

## Chapter 4

### Agricultural land, agribusinesses and the foreign investment review process

4.1 This chapter considers the evidence regarding the foreign investment review process in relation to agricultural land and agribusinesses. In particular, it considers the evidence for and against the Government's decision to lower the thresholds for foreign investment in agricultural land and agribusinesses. It also examines the Government's announcement of the introduction of an agricultural land register, along with the decision to alter the definition of agribusinesses to take in first stage producers.

#### **The blocked sale of S. Kidman and Co. Ltd**

4.2 As one of Australia's largest beef producers, S. Kidman and Co. Ltd has a herd of around 185,000 cattle and controls pastoral leases covering approximately 101,000 square kilometres. Its land holdings cover three states – Western Australia, South Australia and Queensland – and also extend into the Northern Territory.<sup>1</sup> In addition to Anna Creek station, located in outback South Australia and the largest property in Kidman's portfolio, the company also owns and manages a further 15 properties of various sizes.<sup>2</sup> As Australia's largest private land owner, the company holds about 1.3 per cent of Australia's total land area, which equates to approximately 2.5 per cent of the nation's total agricultural land.<sup>3</sup> The company's cattle stations produce beef for export to Japan, the US and South East Asia.<sup>4</sup>

4.3 On 19 November 2015, the Treasurer, the Hon. Scott Morrison MP, announced that, after receiving advice from FIRB, he had decided to block the proposed sale of S. Kidman and Co. to unnamed foreign investors on the grounds that the sale would be contrary to Australia's national interest.<sup>5</sup>

4.4 The Treasurer highlighted the fact that the proposal included the entirety of the company's largest property, Anna Creek station, a sizeable proportion of which is located within the Woomera Prohibited Area (WPA) in South Australia. According to the Treasurer, the WPA contains a significant weapons testing range, and is therefore

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1 S. Kidman and Co. Ltd, *About S. Kidman & Co*, <http://www.kidman.com.au/about/> (accessed 29 February 2016).

2 S. Kidman and Co. Ltd, *About S. Kidman & Co*.

3 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Statement on the Decision to prevent sale of S. Kidman & Co. Limited', *Media Release*, 19 November 2015, <http://sjm.ministers.treasury.gov.au/media-release/011-2015/> (accessed 29 February 2016).

4 S. Kidman and Co. Ltd, *About S. Kidman & Co*.

5 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Statement on the Decision to prevent sale of S. Kidman & Co. Limited', *Media Release*, 19 November 2015.

a highly sensitive part of Australia's national defence architecture. The Treasurer stated that:

Given the size and significance of the total portfolio of Kidman properties along with the national security issues around access to the WPA, I have determined, after taking advice from FIRB, that it would be contrary to Australia's national interest for a foreign person to acquire S. Kidman and Co. in its current form.<sup>6</sup>

4.5 The Treasurer also stated that foreign investors that had sought approval of their investment proposals voluntarily withdrew their applications after being informed of his decision.<sup>7</sup> According to some media reports, which have not been confirmed by the Government, the major bidders for S. Kidman and Co. were two privately-owned Chinese companies, Genius Link Asset Management and Shanghai Pengxin. The companies are reported to have submitted bids of between \$350 and \$370 million.<sup>8</sup>

4.6 Following the Treasurer's decision, some media outlets reported that S. Kidman and Co. has decided to remove its Anna Creek and The Peak properties from a future sale of the company's land holdings. Further, it was reported that the process of soliciting fresh bids is currently underway.<sup>9</sup> It was reported that the company might now only offer its Anna Creek and The Peak properties to local investors, in an effort to comply with the requirements of the Treasurer's decision.<sup>10</sup>

4.7 At the time of writing, the Treasurer has not made an announcement on whether a revised investment proposal from a foreign investor will be approved. There is also no publically available information on which foreign investors, if any, have submitted applications to FIRB to purchase S. Kidman and Co.

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- 6 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Statement on the Decision to prevent sale of S. Kidman & Co. Limited', *Media Release*, 19 November 2015, <http://sjm.ministers.treasury.gov.au/media-release/011-2015/> (accessed 29 February 2016).
  - 7 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Statement on the Decision to prevent sale of S. Kidman & Co. Limited', *Media Release*, 19 November 2015.
  - 8 Peter Hartcher, James Massola and Jared Lynch, 'Kidman Cattle Stations: Andrew Robb criticises Scott Morrison's 'political' decision to block sale', *Sydney Morning Herald*, 10 November 2015, <http://www.smh.com.au/federal-politics/political-news/kidman-cattle-stations-andrew-robb-criticises-scott-morrison-political-decision-to-block-sale-20151120-gl3vkb.html> (accessed 29 February 2016).
  - 9 Matthew Cranston, 'S. Kidman & Co. sale back on, and Australian still have a chance to buy in', *Australian Financial Review*, 10 February 2016, <http://www.afr.com/real-estate/skidman--co-sale-back-on-and-australians-still-have-a-chance-to-buy-in-20160210-gmqftv> (accessed 29 February 2016).
  - 10 Andrew Marshall, 'Kidman Decision Expected Late January', *Farm Weekly*, 28 December 2015, <http://www.farmweekly.com.au/news/agriculture/agribusiness/general-news/kidman-decision-expected-late-january/2750136.aspx> (accessed 1 March 2016).

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## Lower investment thresholds and the agricultural land register

4.8 Australia's foreign investment review framework is particularly significant in relation to agricultural land and agribusinesses. Proposals for foreign investment in both categories are assessed on the basis of criteria that are different than those that apply to other types of foreign investment, such as general business acquisitions, where thresholds of either \$252 million or \$1.094 billion apply. This is dependent on whether the investor is from a non-FTA country or a country with which Australia has a FTA, respectively.

4.9 Amongst a number of legislative changes introduced in 2015, the Government lowered the threshold for investments in agribusinesses to \$55 million. To meet the threshold test for FIRB scrutiny, the total value of an acquisition – along with the total value of the other interests held by the person (and their associates) – in the entity or business, or previously acquired from the entity or business, must be more than \$55 million.<sup>11</sup> Additionally, foreign investment in agricultural land will now be screened at a cumulative threshold of \$15 million, unless the investor is from Chile, the US or New Zealand, in which case the threshold increases to \$1.094 billion.<sup>12</sup>

4.10 One of the Government's key reforms was the introduction of a register of all foreign-owned agricultural land in Australia. On the basis of the *Register of Foreign Ownership of Agricultural Land Act 2015*, the ATO will create and administer a comprehensive register of data relating to the purchase, sale and transfer of Australian agricultural land by foreign persons. As a consequence, all foreign persons, companies and trustees will be required to notify the ATO if they:

- have an existing interest in agricultural land;
- have a new interest in agricultural land;
- no longer have an interest in agricultural land.<sup>13</sup>

4.11 The deadline for foreign investors to notify the ATO of their existing interests in Australian agricultural land, as defined by the three criteria outlined above, passed on 29 February 2016.<sup>14</sup>

4.12 As part of its suite of reforms to the foreign investment review framework, which included changes to the FATA and its associated regulations, the Government also introduced a new definition of agribusinesses, which now encompasses first stage

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11 The Treasury, *Agribusiness Investment (Guidance Note 18)*, 1 November 2016, p. 2, [https://firb.gov.au/files/2015/11/18\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/18_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

12 The Treasury, *Agricultural Land Investments (Guidance Note 17)*, 1 November 2015, p. 2, [https://firb.gov.au/files/2015/11/17\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/17_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

13 Australian Taxation Office, *Agricultural Land Register*, <https://www.ato.gov.au/General/Foreign-investment-in-Australia/Agricultural-Land-Register/> (accessed 3 March 2016).

14 Australian Taxation Office, *Agricultural Land Register*.

processors 'beyond the farm gate'.<sup>15</sup> According to the Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, this introduces a common sense definition of agribusiness that will see the lower threshold of \$55 million apply to proposed foreign investments in a larger range of agribusinesses.<sup>16</sup>

4.13 According to section 12 of the Foreign Acquisitions and Takeovers Regulations 2015, a business should be defined as an agribusiness for the purposes of foreign investment review if certain criteria are met.<sup>17</sup> Two specific criteria apply in the case of an Australian entity:

- the value of the assets of the entity and subsidiaries of the entity, used in carrying on an agribusiness, exceeds 25 per cent of the total asset value of the entity; or
- the earnings before interest and tax derived by the entity and its subsidiaries in the above classes, in the most recent financial year for which there are audited accounts, exceeds 25 per cent of the total earnings for the entity.<sup>18</sup>

4.14 In the case of an Australian business, rather than an Australian entity, FIRB provides the following definition of an agribusiness:

- for an Australian business, the value of the assets of the business used in carrying on an agribusiness exceeds 25 per cent of the value of the total assets of the business.<sup>19</sup>

4.15 In addition to the requirements set out above, regulation 12 stipulates that an agribusiness must fall within the following categories, as defined by the Australian and New Zealand Standard Industrial Classification Codes:

- any class of Division A;
- 1111 meat processing;

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15 The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Joyce Welcomes Better Scrutiny of Foreign Investment in Agriculture', *Media Release*, 2 May 2015, <http://minister.agriculture.gov.au/joyce/pages/media-releases/foreign-investment-scrutiny.aspx> (accessed 3 March 2016).

16 The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Joyce Welcomes Better Scrutiny of Foreign Investment in Agriculture', *Media Release*, 2 May 2015, <http://minister.agriculture.gov.au/joyce/pages/media-releases/foreign-investment-scrutiny.aspx> (accessed 3 March 2016).

17 For the full text of regulation 12, see the Foreign Acquisitions and Takeovers Regulation 2015, [https://www.comlaw.gov.au/Details/F2015L01854/Html/Text#\\_Toc435776905](https://www.comlaw.gov.au/Details/F2015L01854/Html/Text#_Toc435776905) (accessed 3 March 2016).

18 The Treasury, *Agribusiness Investment (Guidance Note 18)*, 1 November 2016, pp. 2–3, [https://firb.gov.au/files/2015/11/18\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/18_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

19 The Treasury, *Agribusiness Investment (Guidance Note 18)*, 1 November 2016, p. 3, [https://firb.gov.au/files/2015/11/18\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/18_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

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- 1112 poultry processing;
  - 1120 seafood processing;
  - 1131 milk and cream processing;
  - 1133 cheese and other dairy product manufacturing;
  - 1140 fruit and vegetable processing;
  - 1150 oil and fat manufacturing;
  - 1161 grain mill product manufacturing; and
  - 1181 sugar manufacturing.<sup>20</sup>

4.16 In order to illustrate the practical implications of the new definition of an agribusiness, FIRB has provided the following hypothetical explanatory scenario:

Agversity is a diversified Australian business and the parent entity of the business. The business has operations in both dairy product manufacturing and transport logistics. A German corporation is proposing to acquire 15 per cent of the securities of Agversity (which is an Australian entity) for \$70 million. Agversity's most recent audited financial statements show that in the last financial year:

- 10 per cent of the value of its total assets were used in its dairy manufacturing operations; and
- its dairy manufacturing operations accounted for more than 40 per cent of its total earnings before interest and tax.

As the proportion of Agversity's total earnings before interest and tax derived from its dairy manufacturing business exceeds 25 per cent and the German corporation is proposing to acquire a direct interest (more than 10 per cent), the proposal is both a notifiable and significant action.<sup>21</sup>

### **Concerns regarding the thresholds to agricultural land and agribusinesses**

4.17 In its submission, the Business Council of Australia (BCA) maintained that significant levels of capital investment, including from foreign investors, are required to ensure that productivity and yield are increased. According to the BCA:

The ability of businesses to access finance is critical to their ability to undertake the investment necessary to improve their productive capacity and productivity. Yet access to finance is the most commonly cited barrier to innovating by Australian businesses and the factor which most adversely affects international competitiveness by Australian exporters. A 2013 survey of food and beverage businesses by Grant Thornton found

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20 The Treasury, *Agribusiness Investment (Guidance Note 18)*, 1 November 2016, p. 2, [https://firb.gov.au/files/2015/11/18\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/18_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

21 The Treasury, *Agribusiness Investment (Guidance Note 18)*, 1 November 2016, p. 3, [https://firb.gov.au/files/2015/11/18\\_GN\\_FIRB\\_Nov\\_15.pdf](https://firb.gov.au/files/2015/11/18_GN_FIRB_Nov_15.pdf) (accessed 3 March 2016).

approximately 16 per cent of Australian executives indicate that sourcing capital is a constraint on business growth.<sup>22</sup>

4.18 Yet the BCA argued that the Government's decision to lower the threshold for foreign investment in agribusinesses and agricultural land will have the unintended effect of sending 'a strong negative message about Australia's attitude towards foreign investors. This risks having a chilling effect on future investment'.<sup>23</sup>

4.19 The BCA maintained that the newly-introduced cumulative threshold of \$15 million for foreign investment in agricultural land is unlikely to bring any significant public benefit, and is likely to increase the number of investment proposals that will need to be submitted to FIRB. The BCA further argued that this will have the effect of increasing costs, creating a climate of greater investment uncertainty, and will ultimately produce a chilling effect on foreign investment in the Australian agricultural sector.<sup>24</sup>

4.20 In his evidence to the committee, Mr Troy Setter, CEO of the Consolidated Pastoral Company (CPC), also took the view that further development and growth in the Australian agricultural sector will depend on ready access to significant levels of capital, including foreign capital investment.<sup>25</sup> Mr Setter further maintained that any government policy settings that hinder the flow of capital into the sector, regardless of whether that flow is domestic or foreign, will have a negative effect on the future competitiveness of Australian agriculture.<sup>26</sup>

4.21 Additionally, Mr Setter observed that Australian capital markets do not have sufficient capital available to provide for the current and future needs of the agricultural sector, and that foreign investment is therefore of paramount importance for future development. He maintained that impediments to foreign investment are likely to have far-reaching consequences:

There is simply not enough capital available in the Australian capital markets. The Australian rural family farm cannot handle a debt increase of the magnitude needed to unlock Australia's potential. Australia is at a crossroads, with strong global demand for clean food products. Detailed

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22 Business Council of Australia, *Submission to the Government's Options Paper: Strengthening Australia's Foreign Investment Review Framework*, p. 6, <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Strengthening%20Australia's%20foreign%20investment%20framework/Submissions/PDF/Business%20Council%20of%20Australia.ashx> (accessed 3 March 2016).

23 Business Council of Australia, *Submission to the Government's Options Paper: Strengthening Australia's Foreign Investment Review Framework*, p. 8, <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Strengthening%20Australia's%20foreign%20investment%20framework/Submissions/PDF/Business%20Council%20of%20Australia.ashx> (accessed 3 March 2016).

24 Business Council of Australia, *Submission to the Government's Options Paper: Strengthening Australia's Foreign Investment Review Framework*, p. 8.

25 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 19.

26 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 19.

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plans for developing the region's agriculture are academic if foreign investors are prevented or hindered from investing in our region.<sup>27</sup>

4.22 Mr Setter argued that the difficulties involved in achieving the required development through an increase in debt financing are insurmountable, and that attracting foreign investment has become one of the few effective ways of securing the future of Australia's agricultural sector. He added that it has been CPC's experience that FIRB's review process, especially in relation to its complexity and inconsistency, has made it difficult to attract sufficient levels of foreign capital investment.<sup>28</sup> Mr Setter further maintained that this is likely to be a significant hurdle into the foreseeable future:

It is not only CPC's view but also CPC's experience that the complexities and inconsistencies in the current foreign investment regime have the potential to stifle foreign investment in Australian agriculture and derail the government's broader policy agenda on developing Northern Australia and agricultural competitiveness.<sup>29</sup>

4.23 In addition, Mr Setter argued that the Government's recent changes to the investment thresholds for agricultural land and agribusinesses, rather than introducing greater clarity into the review process, have produced further inconsistencies. According to Mr Setter, the changes have led to an overall lack of policy logic in the investment review framework.<sup>30</sup> Mr Setter also maintained that the new thresholds serve as a significant disincentive to further foreign capital investment in the agricultural sector:

I have experienced firsthand the active discouragement of foreign investment... The inconsistencies that they have [in the thresholds] are certainly challenging for us to look at. We have Chile, the United States and New Zealand with a threshold of close to \$1.1 billion. We have Singapore and Thailand at \$50 million. We have China, South Korea, Japan, Ireland and the United Kingdom at \$15 million cumulative. It is CPC's view that this highlights a lack of policy logic in the new system—that it is not standard across the board.<sup>31</sup>

4.24 In particular, Mr Setter singled out four elements of the current review process as the principal obstacles to attracting sufficient foreign investment into the Australian agricultural sector:

- the frequently lengthy timeframe of FIRB's decision-making process;
- the largely ad hoc character of the assessment process;
- the lack of clear direction in relation to the application process; and the

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27 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 19.

28 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 19.

29 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 19.

30 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 20.

31 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 20.

- general and unfocussed nature of the national interest test.<sup>32</sup>

4.25 Given the difficulties involved in using greater debt financing to achieve an increase in productivity and competitiveness, Mr Setter argued that the most significant flaw in FIRB's assessment process remains a lack of transparency, principally in relation to the review process itself, along with a lack of consistency in the application of investment thresholds, which are currently highly differentiated:

To break it down into a couple of parts, the consistency and transparency of the application process would be first, up-front. At the moment, how the process actually works is not transparent...I would welcome the consistency of the amount per country or per type as a standard rate. For us, the \$15 million add-on to do new business is difficult. If you were to go and lease a large property, purchase a large property or start to invest in some infrastructure, in today's market \$15 million is not a lot of money. To then spend three or four months waiting for a FIRB response takes you out of any commercial level of negotiations, at that speed.<sup>33</sup>

4.26 The concern raised by Mr Setter in relation to the process that underlies the foreign investment review framework was shared by EABER. In its submission to the inquiry, EABER maintained that one of the major weaknesses of the current review process is the fact that Australia's foreign investment review framework is based on a series of thresholds that are not the result of conscious policy design, but flow from the ad hoc requirements of separate FTAs. According to EABER:

An investment regime that discriminates against capital based on the accident of the sequence of trade agreement negotiations is piecemeal, protectionist, and not logically defensible. Unilateral action to equalise foreign investment screening thresholds will lead to a more coherent and rational Australian investment policy, and is a show of good faith that will advance Australia's position in future trade and investment negotiations. There is no good reason not to treat agricultural land and agribusiness investment in the same way as other business investments, but if a lower threshold is set for agricultural investment, it should apply uniformly to all investors.<sup>34</sup>

4.27 The Agricultural Management Company (AMC), which specialises in the management of agriculture sector assets, expressed a similar concern in its submission to the committee. According to AMC, the foreign investment review framework is rendered less effective than it could be by the fact that its central processes, including the Treasurer's power to make a determination on the basis of an unlegislated national interest test, are largely undefined. They therefore lack the transparency that is sought by foreign investors and frequently demanded by the Australian public.<sup>35</sup> AMC further argued that:

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32 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 20.

33 Mr Troy Setter, Consolidated Pastoral Company, *Committee Hansard*, 10 March 2016, p. 20.

34 East Asian Bureau of Economic Research, *Submission 20*, p. 11.

35 Agricultural Management Company, *Submission 25*, p. 3.



The term “National Interest” is inadequately defined, if at all, by the Act, although factors for consideration are loosely outlined in Australia’s Foreign Investment Policy (November, 2015). The Policy leaves ultimate judgement to the Treasurer without the requirement for clear justification of reasoning or decisions made. Decision-making that is open to interpretation and unjustified does not portray the message of transparency and accountability that Australia proudly promotes as a point of difference and will deter investment interest in Australia...The Foreign Acquisitions and Takeovers Act 1975 allows the Treasurer to review proposals that meet certain criteria, although these ambiguous criteria do not provide support for justifiable decision-making, or clarify judgement reasoning for investors or investment proponents. The reputation risk for both investors and investment proponents is high under this structure and deters some investors from investing in Australia for fear of generating a poor reputation.<sup>36</sup>

4.28 In its submission to the inquiry, the National Farmers' Federation (NFF) raised its own concerns about the openness of FIRB's review process. In relation to the transparency and effectiveness of the national interest test, NFF argued that the various elements that form the test should be publicised, to the greatest degree possible, in order to ensure that potential investors and the agricultural sector clearly understand the criteria that will be applied in assessing applications.<sup>37</sup> NFF also maintained that the changes to the way in which the national interest test is publicised must be accompanied by a series of additional reforms to the review process itself, including the publication, as is currently the case in New Zealand, of the reasons behind FIRB's decisions:

More specifically, the NFF seeks a number of changes to the operation of the FIRB. Upon making an approval decision, the FIRB should make publically available a thorough explanation with regards to their decision making process. Included in this should be a specific explanation of the interpretation of the National Interest Test and the weightings placed on the various criteria. Clearly articulating the outcomes of applications will not only give confidence to the sector, but will ensure future investors have a clear understanding of what is expected of them when seeking to invest. This will in turn improve the quality of application received by the FIRB, benefiting both the regulator and the applicant.<sup>38</sup>

4.29 NFF also expressed the view that, since the agricultural sector is actively seeking capital investment, including foreign investment, FIRB's membership should be expanded to include a board member with specific expertise in agriculture.<sup>39</sup>

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36 Agricultural Management Company, *Submission 25*, pp. 2–3.

37 The National Farmers' Federation, *Submission 7*, p. 2.

38 The National Farmers' Federation, *Submission 7*, p. 2.

39 The National Farmers' Federation, *Submission 7*, p. 2.

### ***Agribusiness definition***

4.30 The Australian Food and Grocery Council (AFGC) criticised the Government's new definition of agribusinesses. The AFGC maintained that an extension of the definition of agribusiness beyond the 'farm gate' is likely to produce uncertainty about the possibility of further scope creep, which could have the effect of diminishing the attractiveness of the agribusiness sector to potential foreign investment.<sup>40</sup> The AFGC maintained that:

For the purposes of the FIRB review, the definition of agribusiness should capture all primary production businesses. The definition of agribusiness should not capture first stage downstream businesses beyond the farm gate. To extend the definition goes beyond the government's commitments made in the context of agriculture.<sup>41</sup>

4.31 For the AFGC, one of the dangers of the Government's decision to extend the definition of an agribusiness 'beyond the farm', so that it captures some first stage processors, is that it risks creating a climate of greater investment ambiguity and confusion. This is likely to weaken further the FIRB assessment process.<sup>42</sup>

### **Importance of foreign direct investment to the agricultural sector**

4.32 The Australia and New Zealand Banking Group (ANZ) has highlighted the importance of foreign direct investment for the continued growth and future prosperity of Australia's agricultural sector. ANZ pointed out that the agricultural sector requires very high levels of capital investment. It notes that foreign direct investment is a significant source of much-needed capital, yet attracting capital investment from foreign entities and individuals is a competitive process.<sup>43</sup>

4.33 In particular, ANZ estimated that, by 2050, the shortfall between capital requirements and available domestic capital in the agricultural sector is likely to be \$850 billion. Given the mismatch between available domestic capital and the projected investment needs of the sector, attracting foreign investment is a workable solution to the lack of a sufficient domestic pool of capital.<sup>44</sup> ANZ argued that, in an

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40 Australian Food and Grocery Council, *Strengthening Australia's Foreign Investment Review Framework – Options Paper*, p. 8, <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultation%20s/2015/Strengthening%20Australias%20foreign%20investment%20framework/Submissions/PDF/Australian%20Food%20and%20Grocery%20Council.ashx> (accessed 3 March 2016).

41 Australian Food and Grocery Council, *Strengthening Australia's Foreign Investment Review Framework – Options Paper*, p. 8.

42 Business Council of Australia, *Submission to the Government's Options Paper: Strengthening Australia's Foreign Investment Review Framework*, p. 10, <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultation%20s/2015/Strengthening%20Australias%20foreign%20investment%20framework/Submissions/PDF/Business%20Council%20of%20Australia.ashx> (accessed 3 March 2016).

43 Australia and New Zealand Banking Group, *Submission 2*, p. 2

44 Australia and New Zealand Banking Group, *Submission 2*, pp. 1–2.

increasingly competitive global environment, the Government's foreign investment review framework needs to ensure that Australia remains an internationally attractive destination for foreign direct investment:

Australia needs to be an attractive destination among the nations competing for capital. In relation to the agricultural sector, Australia is estimated to account for less than five per cent of global institutional investment. Competition for institutional agricultural investment is increasing with nations in Asia, South America and Africa seeking investment to develop their economies.<sup>45</sup>

4.34 ANZ argued that the current foreign investment review framework, in which the Treasurer bases decisions on a broad national interest test, strikes an appropriate balance between the legitimate demands of the national interest and the need to attract sufficient levels of foreign direct investment into the agricultural sector.<sup>46</sup>

***Support for the thresholds on agricultural land and agribusiness***

4.35 The Deputy Prime Minister and Minister for Agriculture and Water Resources, the Hon. Barnaby Joyce MP, has argued that the Government's reforms strike an appropriate balance between facilitating foreign capital investment in the agricultural sector, which is a Government priority, and ensuring that all investments are in Australia's national interest.<sup>47</sup> He further argued that the Government's reforms have introduced a greater degree of transparency into Australia's foreign investment review process by achieving the following interrelated aims:

- a more realistic, cumulative, threshold of \$15 million for agricultural land purchases by foreign investors that are required to be scrutinised and approved by the Foreign Investment Review Board (FIRB), compared with the previous level of \$252 million; this came into effect from 1 March 2015;
- a more realistic threshold of \$55 million for agribusiness purchases by foreign investors that require FIRB scrutiny and approval, also compared to the previous level of \$252 million;
- a common sense definition of agribusiness to capture first stage processors beyond the farm gate, to which the new \$55 million threshold will apply and which was previously lacking;

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45 Australia and New Zealand Banking Group, *Submission 2*, p. 2.

46 Australia and New Zealand Banking Group, *Submission 2*, p. 2.

47 The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Joyce Welcomes Better Scrutiny of Foreign Investment in Agriculture', *Media Release*, 2 May 2015, <http://minister.agriculture.gov.au/joyce/pages/media-releases/foreign-investment-scrutiny.aspx> (accessed 3 March 2016).

- a register of all foreign ownership of agricultural land, which will paint a clearer picture of the level of foreign ownership in our nation.<sup>48</sup>

4.36 According to the Treasurer, the unique nature of the Australian agricultural sector means that the previous threshold of \$252 million was not ideally suited to ensuring that foreign investment proposals are effectively assessed. Many farming businesses are smaller than their counterparts in other industries, and should therefore be treated differently under Australia's foreign investment review framework:

While foreign investment in agriculture provides important economic benefits, we have acted to improve scrutiny and transparency around foreign ownership of Australia's agricultural production. The average farming business is smaller than other businesses in the economy and applying the general business threshold of \$252 million excludes a large part of the agricultural sector from foreign investment screening.<sup>49</sup>

4.37 Despite calling for changes to FIRB's review process, NFF expressed its general support for the legislative changes undertaken by the Government, arguing that the revised thresholds will allow FIRB's assessment process to give more thorough consideration to the benefits and risks of foreign investment in the agricultural sector.<sup>50</sup>

4.38 NFF observed that the Government's introduction of an agricultural land register will eventually produce a significant repository of statistical data, which will provide an important evidence base for future policy development in the area of foreign investment in agricultural land and water resources.<sup>51</sup> Additionally, the NFF maintained that the land registry will be an important resource in helping to allay community concerns about foreign investment in agricultural land, thereby strengthening the transparency and openness of FIRB's review process.<sup>52</sup>

4.39 NFF took the view that the Government's changes to the thresholds and its introduction of the agricultural land register are both likely to enhance the effectiveness of the FIRB's review process:

The NFF welcome the recent amendments to the Foreign Acquisitions and Takeovers Act. Our view is that safeguards enacted by the amendments, including the \$15 million cumulative screening threshold for agricultural land and \$55 million for agribusiness, will help ensure that due

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48 The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Joyce Welcomes Better Scrutiny of Foreign Investment in Agriculture', *Media Release*, 2 May 2015.

49 The Hon. Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Stronger Foreign Investment Regime Comes into Force', *Media Release*, 1 December 2015, <http://sjm.ministers.treasury.gov.au/media-release/016-2015/> (accessed 3 March 2016).

50 The National Farmers' Federation, *Submission 7*, p. 1.

51 The National Farmers' Federation, *Submission 7*, p. 1.

52 The National Farmers' Federation, *Submission 7*, p. 1.

consideration is given to foreign ownership coming into the sector. Furthermore, the establishment of the land and water ownership register will also provide valuable data and facts to help inform any policy debate and decisions that may be required in the future.<sup>53</sup>

4.40 The NFF maintained that the changes are not only significant for potential foreign investors, allowing them to gain a clearer understanding of the Government's requirements for investment in Australia, but also increase the public's confidence that Australia's national interest is being protected and furthered.<sup>54</sup>

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53 Mr Tony Mahar, National Farmers' Federation, *Committee Hansard*, 10 March 2016, p. 27.

54 Mr Tony Mahar, National Farmers' Federation, *Committee Hansard*, 10 March 2016, p. 27.

