity to participate in an acquisition of the land in the in globo sale being conducted by you and your advisors.

We have given considerable thought as to how we are able to meet and match the needs of various stakeholders in this process which will facilitate the best possible outcome for secured and other creditors of Great Southern, whilst also ensuring our members and farmers Australia wide have an opportunity to acquire property to add to their existing land interests.

Farrer House 24-28 Collins Street Melbourne 3000 | abn 67 079 980 304 | Ph.1300 882 833 | Fax. 03 9207 5500 | E-mail. vff@vff.org.au | www.vff.org.au

In considering the various options, we have discussed this matter with Elders Rural Services Australia Limited ("**Elders**") and they have provided us with their proposal relating to the release of Properties to the market, which would facilitate and achieve the outcome set out above.

We have attached a copy of the marketing proposal which has been provided to us by Elders. It includes estimates of the indicative price range that the land realisation process, managed by Elders, could achieve.

We verily believe, on the basis of the proposal provided by Elders, that with the indicative price ranges of realisation between $3000 and $7000 per hectare, the properties will be attractive to Australian farmers generally and our members in particular. We have been advised by Elders that the final realisation price will be subject to a number of factors including:

- land in higher rainfall belts expected to sell at the higher range;
- land with soil types suitable for a range of farming systems may be highly sought after;
- land located where there is a high proportion of local farmers may attract multiple bidders;
- land offered for sale that is unencumbered or close to being unencumbered at or around the time of sale or requiring minimal remedial work by the successful bidder to prepare the land for its intended purpose; and
- prices for land sales conducted in future years reflecting movements in prices in local farming land over the same period.

At the indicative price ranges prepared by Elders and pursuing the realisation programme suggested by Elders, we are of the view, on the basis of the evidence provided to the Federation, that a number of important outcomes may emerge for the benefit of all parties, which we summarise as follows:

1. secured creditors should be repaid in a timely manner;
2. the properties remain owned by Australians for the benefit of future generations and, in particular, the farming community;
3. the best financial outcome could arise for other creditors and shareholders in the Great Southern Group;
4. the price per hectare could be greater than that achieved in an in globo sale process currently being pursued;
5. the Elders proposal will allow all farmers Australia wide to participate in the process (not just those in Victoria), which would provide equal opportunity for Australian farmers to bid, creating maximum competitive tension on the sale price; and
6. based on the estimates provided by Elders and its understanding of the total hectares of land to be sold, the realisation process could result in sale proceeds in the order of $600 million to $1.4 billion.

We are of the view that the Elders proposal is capable of being realised in a timely and efficient manner that will meet the requirements of the secured creditors, together with the social and philosophical benefits that come from the mechanism proposed by Elders.

We do not see this process as marginalising the larger corporate interests that no doubt have pursued this opportunity through Gresham. Our interest is on behalf of farmers around Australia, and seeking to ensure that they receive the opportunity to participate in this process.

We would appreciate the opportunity to meet with you to be able to further explain our interest on behalf of Australian farmers so that we are able to work towards a satisfactory conclusion for the benefit of all parties.

Please do not hesitate to phone the undersigned at a time convenient to you to arrange such a meeting.

Yours faithfully,

Andrew Broad
President

Encl. copy of letter to Minister Bowen dated 28 June 2010:
Charles Burke, Vice President, National Farmers Federation

copy of Elders Rural Services letter dated 19 August 2010:
Shayne Mcintyre, National sales manager, Elders Rural Services

Cc: Brendan White, Executive General Manager Regional & Agribusiness Banking, Commonwealth Bank
Ian Narev, Group Executive Business & Private Banking, Commonwealth Bank
David Hisco, Chief Executive, ANZ Bank Group Ltd
Darryl Mohr, Head of Agribusiness, ANZ Bank Group Ltd
Chris Ammann, Senior Director, Corporate Finance, Mizuho Corporate Australia

National Farmers' FEDERATION

28 June 2010

The Hon Chris Bowen MP
Minister for Financial Services, Superannuation and Corporate Law; Minister for Human Services
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister,

RE: MIS – liquidation of land assets

As the NFF has discussed with you in the past, we have been concerned about the exponential growth in Managed Investment Scheme (MIS) projects and believe that in many instances, the MIS mechanism does not promote sound investment decisions in rural and regional Australia. In addition, we believe that many MIS projects have created negative distortions of resource allocation in regional areas.

The NFF has always been concerned that MIS have the potential to damage the reputation of Australian agriculture as a competitive investment option for people in metropolitan areas. This concern has now come to fruition with the demise of MIS operators such as Timbercorp and Great Southern Plantations, which has painted agriculture in an extremely poor light.

With the demise of these MIS operators, the NFF is keen to raise our concerns about the insolvency aspects of these operations and the process of liquidating MIS assets.

In particular, the NFF is keen to ensure that Australian farmers are given an equal opportunity to purchase land owned by MIS companies in liquidation. We want to ensure that the process for selling the land does not exclude the farming community to the detriment of farmers wanting to expand their operations as well as creditors seeking to maximise the value of the sale of assets.

The NFF understands that with the liquidation of Timbercorp assets, the farming community was not consulted nor was there any process facilitating the opportunity for farmers to purchase the land assets that were available. Instead, we believe that the administrator only made the land assets available to overseas companies or other large consortiums for the purpose of ensuring the outstanding bank debt was paid promptly.

With the liquidation of Great Southern Group of Companies land assets due to commence in the near future, we want to ensure that farmers have an opportunity to purchase these assets.

You would be aware that Australian farmers boast a productivity growth level that over the past 20 year has been second only to the IT sector. It is only these productivity growth levels that have allowed Australian farmers to keep pace with declining terms of trade.

Increasing economies of scale through land expansion has been a key factor that has in the past and will continue to play a role in ensuring that many Australian farmers can maintain their profitability. Farmers, particularly those bordering now defunct MIS operations, clearly see an opportunity to expand their properties and are asking for the opportunity to bid for the land (or parcels of it) and in doing so providing competition for the sale.

Therefore the NFF asks that measures are undertaken to ensure that the process of selling the land should be as transparent, well administered and competitive as possible. Australian farmers are not looking for an unfair advantage, but rather an equal opportunity to engage in the sale process.

The NFF have been contacted by Treasury in relation to NFF's participation within a consultation process in relation to governance and restructuring aspects of the MIS provisions of the Corporations Act 2001. The NFF will engage in this consultation process and will raise this issue through that process as well.

Yours sincerely

Charles Burke
Vice President

CC: Senator the Hon Nick Sherry
Assistant Treasurer

Matthew Collett
Investor Protection Unit
Corporations & Financial Services Division
Department of the Treasury

Elders Melbourne
160 Queen Street
Melbourne Vic 3000
Ph 03 9609 6222
Fax 03 9602 3787
www.eldersre.com.au

19 August 2010

Mr Andrew Broad
President
Victorian Farmers Federation
Level 6
24 Collins Street
MELBOURNE VIC 3000

Dear Andrew

Re: Plantations Marketing Proposal

Thank you for your endorsement in relation to this company being considered to instigate a marketing and sales strategy that will fulfil your organisation's objectives to allow the farming communities of Australia to participate in a realisation process involving the sale of plantation land owned by the Great Southern group of companies.

Our recent experience with the marketing of blue gum plantations land indicates the farming community is keen to participate, with the intention of purchasing tree land and to return it to higher valued economic uses such as pasture for animal/dairy production or cropping.

Elders Australia wide footprint offers a local experienced rural salesperson in every district or region that have plantations. This vast spread of sales staff means all lands will have dedicated people to identify, inspect, service and negotiate respective parcels and will assist farmers and other local and international parties assess the value of the land offered for sale.

We believe this process will create positive, competitive tension on land sales as well as provide a sales mechanism that is transparent and orderly, so that the objectives of obtaining fair market value for the land is achieved in a timely manner. This will also satisfy key requirements under the receivership, namely the prompt repayment of secured creditors, while maximising any residual value flowing through to unsecured creditors.
Under our proposal, the work currently undertaken by Gresham Partners to determine expressions of interest in the land bank can easily be accommodated, as any expressions of interest can be formalised through the internet based bidding process that we propose. This will also ensure that these bids are commercial and reflect market value, as they will be assessed against other bids, particularly from local producers, where we believe significant, competitive tension for land purchase will be derived.

Subject to approval by the Receivers and Club Bank syndicate, Elders would be in a position to commence work immediately on its proposal.
In broad terms the framework of our proposal would be conducted through a stage by stage process for selling the land.

Process for selling land

To achieve the objectives of fair market value whilst satisfying requirements of the receivership for stakeholders, we propose that the land sale be conducted in stages, with the timing of release and sale of land parcels subject to the following:

Stage 1 — Quantifying and qualifying all available parcels of land on separate titles that is or will be unencumbered during 2010.

Provide forward estimates to the receivers of the revenue likely to be raised from the sale of this land, based on the land value estimates provided by Elders. Based on these forward estimates, determine the requirement to release further portions of land from Stage 2 onwards, should the land sold in stage 1 not raise sufficient funds to clear the Club Bank debt.

Commence advertising, promotion and sale process for unencumbered land. Receivers to agree on closing date for sale process of Stage 1.

Stage 2 — Subject to the level of funds raised from successful bids in Stage 1, a further proportion of land will be released for sale in 2011. The timing of which could be shortly after Stage 1 sale is completed and would be targeting release of land which becomes unencumbered during 2011.

Should the Stage 2 parcel of land in addition to the sale proceeds from Stage 1 not be sufficient to clear the debt owing to the Club Bank, a further portion of land will be offered for sale in 2011, that being the land area that is due to become unencumbered in 2012.

Stage 3 — The process outlined in Stage 2 would be repeated on an annual basis. Should the revenue raised from land sales in Stages 1 & 2 raise sufficient funds to clear the Club Bank debt, the area of land offered for sale in Stage 3 on an annual basis would be limited to available unencumbered land in the year in question, until all remaining parcels of land are sold.

The point at which the Club Bank debt is retired would determine the period from which the sale process would be conducted annually. Conducting the sales process annually also provides greater lead and planning times, and would particularly assist producers prepare budgets and arrange finance where required to enable them to effectively and competitively participate in any future bidding process.

Strategy within each stage

1. Establish decision panel confirming lots to be sold.
2. Confirm "saleable" lots ie: clear title, clear access, tree ownership (where applicable), harvest expectation (where applicable).
3. Upload relevant information to publish agreed areas and locations onto Elders website.
4. Advertise availability of agreed lots and the bidding process through local and international networks and nationwide media including those resources available through the VFF/NFF, Elders website and Partners consultants (who are currently assisting the receivers obtain expressions of interest from corporate parties)
5. Establish the "end date" of bidding per tranche of land offered for sale.
6. Register bidders online or in person via Elders branch network.
7. Activate sale.
8. Successful bidders signed to prepared contracts by Elders staff, who will be pre-advised of sale lots.

Lead time required

Establishment/set up

- ERS will require 2 months to complete the construction of software to facilitate the sale process. Existing software requires "merging". ERS is experienced at this method of marketing, using this strategy to sell livestock across Australia.

Advertising land bank portions

- minimum 6 weeks prior to any sale deadline or other agreed period.

After sale time required

- 7 days to finalise signing by successful bidders

Settlement

- 60 days from day of sale, or other agreed period.

Areas of land will be identified in a staged sale matrix, and associated media and local Elders staff working with interested farmers to support the on-line bidding process for the relevant parcels of land. The schedule of sales will include buyer parcels and small lots and may include treed as well as untreed or unencumbered land.

The focus will initially be on satisfying the bank debt, in an agreeable timetable, and subsequently on maximising the sales value from the balance of the lands.

The values achieved for established plantation lands will vary considerably, depending largely on the quality of soils and rainfall reliability of the district and timing of the land sales.

Our preliminary estimates indicate that land values will vary from $3,000/ha to $7,000/ha with values at the higher end of or exceeding the range for land under the following scenarios:

- land in higher rainfall belts is expected to sell at the higher range
- land with soil types suitable for a range of farming systems may be highly sought after
- land located where there is a high proportion of local farmers may attract multiple bidders
- land offered for sale that is unencumbered or close to being unencumbered at or around the time of sale or requiring minimal remedial work by the successful bidder to prepare the land for its intended purpose
- prices for land sales conducted in future years should reflect movements in prices in local farming land over the same period

Each agreed aggregation will be valued immediately prior to marketing, by respected assessors, to ensure value integrity is retained throughout the process.

Legal documentation will be required to align with each offering.

Where sales are conducted through Elders our trust accounting processes will ensure the security of deposits and we shall monitor the settlement process also.

Upon sale, an Elders representative will sign the buyer, take a deposit and take care of all after sale documentation until settlement.

This process will then be repeated in agreed tranches to ensure maximum return from each offering.

Conclusion

Elders would be delighted to meet with you to personally present the manner in which the web-site will operate to achieve the best outcomes and answer any queries you may have regarding this proposal strategy.

We submit our proposal satisfies both the obligations of the receivers and administrators under the receivership and the VFF's objectives and requirements of its members and the broader farming community, in seeking to participate meaningfully, through an objective, transparent process in the proposed sale of land owned by the Great Southern group of companies.

Yours sincerely

Shane McIntyre
National Sales Manager
- Real Estate

Appendix 3

McN+

McGRATHNICOL

CORPORATE RECOVERY

1 October 2010

1 - OCT 2010

Andrew Broad
President
Victoria Farmers Federation
Farrer House
24-28 Collins Street
Melbourne VIC 3000

Dear Sir,

Great Southern Limited (Receivers and Managers Appointed) (In Liquidation)
ACN 052 046 536

We acknowledge the interest of the Victorian Farmers Federation in the forestry assets of Great Southern Limited, as outlined in your letter dated 27 September 2010.

On 10 June 2010, McGrathNicol as the Receivers of Great Southern Limited publicly announced the commencement of a sale process for the entire Great Southern blue gum forestry estate. The decision to start the sale process followed the completion of an extensive scoping review conducted by Gresham Advisory Partners Limited. This scoping review considered all available methodologies to meet the objectives of all stakeholders whom the Receivers represent.

In order to deliver on these objectives, the entire Great Southern blue gum forestry assets have been widely marketed to parties in Australia and offshore. The sales process is significantly advanced and, as such, we are currently unable to engage with you on this matter. Accordingly, we respectively decline the unsolicited sales role proposed by Elders Rural Services Australia Limited.

Should circumstances change such that we may contemplate a modified sale process, we may contact you to discuss your proposal in more detail.

Yours faithfully
Great Southern Limited (Receivers Appointed) (In Liquidation)

Tony McGrath
Joint and Several Receiver and Manager

101001 Ltr to VFF

Appendix 4

National Farmers' FEDERATION

28 June 2010

The Hon Chris Bowen MP
Minister for Financial Services, Superannuation and Corporate Law; Minister for Human Services
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister,

RE: MIS – liquidation of land assets

As the NFF has discussed with you in the past, we have been concerned about the exponential growth in Managed Investment Scheme (MIS) projects and believe that in many instances, the MIS mechanism does not promote sound investment decisions in rural and regional Australia. In addition, we believe that many MIS projects have created negative distortions of resource allocation in regional areas.

The NFF has always been concerned that MIS have the potential to damage the reputation of Australian agriculture as a competitive investment option for people in metropolitan areas. This concern has now come to fruition with the demise of MIS operators such as Timbercorp and Great Southern Plantations, which has painted agriculture in an extremely poor light.

With the demise of these MIS operators, the NFF is keen to raise our concerns about the insolvency aspects of these operations and the process of liquidating MIS assets.

In particular, the NFF is keen to ensure that Australian farmers are given an equal opportunity to purchase land owned by MIS companies in liquidation. We want to ensure that the process for selling the land does not exclude the farming community to the detriment of farmers wanting to expand their operations as well as creditors seeking to maximise the value of the sale of assets.

The NFF understands that with the liquidation of Timbercorp assets, the farming community was not consulted nor was there any process facilitating the opportunity for farmers to purchase the land assets that were available. Instead, we believe that the administrator only made the land assets available to overseas companies or other large consortiums for the purpose of ensuring the outstanding bank debt was paid promptly.

With the liquidation of Great Southern Group of Companies land assets due to commence in the near future, we want to ensure that farmers have an opportunity to purchase these assets.

You would be aware that Australian farmers boast a productivity growth level that over the past 20 year has been second only to the IT sector. It is only these productivity growth levels that have allowed Australian farmers to keep pace with declining terms of trade.

Increasing economies of scale through land expansion has been a key factor that has in the past and will continue to play a role in ensuring that many Australian farmers can maintain their profitability. Farmers, particularly those bordering now defunct MIS operations, clearly see an opportunity to expand their properties and are asking for the opportunity to bid for the land (or parcels of it) and in doing so providing competition for the sale.

Therefore the NFF asks that measures are undertaken to ensure that the process of selling the land should be as transparent, well administered and competitive as possible. Australian farmers are not looking for an unfair advantage, but rather an equal opportunity to engage in the sale process.

The NFF have been contacted by Treasury in relation to NFF's participation within a consultation process in relation to governance and restructuring aspects of the MIS provisions of the Corporations Act 2001. The NFF will engage in this consultation process and will raise this issue through that process as well.

Yours sincerely

Charles Burke
Vice President

CC: Senator the Hon Nick Sherry
Assistant Treasurer

Matthew Collett
Investor Protection Unit
Corporations & Financial Services Division
Department of the Treasury

Appendix 5

ASIC

Australian Securities & Investments Commission

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

28 October 2010

Mr Phillip Capicchiano
Director
Alliton Securities
Level 13, 350 Collins Street
MELBOURNE VIC 3000

Email: p.capicchiano@alliton.com.au

Dear Sir

GREAT SOUTHERN GROUP OF COMPANIES (the Group)

I refer to the meeting between you and ASIC attended by Michael Dwyer, Commissioner, Warren Day, Regional Commissioner, Faranaz Alam and myself on Monday 25 October 2010 in relation to your email complaint of 13 October 2010.

Your complaint relates to concerns regarding the sale process (the sale process) for realisation of Group land being undertaken by the receivers and managers of the Group (the receivers). In particular, you have raised concerns about the appropriateness of the receivers declining a proposal made by the Victorian Farmers Federation dated 28 September 2010 (the proposal).

We confirm that during the meeting:

- you advised us that you had not raised your concerns with the receivers or the liquidators of the Group prior to raising the complaint with ASIC;
- we outlined ASIC's regulatory role;
- we explained to you the differences in the roles of a receiver and manager and a liquidator;
- we suggested that you may wish to raise your concerns with the receivers, the liquidators and/or the committees of inspection of the relevant companies forming part of the Group and request an update from the receivers as to the sale process; and
- we suggested that you seek legal advice surrounding your concerns.

In response to your request for ASIC to undertake enquiries in relation to your complaint, based on available information and the outcomes of our discussion, we will not be taking further steps at this time. However, we will consider any additional information that you or the liquidator of the Group may wish to bring to our attention in relation to any evidence indicating breaches of the law, in particular, breaches of section 420A of the Corporations Act 2001 (Cth), should this be provided to us.

I confirm that the discussion during our meeting in no way endorses or approves the merit or otherwise of the proposal dated 28 September 2010 or any further steps you may take in relation to the proposal. I encourage you to take legal advice in relation to this matter.

If you have any questions in relation to this letter, please telephone me on 03 9280 3465 or Ms Faranaz Alam on 03 9280 3319.

Yours faithfully

Maria Duta
Acting Senior Executive Leader
Insolvency Practitioners and Liquidators
Australian Securities and Investments Commission

Appendix 6

Appendix

<u>**Copy of The Age reporter Raphael Epstein's report on the VFMC - March 2011** (emphasis added)</u>

Every time a person is hurt in a car accident or injured at work, or whenever Victorian police officers or firemen retire, the money they and their families are entitled to is in the hands of the Victorian Funds Management Corporation.

Just 90 people work at the corporation, where the highly specialised, high-stakes world of international finance meets the sober world of the public service. It is charged with keeping a judicious eye on the $35 billion worth of pensions, payouts and other piles of public money that make up three-quarters of the state government's assets.

After revelations in 2008, the corporation has mostly been known for its executives being paid the biggest wages and bonuses ever seen in Victoria's public service, and at a time when they were presiding over multibillion-dollar losses.

In March 2011 The Age revealed the details of a new $500 million loss that was only entered in the corporation's accounts at the end of last year and the mistakes that led to that loss and the lack of due diligence, the willingness to use Google as a research tool rather than thorough questioning and corroboration, and the corporation's willingness to ignore the need for formal Treasury approval.

These failures occurred as the corporation was deciding whether or not to invest $1 billion in a new financial instrument called a death fund that was managed by a company named the Life Settlements Wholesale Fund.

In 2009 the law firm Mallesons Stephen Jaques was called in to track how the corporation made the investment and the major loss incurred from it. (The review will also raise questions about the corporation's other losses, those the Brumby government blamed on the global financial crisis. Current management insist there are "no other skeletons in the closet".)

The origins of this loss began in 2007 when fund managers around the world were looking for new assets that were somehow immune to the vacillations of global share markets.

All sorts of financial companies were marketing new, sometimes fanciful schemes, such as buying shares in cargo ships and bankrolling restaurants and future pop stars.

The corporation chose death funds, which were being sold as high-return, low-risk investments offering a new but simple proposition: the fund buys life insurance policies from elderly and unwell Americans who are keen to cash in their policies before they die.

The death fund then assumes responsibility for paying the premiums and gives the still living policyholder a discounted payout. The fund would cash in the policy when the former policyholder dies and hopefully make a profit.

The death funds packaged these policies in bundles worth millions of dollars and sold them on to investors who could theoretically sit back and wait for some healthy returns as others watched their sharemarket-linked investments turn sour.

But even without the credit crunch caused by the financial crisis, there was a catch. A death fund has to have the money to pay the premiums until the policyholder dies. Also, actuaries don't always correctly estimate how long people will live.

One of the fund managers looking for a new investment was Leo de Bever, the Dutch-born financial whiz brought in as the corporation's chief investment officer at the end of 2006. In 2007 de Bever heard a presentation from a representative of the Life Settlement Fund. And it is from this point that Mallesons' examination begins to reveal a disturbing story.

Throughout the global financial crisis, the Labor government defended the corporation, saying its losses were comparable to those suffered by funds all over the world. But the government was in a difficult position: it was both promoter and watchdog of the corporation.

The Department of Treasury and Finance is the prudential regulator and supervisor of the corporation. At the same time, the Treasurer, acting on advice from the department, is supposed to sign off on any significant investments.

The Mallesons' report makes it clear this difficult balancing act was not working. As transactions for the death fund were completed **in April 2008, de Bever resigned as the corporation's chief investment officer halfway through his term, saying there was "more interference than was desirable" from the Labor government.**

It was de Bever who had rushed through the corporation's initial investment of $200 million in the death fund in June the previous year. <u>He had done this before final approval for the investment had been given by Treasury</u>. Indeed, Mallesons' review of the corporation's emails found a constant theme; Leo de Bever's "impatience with the [Treasury] process and [his] view on the necessity for speed".

Treasury has two layers of approval and signing off on each major investment and keeping an eye on the overall investment strategy through what is called the Investment Risk Management Plan.

The Mallesons report raises concerns about both these means of oversight. First, Treasurer John Brumby amended this risk management plan to allow the corporation to buy into the death fund. Previously, it had only been allowed to make investments such as this in Australia.

The risk management plan is supposed to be a guide for the corporation, helping it balance the fund managers' pursuit of higher returns with the sober management of public finances.

And the Mallesons review also shows that when approval for this investment was sought, Treasury was given as little information as the corporation's board.

It appears the corporation skirted some of the rules set by Treasury. When approval was sought from the treasurer, the death fund was classified as "international fixed interest" rather than "alternative investment".

The distinction is important. The latter would have required more scrutiny from the treasurer. Internal emails acknowledge that this was an "unusual classification" but someone from the corporation says in an email this is "an easier way to go".

By the end of 2008, death funds were in trouble. The mathematical tables relied on to predict life expectancy were rejigged, and most funds suffered an automatic 20 per cent loss.

Despite the writedown costing the corporation at least $200 million, an internal email at the time from the corporation's then chief executive, Syd Bone, says "this is not great but [is] manageable".

By the end of last year the current executive had called in the corporate cleaners. Accountants, lawyers and actuaries did their own investigation. The lawyers essentially blamed Leo de Bever, and the actuaries revalued the billion-dollar investment at around $580 million. Other insiders said it was actually $490 million.

But de Bever is unrepentant. Speaking by telephone from Edmonton, Canada, where he manages an investment fund (AimCo) that is twice the size of the VFMC, he says there is more politics than logic in the revaluation of the investment in the death fund, which it is still a good investment and "this is simply a good old-fashioned attempt by the CEO to clear the decks".

He says if it could be sold, the death fund asset would sell quickly, devalued as it is.

The corporation's current chief executive, Justin Arter, insists that investing in death funds was a bad decision. He is adamant that the corporation has changed dramatically, and insists there are far stricter controls now in place. But he admits there were "some pretty unpalatable phone calls" late last year with those who lost money, such as WorkSafe and the TAC.

None of the staff involved in the death fund investment took part in the Mallesons review, and they no longer work at the corporation. But in dozens of pages, the Mallesons report provides some tantalising glimpses of decisions that will surely be pursued by the new government. It certainly plans to examine whether any other major investments were made with a similar lack of due diligence.

The review found no other evidence to back the claim made in a 2007 internal email that "the board had told [de Bever] to just ignore [Treasury] and get on with it regardless of the rules".

Those now in charge can expect many more questions about the corporation's losses in the past few years.

Rafael Epstein is an investigative reporter with The Age.

Appendix 7

National Post

Today's Paper & Archive

AimCo buys into forest land down under

Leo de Bever, chief executive of AimCo, says the Australian transaction was "tricky." Ted Rhodes, Postmedia News Files

Jeffrey Jones, Reuters Jan 28, 2011 | Last Updated: Jan. 28, 2011 3:03 AM ET

CALGARY - A Canadian public-sector pension fund has joined a forestry management firm in a $415-million acquisition of Australian timber lands, capitalizing on a failed government investment scheme, the companies said on Thursday.

Alberta Investment Management Corp. and a fund run by Australia's New Forests Pty Ltd. are buying the timberland assets of Great Southern Plantations, which include more than 2,500 square kilometres of land in forestry and agricultural regions in six states.

The pair are buying the assets out of receivership. They will be managed by New Forests, an investment firm specializing in timber lands and environmental markets such as carbon, biodiversity and water.

The lands offer long-term opportunities to make money in numerous ways, AimCo chief executive Leo de Bever said.

They have been unaffected by the country's severe flooding, he said.

"There is a lot of optionality to this transaction. Some of this land may eventually revert to agriculture and some of it we may turn into a different kind of forest, for biomass for instance," Mr. de Bever said.

The deal, one of the largest in Australia's forestry estate business, fits into the fund manager's stated investment criteria, which include looking for distressed assets in the fields of food, energy and raw materials. Mr. de Bever has about 10 years of experience investing in the Australian forestry sector.

"It is a very tricky transaction. It's got a lot of moving pieces, and very few people could come up with the cash, which is what we did," said Mr. de Bever, whose organization manages about $70-billion in public pensions and other government funds for Alberta.

"A lot of other people wanted to buy pieces but couldn't get the financing and so on. We finally got tired of it and said, 'OK, here's a price for the whole thing.' "

AimCo has been an active dealmaker, making major investments in recent years in Precision Drilling Corp., Viterra Inc. and, as recently as last month, a six-lane toll road in Chile.

Great Southern Plantations was a managed investment company through which retail investors could help fund government efforts to reduce Australia's shortage of wood products while gaining a tax break. It went into receivership in 2009, a victim of the economic meltdown.

"These are 650 individual pieces that were run by different organizations at one point, so the receiver ends up with all these things and we came along and made a bid for the whole kit and caboodle," Mr. de Bever said.

"This transaction is indicative of the trend to move towards institutional ownership of Australia's plantation forestry estate, which will allow the industry to consolidate and become internationally competitive," said David Brand, managing director of New Forests.

Appendix 8

Senator the Hon. Joe Ludwig

Minister for Agriculture, Fisheries and Forestry
Senator for Queensland

REF: MNMC2010-11267

Mr Phillip Capicchiano
Director, Practice Development
Alliton Securities Pty Ltd
Level 13, 350 Collins Street
MELBOURNE VIC 3000

Dear Mr Capicchiano

Thank you for your email of 8 October 2010 about the liquidation of Great Southern Limited.

I appreciate you taking the time to raise your concerns with me. However, as the matter relates to the portfolio of the Hon. Bill Shorten MP, I have referred your letter to the Treasury for consideration.

Thank you again for writing to me.

Yours sincerely

Joe Ludwig

Minister for Agriculture, Fisheries and Forestry
Senator for Queensland

30 October 2010

Parliament House, Canberra ACT 2600 Telephone: 02 6277 7520 Facsimile: 02 6273 4120

Appendix 9

The Hon David Bradbury MP
Parliamentary Secretary to the Treasurer

5 - MAY 2011

Mr Phillip Capicchiano
Director
Alliton Securities Pty Ltd
Level 13, 350 Collins Street
MELBOURNE VIC 3000

Dear Mr Capicchiano

Thank you for your letter of 8 October 2010 to Mr Tony Windsor MP, concerning the conduct of the receivership of Great Southern. Your email has been referred to me as I have portfolio responsibility for insolvency policy. I apologise for the delay in responding to you.

A receiver is an independent and suitably qualified person who is appointed by a secured creditor (or, in special circumstances by the Court) to take control of some or all of a company's property. The receiver's main function is to deal with (ordinarily, to collect and sell) sufficient property of the company to meet the claims of the secured creditor. Their powers to deal with the property are determined by the document/s creating the charge in favour of the secured creditor and by the *Corporations Act 2001* (Corporations Act).

A receiver is primarily obligated to look after the interests of the secured creditor who appointed them. However, the Corporations Act also requires them to take reasonable care to sell charged property for not less than its market value or, if there is no market value, the best price reasonably obtainable. In addition to this, their conduct is subject to a range of duties that apply to company officers in general.

The law does not prescribe the exact manner in which a receiver must attempt to sell any assets. Subject to the overriding duties referred to above, the law does not interfere with their ability to adapt their approach to asset realisation to the individual circumstances of each administration.

Receivers are afforded a high degree of independence in the manner in which they carry out their functions. They are not subject to direction by the Australian Securities and Investments Commission (ASIC) or the Government. Their actions are reviewable by the courts pursuant to section 423 of the Corporations Act. However, the courts are reluctant to second guess corporate insolvency practitioners in the absence of negligence or misconduct.

In addition to their actions being reviewable by the court, breaches of their duties may result in receivers being personally liable for any loss suffered by stakeholders. You should seek your own legal advice prior to commencing any court proceedings against the receiver.

Neither the Government nor ASIC is directly involved in the administration of particular insolvencies. ASIC may become involved if a receiver commits an actionable breach of the law in the course of the receivership. If you have any concerns regarding the conduct of an insolvency practitioner, you should raise your concerns with them in first instance. If this fails to resolve your concerns, and you have formed the view that they are in breach of their duties under the Corporations Act, you may wish to lodge a complaint with ASIC at www.asic.gov.au, or write to: Manager National Assessment & Action, ASIC, GPO Box 9827, in your capital city.

ASIC is an independent statutory authority responsible for the administration and enforcement of the Corporations Act and related legislation. One of the reasons that ASIC was established as an independent body was to ensure that its decisions and actions are, and are seen to be, independent of the political process. Under the Corporations Act there are limited circumstances in which I am legally able to direct ASIC in respect of a particular matter. I consider it is important to allow ASIC some freedom to identify priorities and act accordingly.

With respect to any sale by the receiver to any foreign persons, you should note that the Foreign Investment Review Board (the FIRB) examines proposals by foreign persons to invest in Australia. FIRB advises the Treasurer on those proposed sales subject to the *Foreign Acquisitions and Takeovers Act 1975* and Australia's foreign investment policy. Where acquisitions fall within the scope of that Act, the Government has the power to block certain proposals that are determined to be contrary to the national interest.

Thank you again for your letter and I hope that this information will be of assistance to you.

Yours sincerely

DAVID BRADBURY

Appendix 10

Treasurer

www.treasurer.gov.au

January 2011

FOREIGN INVESTMENT POLICY

OUR APPROACH

The Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, it encourages innovation, it introduces new technologies and skills, it brings access to overseas markets and it promotes competition amongst our industries.

In 2004, the Australian Bureau of Statistics (ABS) estimated that foreign-owned businesses employed 12 per cent of all private sector employees and contributed 25 per cent of all capital formation. In the mining sector, the ABS found that around one in four people were employed by foreign-owned businesses. Since November 2007, the Government has approved over $400 billion of proposed foreign investment.

The Government reviews foreign investment proposals against the national interest case-by-case. We prefer this flexible approach to hard and fast rules. Rigid laws that prohibit a class of investments too often also stop valuable investments. The case-by-case approach maximises investment flows, while protecting Australia's interests. Our Foreign Investment Review Board (FIRB) will work with an applicant to ensure the national interest is protected. But, if we ultimately determine that a proposal is contrary to the national interest, we will not approve it.

The Government also recognises community concerns about foreign ownership of certain Australian assets. The review system allows the Government to consider these concerns when assessing Australia's national interest.

The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces rather than external strategic or non-commercial considerations.

The Foreign Investment Review Framework provides details on how the Policy is applied to individual cases.

FOREIGN INVESTMENT REVIEW FRAMEWORK

THE FOREIGN INVESTMENT POLICY AND THE LEGISLATION

The *Foreign Acquisitions and Takeovers Act 1975* (FATA) provides the legislative framework for our screening regime. The FATA allows the Treasurer or his delegate – usually the Assistant Treasurer – to review investment proposals to decide if they are contrary to Australia's national interest.

The Treasurer can block proposals that are contrary to the national interest or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest. When making such decisions, the Treasurer relies on advice from FIRB.

The Policy provides guidance to foreign investors to assist understanding of the Government's approach to administering the FATA. The Policy also identifies a number of investment proposals that need to be notified to the Government even if the FATA does not appear to apply.

WHO NEEDS TO APPLY?

1. Foreign Governments and their Related Entities

All foreign governments and their related entities[1] should notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment.

Foreign governments and their related entities also need to notify the Government and get prior approval to start a new business or to acquire an interest in Australian urban land (except when buying land for diplomatic or consular requirements).

Further guidance for foreign government investors is provided under Further Information for Business Acquisitions and, in particular, the section titled Foreign Governments and their Related Entities.

2. Privately-Owned Foreign Investors – Business Acquisitions

Foreign persons should notify the Government before acquiring an interest of 15 per cent or more in an Australian business or corporation that is valued above $231 million.[2] They also need to notify if they wish to acquire an interest in an offshore company whose Australian subsidiaries or gross assets are valued above $231 million.[3]

The exception is for 'US investors'[4], where the $231 million threshold applies only for investments in prescribed sensitive sectors. A $1005 million[5] threshold applies to US investment in other

[1] Definitions are provided in the Annex.

[2] The threshold is indexed annually on 1 January.

[3] The threshold is indexed annually on 1 January.

[4] The FATA does not apply to investments by US investors in financial sector companies. Financial sector companies have the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

sectors. To calculate the value of a business or corporation, you need to consider the value of the total issued shares of the corporation or its total gross assets, whichever is higher.

All foreign persons, including US investors, need to notify the Government and get prior approval to make investments of 5 per cent or more in the media sector, regardless of the value of the investment.

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- foreign investment in the banking sector must be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy;
- total foreign investment in Australian international airlines (including Qantas)[6] is limited to 49 per cent;
- the *Airports Act 1996* limits foreign ownership of airports offered for sale by the Commonwealth to 49 per cent, with a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports;
- the *Shipping Registration Act 1981* requires a ship to be majority Australian-owned if it is to be registered in Australia; and
- aggregate foreign ownership of Telstra is limited to 35 per cent of the privatised equity and individual foreign investors are only allowed to own up to 5 per cent.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

Further guidance is provided under Further Information for Business Acquisitions.

3. Privately-Owned Foreign Investors – Real Estate

Foreign persons should notify the Government and get prior approval to acquire an interest in certain types of real estate. An 'interest' includes buying real estate, obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements.

Regardless of value, foreign persons generally need to notify the Government to take an interest in residential real estate, vacant land or to buy shares or units in Australian urban land corporations or trust estates.

Foreign persons also need to notify if they want to take an interest in developed commercial real estate that is valued at $50 million or more – unless the real estate is heritage listed, then a $5 million threshold applies. An exception for developed commercial real estate applies to US investors, where a $1005 million[7] threshold applies instead.

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[5] The threshold is indexed annually on 1 January.

[6] Individual holdings in Qantas are also currently limited to 25 per cent and aggregate ownership by foreign airlines is limited to 35 per cent. However, the Government announced on 16 December 2009 that these two restrictions will be removed in the future.

[7] The threshold is indexed annually on 1 January.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

The specific real estate rules are explained in further detail under Further Information About Buying Real Estate.

When Should You Apply?

You should lodge an application in advance of any transaction or you should make your purchase contract conditional on foreign investment approval. A transaction should not proceed until the Government advises you of the outcome of its review.

The Government encourages potential investors to engage with FIRB prior to lodging applications on significant proposals to allow timely consideration of the proposal. The Government will treat proposals in-confidence (as outlined further in the section titled Confidentiality/Privacy).

Applications will be accepted as proposals under the FATA when they contain sufficient detail. This includes information about the parties, the proposed investment (including its nature, methods of acquisition, the value of the investment, timetables and whether the investment is public), a statement of the investor's intentions (immediate and ongoing) and how the proposed investment may impact on the national interest.[8]

Applications should also include applicable statutory notices (although please note that there is no statutory form for applications made under the Policy only). Applications to acquire interests that will not be substantially completed within 12 months will generally not be accepted.

Please refer to FIRB's website www.firb.gov.au or to the relevant How to Apply guide for further details and links to the forms under the FATA.

No fees or charges apply to applications.

What is the Government Looking For?

The Government is making sure investments are not contrary to the national interest. If an investment is contrary to the national interest, the Government will intervene. This occurs infrequently.

What is contrary to the national interest cannot be answered with hard and fast rules. Attempting to do so can prohibit beneficial investments and that is not the intention of our regime. Australia's case-by-case approach maximises investment flows while protecting Australia's national interest.

To assist applicants, we provide more guidance on what we are looking for under Further Information for Business Acquisitions.

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[8] See National Interest Considerations under Further Information for Business Acquisitions.

How Long Before a Decision is Made?

Under the FATA, the Treasurer has 30 days to consider your application and make a decision. However, the Treasurer may extend this period by up to a further 90 days by publishing an interim order. An interim order is normally issued if a proposal is very complicated or where you have not provided sufficient information.

You will be informed of the Treasurer's decision within 10 days of it being made. That decision will either raise no objections, allowing the proposal to go ahead; impose conditions, which will need to be met; or prohibit the proposal. If the Treasurer has no objections, you will receive an e-mail or letter to this effect from the FIRB Secretariat on the Treasurer's behalf.

There is no time limit for applications made under the Policy only. However, the Government also aims to consider these proposals within 30 days, where possible.

Confidentiality/Privacy

The Government may share your application with Government Departments and Agencies for consultation purposes. However, the Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government will not provide your application to third parties outside of the Government unless it has your permission or it is ordered to do so by a court of competent jurisdiction. The Government will defend this policy through the judicial system if needed.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

Further Enquiries

Further information on the policy may be found at FIRB's website www.firb.gov.au. Should you have any further enquiries please contact FIRB on:

General enquiries:		*From overseas:*
Phone:	02 6263 3795	+61 2 6263 3795
Fax:	02 6263 2940	+61 2 6263 2940
Email:	firbenquiries@treasury.gov.au	firbenquiries@treasury.gov.au

FURTHER INFORMATION FOR BUSINESS ACQUISITIONS

NATIONAL INTEREST CONSIDERATIONS

Assessing the national interest allows the Government to balance potential sensitivities against the benefits of foreign investment.

The Government determines national interest concerns case-by-case. We look at a range of factors and the relative importance of these can vary depending upon the nature of the target enterprise. Investments in enterprises that are large employers or that have significant market share may raise more sensitivities than investments in smaller enterprises. However, investments in small enterprises with unique assets or in sensitive industries may also raise concerns.

The impact of the investment is also a consideration. An investment that enhances economic activity – such as by developing additional productive capacity or new technology – is less likely to be contrary to the national interest.

The Government typically considers the following factors when assessing foreign investment proposals.

National Security

The Government considers the extent to which investments affect Australia's ability to protect its strategic and security interests. The Government relies on advice from the relevant national security agencies for assessments as to whether an investment raises national security issues.

Competition

The Government favours diversity of ownership within Australian industries and sectors to promote healthy competition. The Government considers whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia.
For example, the Government will carefully consider a proposal that involves a customer of a product gaining control over an existing Australian producer of the product, particularly if it involves a significant producer.

The Government may also consider the impact that a proposed investment has on the make-up of the relevant global industry, particularly where concentration could lead to distortions to competitive market outcomes. A particular concern is the extent to which an investment may allow an investor to control the global supply of a product or service.

The Australian Competition and Consumer Commission (ACCC) also examines competition issues in accordance with Australia's competition policy regime. Any such examination is independent of Australia's foreign investment regime.

Other Australian Government Policies (Including Tax)

The Government considers the impact of a foreign investment proposal on Australian tax revenues. Investments must also be consistent with the Government's objectives in relation to matters such as environmental impact.

Impact on the Economy and the Community

The Government considers the impact of the investment on the general economy. The Government will consider the impact of any plans to restructure an Australian enterprise following an acquisition. It also considers the nature of the funding of the acquisition and what level of Australian participation in the enterprise will remain after the foreign investment occurs, as well as the interests of employees, creditors and other stakeholders.

The Government considers the extent to which the investor will develop the project and ensure a fair return for the Australian people. The investment should also be consistent with the Government's aim of ensuring that Australia remains a reliable supplier to all customers in the future.

Character of the Investor

The Government considers the extent to which the investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision. The Government also considers the corporate governance practices of foreign investors. In the case of investors who are fund managers, including sovereign wealth funds, the Government considers the fund's investment policy and how it proposes to exercise voting power in relation to Australian enterprises in which the fund proposes to take an interest.

Proposals by foreign owned or controlled investors that operate on a transparent and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Foreign Governments and their Related Entities

Where a proposal involves a foreign government or a related entity, the Australian Government also considers if the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest. This includes assessing whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government (including through the investor's funding arrangements). Proposals from foreign government entities operating on a fully arms length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Where the potential investor has been partly privatised, the Government considers the size, nature and composition of any non-government interests, including any restrictions on the exercise of their rights as interest holders.

The Government looks carefully at proposals from foreign government entities that are not operating on a fully arms length and commercial basis. The Government does not have a policy of prohibiting such investments but it looks at the overall proposal carefully to determine whether such investments may be contrary to the national interest.

Mitigating factors that assist in determining that such proposals are not contrary to the national interest may include: the existence of external partners or shareholders in the investment; the level of non-associated ownership interests; the governance arrangements for the investment; ongoing arrangements to protect Australian interests from non-commercial dealings; and whether the target will be, or remain, listed on the Australian Securities Exchange or another recognised exchange. The Government will also consider the size, importance and potential impact of such investments in considering whether or not the proposal is contrary to the national interest.

Further Information About Buying Real Estate

General

The Government has decided that some types of investment in real estate are contrary to the national interest. This section outlines these prohibitions as well as the types of real estate that foreign investors may buy and whether they need Government approval to do so.

If you are intending to buy real estate in Australia, you should make your purchase contracts conditional on foreign investment approval, unless you already have approval or you are exempt from the FATA. Significant penalties may apply to ineligible owners of real estate.

Rules for Buying Residential Real Estate

It is the Government's policy that foreign investment in residential real estate should increase Australia's housing stock. All applications are considered in light of this overarching principle.

Residential real estate means all land and housing that is not commercial property or rural land. In that regard, vacant land that can be used for residential purposes, 'hobby farms' and 'rural residential' blocks are residential real estate.

Temporary Residents

Established (Second-Hand) Dwellings

Temporary residents need to apply if they wish to buy an established dwelling. Only **one** established dwelling may be purchased by a temporary resident and it must be used as their residence in Australia. Such proposals are normally approved subject to conditions (such as, that the temporary resident sells the property when it ceases to be their residence).

Temporary residents **cannot** buy established dwellings as investment properties.

New Dwellings

Temporary residents need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

Vacant Land

Temporary residents need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

All Other Foreign Persons

Established (Second-Hand) Dwellings

Non-resident foreign persons **cannot** buy established dwellings as investment properties or as homes, except as below.

Companies that are foreign persons need to apply to buy established dwellings to house their Australian-based staff. Such proposals are normally approved subject to the company undertaking to sell or rent the property if it is expected to remain vacant for six months or more.

Non-resident foreign persons need to apply to buy established dwellings for redevelopment (that is, to demolish the existing dwelling and build new dwellings). Proposals for redevelopment are normally approved as long as the redevelopment increases Australia's housing stock (at least two dwellings built for the one demolished) or where it can be shown that the existing dwelling is derelict or uninhabitable. Approvals are usually subject to conditions.

New Dwellings

Non-resident foreign persons need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

Vacant Land

Non-resident foreign persons need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

Who is Exempt?

You **do not** need Government approval to buy residential real estate if you are:

- an Australian citizen (living at home or overseas) or you are ordinarily resident in Australia;
- a New Zealand citizen;
- a foreign national who holds a permanent resident visa; or
- a foreign national buying a property as joint tenants with their Australian citizen spouse.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- new dwellings bought from a developer that has pre-approval to sell them to foreign persons;
- an interest in a time share scheme that allows you (and any associates) to use it for up to four weeks per year;
- certain residential real estate in Integrated Tourism Resorts (ITR) – see below;
- an interest acquired by will or devolution by operation of law; or
- an interest acquired from a Government in Australia (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose.

Residential Real Estate in ITRs

You **do not** need the Government's approval to buy residential property that is within the bounds of a resort that the then Treasurer designated as an ITR prior to September 1999.

For resorts designated as ITRs from September 1999, the exemption only applies to developed residential property that is subject to a lease of 10 years or more to the resort operator and that is available as tourist accommodation when it is not occupied by the owner. The normal foreign

investment rules apply to all other property within the ITR, including vacant land for development. Strict conditions must be met to qualify for ITR status.

RULES FOR BUYING COMMERCIAL REAL ESTATE

Commercial real estate includes vacant and developed property that is not for residential purposes, such as offices, factories, warehouses, hotels and shops. It may also include land that does not meet the definition of rural land, such as mining operations.

All Foreign Persons

Vacant Land

Foreign persons need to apply to buy or take an interest[9] in land for commercial development (including to start a forestry business), regardless of the value of the land. Such proposals are normally approved subject to development conditions.

Developed Commercial Property

Foreign persons need to apply to buy or take an interest in developed commercial real estate valued at $50 million or more – unless the real estate is heritage listed, then a $5 million threshold applies. US investors only need to apply for developed commercial real estate valued at $1005 million or more.

Developed commercial property includes hotels, motels, hostels and guesthouses, as well as individual dwellings that are a part of these properties. Buying a unit in a hotel that is owner-occupied or rented out privately (that is, it is not part of the hotel business) is considered to be residential property.

Mining Tenements

Foreign persons need to apply to buy mineral rights, mining leases, mining tenements or production licences where:

- they provide the right to occupy Australian urban land and the term of the lease or licence (including extensions) is likely to exceed 5 years; or
- they provide an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land.

Australian urban land is any land that is not rural land. It includes all seabed within Australia's Exclusive Economic Zone (EEZ). If the mining tenement applies to land currently being used as rural land, then other rules apply (see below).

Where a mining tenement is developed to an operational mine, it will then be considered developed commercial property (see above).

Forestry

Established forestry businesses are treated as rural land.

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[9] An 'interest' includes obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements.

Who is Exempt?

You **do not** need Government approval to buy or take an interest in commercial real estate if you are an Australian citizen (living at home or abroad) or you are ordinarily resident in Australia.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- an interest acquired by will or devolution by operation of law;
- an interest acquired from the Government (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose;
- an interest in developed commercial property (regardless of value) where the property is to be used immediately and in its present state for industrial or non residential commercial purposes (the acquisition must be wholly incidental to the purchaser's proposed or existing business activities); or
- an interest in developed commercial property valued below $50 million generally; $5 million for heritage listed properties; or $1005 million for US investors.

RURAL LAND

Rural Land is land used wholly and exclusively for carrying on a business of primary production. To be a business of primary production, the business must be substantial and have a commercial purpose or character.[10]

A foreign person needs approval to buy an interest in a primary production business where the total assets of the business exceed $231 million (or $1005 million for US investors).

[10] The definition of a primary production business is taken from the *Income Tax Assessment Act 1997*. It refers to production resulting from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming. Primary production for the purpose of the rural land definition does not include vacant land (even if zoned 'rural'), hobby farms, 'rural residential' blocks or land used for stock agistment or mining.

ANNEX – DEFINITIONS

Australian Urban Land Corporation or Trust

A corporation or trust that has interests in Australian urban land which makes up more than 50 per cent of the value of its total assets.

Direct Investment

A direct investment has the objective of establishing a lasting interest in, and a strategic long-term relationship with, the target enterprise. It may allow a significant degree of influence by the investor in the management of the target company.

It is common international practice to consider any investment of 10 per cent or more as a direct investment. However, Australia's foreign investment regime is concerned with all investments that provide the investor with influence or control over the target investment.

Therefore, we consider that interests below 10 per cent may also be direct investments and must also be notified if the acquiring foreign government or related entity can use that investment to influence or control the enterprise. In particular, investments of less than 10 percent which include any of the following must be notified:

- preferential, special or veto voting rights;
- the ability to appoint directors; and
- contractual agreements including, but not restricted to, for loans, provision of services and off take agreements.

Investments preparatory to a takeover bid will also be considered direct investments and must be notified. Enforcing a security interest over a business' assets or shares is also a direct investment.

Foreign Governments and their Related Entities

Foreign governments and their related entities include:

- a body politic of a foreign country;
- companies or other entities in which foreign governments, their agencies or related entities have more than a 15 per cent interest; or
- companies or entities that are otherwise controlled by foreign governments, their agencies or related entities.

Foreign Person

A foreign person is:

- a natural person not ordinarily resident in Australia;[11]

[11] This may include some Australian citizens living abroad, except when they are acquiring Australian urban land.

- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

Joint Tenants

Two or more persons that hold property jointly so that each owns an undivided share of the whole. Should one person die, their interest would pass to the surviving co-owner or co-owners.

Media Sector

For screening purposes, the 'media sector' refers to daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media).

New Dwellings

A dwelling that has not been previously sold by the developer and has not been previously occupied (such as, by tenants) for more than 12 months.

New dwellings include those that are part of extensively refurbished buildings where the building's use has undergone a change from non-residential (for example, office or warehouse) to residential. It does not include established residential real estate that has been refurbished or renovated.

Ordinarily Resident

A person is ordinarily resident if:

- their continued presence in Australia is not subject to any limitation as to time imposed by law (that is, they are permitted to stay in Australia indefinitely, such as Australian permanent residents and New Zealand citizens); and
- the person has actually been in Australia for 200 or more days in the previous 12 months.

Prescribed Sensitive Sectors

The prescribed sensitive sectors are:

- media;
- telecommunications;
- transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided within, or to and from, Australia);

- the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defence Force or other defence forces;
- the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
- the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and
- the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of nuclear facilities.

Spouse

Spouse includes a de facto partner (whether of the same sex or a different sex) – that is, although they may not be legally married, they have a relationship as a couple and live together on a genuine domestic basis (sections 22A and 22B of the *Acts Interpretation Act 1901*).

Substantial Interest

A substantial interest occurs when a single foreign person (and any associates)[12] has 15 per cent or more of the ownership or several foreign persons (and any associates) have 40 per cent or more in aggregate of the ownership of a corporation, business or trust.

Temporary Resident

A person that is residing in Australia and:

- holds a temporary visa which permits them to stay in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or
- has submitted an application for permanent residency and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

United States (US) Investor

A national or permanent resident of the United States of America; a US enterprise; or a branch of an entity located in the US and carrying on business activities there.

Branch of an Entity Located in the US

A branch may be 'carrying on business activities in the US' where it is doing so in a way other than being solely a representative office; and in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the US and by having its administration in the US.

US Enterprise

A US enterprise is an entity constituted or organised under a law of the United States of America. The form in which the entity may be constituted or organised may be, but is not limited to, a corporation, a trust, a partnership, a sole proprietorship or a joint venture.

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[12] See section 6 of the FATA for the list of 'associates'.