

Additional Comments by Senator Nick Xenophon

1.1 There is no question that foreign investment brings considerable economic benefits to Australia. I have previously acknowledged the range of potential benefits that foreign investment could provide to the Australian economy, particularly in Australian agricultural land and the potential to develop our agricultural sector and create jobs.¹

1.2 However, I have also previously expressed concerns about the lack of scrutiny and the lack of available information about foreign investment and the capacity for such foreign investment to have long-term market and food security impacts.²

1.3 In 2010 I introduced the Foreign Acquisitions Amendment (Agricultural Land) Bill 2010 (together with then Senator Christine Milne) to Parliament for debate to address these concerns.

1.4 The Bill, which was modelled on New Zealand's Overseas Investment Act of 2005, required any interest in Australian agricultural land greater than 5 hectares to be subject to application to the Treasurer and required online publication of applications of interest in Australian agricultural land. Through the inquiry process it became apparent that this spatial figure was inappropriate in the Australian context and the Bill was amended to change the threshold from a spatial threshold of 5 hectares, as it is in New Zealand, to a monetary figure of \$5 million.

1.5 I welcome the proposed changes in the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related bills and its focus on ensuring foreign investment supports economic activity without jeopardising national interests.

1.6 Additionally, I welcome the government's announced changes to the screening threshold for agricultural land and the implementation of a foreign ownership register for agricultural land, established and maintained by the Australian Taxation Office (ATO).³

1.7 However, the government's reduced threshold test for purchases of agricultural land (previously known as 'Australian rural land') to \$15 million for investors from most countries doesn't go far enough to provide transparency of smaller scale agricultural land purchases.

1 Nick Xenophon, *Additional Comments to Examination of the Foreign Investment Review Board National Interest Test Interim report: Tax arrangements for foreign investment in agriculture and the limitations of the Foreign Acquisitions and Takeovers Act 1975*, 28 November 2012.

2 Nick Xenophon, *Additional Comments to Foreign Acquisitions Amendment (Agricultural Land) Bill 2010*, 16 June 2011.

3 The Hon. Tony Abbott, MP, Prime Minister of Australia, the Hon. Joe Hockey, MP, Treasurer, and the Hon. Barnaby Joyce, MP, Minister for Agriculture, 'Government tightens rules on foreign purchases of agricultural land', Media release, 11 February 2015.

1.8 The threshold tests for purchases of agricultural land and agribusinesses should be lowered to reflect the Foreign Acquisitions Amendment (Agricultural Land) Bill 2010 proposal of \$5 million.

1.9 This will strengthen the ability of the Government to make informed policy decisions with greater transparency and better information.

1.10 As food security concerns escalate around the world, Australian agriculture and its supply chain is increasingly seen as being a strong investment prospect for international investors and as foreign interest in Australian agricultural land increases, it is imperative we do not lose sight or control of our own domestic food security.

1.11 Furthermore, the current criteria for considering foreign investment proposals in prime agricultural are too vague and imprecise. They fail to set out key issues in the national interest such as the impact on local jobs and economic development. The criteria set out in sections 16 and 17 of New Zealand's Overseas Investment Act 2005 are set out below:

Section 16 Criteria for consent for overseas investments in sensitive land

(1) The criteria for an overseas investment in sensitive land are all of the following:

- (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment;
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment;
- (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character;
- (d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act);
- (e) either subparagraph (i) is met or subparagraph (ii) and (if applicable) subparagraph (iii) are met:
 - (i) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely;
 - (ii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17;

- (iii) if the relevant land includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable;
- (f) if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations;
 - (unless the overseas investment is exempt from this criterion under section 20).

(2) See section 19 in relation to subsection (1)(c) and (d).

Section 17 Factors for assessing benefit of overseas investments in sensitive land

(1) If section 16(1)(e)(ii) applies, the relevant Ministers—

- (a) must consider all the factors in subsection (2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and
- (b) must determine whether the criteria in section 16(1)(e)(ii) and (iii) are met after having regard to those relevant factors; and
- (c) may, in doing so, determine the relative importance to be given to each relevant factor (or part).

(2) The factors are the following:

- (a) whether the overseas investment will, or is likely to, result in—
 - (i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
 - (ii) the introduction into New Zealand of new technology or business skills; or
 - (iii) increased export receipts for New Zealand exporters; or
 - (iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
 - (v) the introduction into New Zealand of additional investment for development purposes; or
 - (vi) increased processing in New Zealand of New Zealand's primary products;
- (b) whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous

vegetation and significant habitats of indigenous fauna, for example, any 1 or more of the following:

- (i) conditions as to pest control, fencing, fire control, erosion control, or riparian planting;
 - (ii) covenants over the land;
- (c) whether there are or will be adequate mechanisms in place for—
- (i) protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in sections 2(1) of that Act (for example, any 1 or more of the mechanisms referred to in paragraph (b)(i) and (ii)); and
 - (ii) providing, protecting, or improving walking access to those habitats by the public or any section of the public;
- (d) whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, for example, any 1 or more of the following:
- (i) conditions for conservation (including maintenance and restoration) and access;
 - (ii) agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993;
 - (iii) agreement to execute a heritage covenant;
 - (iv) compliance with existing covenants;
- (e) whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public;
- (f) if the relevant land is or includes foreshore, seabed, or a bed of a river or lake, whether that foreshore, seabed, riverbed, or lakebed has been offered to the Crown in accordance with regulations;
- (g) any other factors set out in regulations.

1.12 I believe that the New Zealand criteria, tried and tested across the Tasman, would be suitable for Australia and lead to much more transparent outcomes in the national interest.

1.13 Furthermore, the 'elephant in the room' that must be considered more broadly, is the difficulty Australian investors have in investing in agricultural land relative to foreign investors. It appears that foreign investors can have tax advantages through complex arrangements that puts local investors at a disadvantage.

1.14 As a matter of urgency the whole structure of current investment vehicles and tax incentives for agricultural investment must be considered. If other nations can see the benefit of investing in our prime agricultural land, it's about time we did too.

Recommendation 1

That Australia's Foreign Investment Policy and the associated regulations be amended to change the threshold test for purchases of agricultural land of \$15 million to \$5 million.

Recommendation 2

That the criteria used in New Zealand's Overseas Investment Act 2005 be broadly adopted to ensure greater levels of accountability and transparency.

Recommendation 3

That there be an urgent review by an independent body (such as the Productivity Commission) to examine the advantages foreign firms may have in investing in Australian agricultural land and any relative disadvantages local investors may have. Furthermore, the ability of superannuation funds to invest in agribusiness needs to be examined.

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