

Additional Comments by Senator Nick Xenophon

1.1 Foreign investment in Australian agricultural land can provide a range of benefits to the Australian economy, particularly in terms of the development of our agricultural sector and job creation. However under our current foreign investment rules rural land purchases under \$244 million do not attract the attention or scrutiny of the Foreign Investment Review Board (except in the case of foreign government owned entities which face review for all direct investment). This is a very high threshold and there are concerns that significant purchases may be made below this, without the Government being made aware.

1.2 Further, there are concerns of potential piecemeal purchases by foreign investors which, by not exceeding this current threshold, may be able to acquire large areas of land over a period of time. The issue was addressed by Mr John Phillips, former Chair of the Foreign Investment Review Board (FIRB):

CHAIR:...If a foreign investor acquired 10 farms in a single year for \$30 million each, which is beginning to happen, would it have to obtain foreign investment approval given the overall value of the purchase exceeded \$244 million?

Mr Phillips: At the moment, no.

CHAIR: Isn't that perhaps not bizarre but inadequate?

Mr Phillips: I think it is an anomaly.¹

1.3 It is clear such creeping acquisitions of land must be examined by the FIRB in order for accurate information regarding the level of foreign investment in Australian agricultural land to be maintained.

1.4 In its interim report the committee has identified a number of tax incentives and loopholes that benefit overseas investors over Australian investors. During the public hearing Mr David Farley, Chief Executive Officer of AACo gave comprehensive evidence on this issue and undertook to provide recommendations in terms of specific legislative amendments that need to take place in order to level the playing field for Australian investors.² The Committee and I look forward to receiving his recommendations.

1.5 Of particular concern is the *Foreign Acquisitions and Takeovers Act 1975* ('the Act') which is out dated and ill-suited to regulate the contemporary practices of foreign investment.

1.6 In an attempt to address a number of the Act's shortcomings I introduced the Foreign Acquisitions Amendment (Agricultural Land) Bill 2010 ('the Bill') together

1 Mr John Phillips, Chair, FIRB, *Committee Hansard*, 9 February 2012, p. 18.

2 Mr David Farley, Chief Executive Officer and Managing Director, Australian Agricultural Company, *Committee Hansard*, 10 August 2012, p. 14.

with Senator Christine Milne in 2010, which sought to make three key changes to the Act: legislating a national interest test; requiring any interest in Australian agricultural land greater than 5 hectares to be subject to application to the Treasurer; and requiring online publication of applications of interest in Australian agricultural land.

1.7 The Bill also sought to establish a definition of 'Australian agricultural land' to address the need for such land to be treated differently from urban and rural land. The current Act treats rural land as a business and as a result some unusual classifications of urban and rural land take place:

Mr Phillips: We get some very funny situations – and I blame you legislators for this – because we get some things that look as though they are rural land but which, by definition under the act, are clearly –

CHAIR: I will try to clarify it for you, Mr Chairman. Given what you have just said, does that mean you class land in the middle of the Simpson Desert as urban land and you class a mine in the middle of the Kimberleys as urban land but not the pastoral property next door?

Mr Phillips: We do not: the act does.³

1.8 These anomalies need to be rectified as a matter of urgency by way of introducing contemporary and relevant definitions of urban, rural and particularly agricultural land.

1.9 I strongly encourage the Federal Government to undertake the wide-ranging review of tax arrangements applying to foreign investments and acquisitions in the agricultural sector as recommended by the Committee.

Senator Nick Xenophon