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19 March 2017

Dear Sir or Madam

**Re: Foreign Investment Framework**

I refer to the consultation paper regarding the Foreign Investment Framework 2017 Legislative package.

I wish to refer specifically to Section 3 of the Consultation paper, ‘Low sensitivity business investment’ as it includes agricultural land and my comments relate mainly to this section with some overall observations.

The draft Framework as currently conceptualized appears out of touch with the major imperatives driving agricultural property investments globally. These include:

1. climate warming and its impacts including increasing droughts, extreme weather events and associated productivity impacts on agriculture;
2. diminishing water availability and accelerating desert areas;
3. the population of the planet at over 7 billion and growing and how to ensure stability with the availability and distribution of food for such numbers in the context of increasing pressures;
4. financial, economic and geo-political issues arising from the capitalist model of growth in relation to the depletion of natural resources and dramatic plant and animal biodiversity loss;
5. increasing initiatives to secure land ownership and the means of production, wherever it’s available geographically, for food security and resources security through foreign investment.

**New investment drivers unaccounted in draft Framework**

The draft Framework does not appear to respond to these significant drivers, particularly as regards the sale of Australian agricultural assets to foreign ownership. It is almost devoid of strategic analysis and relevant responses in relation to Australia’s own need to secure capacity to use its landmass for its own economic growth.

Under the current provisions, purchases are encouraged and the options in the Consultation paper look at removing the low level of scrutiny currently applied, without comprehending that it undermines Australia’s capacity to use its agricultural land to advance its economic objectives.

### **International marketing of Australian agricultural properties**

As Australian agricultural land parcels become available on the market, they are marketed internationally and a proportion of them are being bought by overseas interests. Appendix A provides a selection of recent agricultural properties marketed for sale.

### **Agricultural land sales to foreign ownership**

Agriculture is a major sector of the Australian economy but increasing areas of agricultural land, including prime agricultural land, are being bought as food security investment. Such purchases may never be sold again and the agricultural produce may never be placed on the open market.

The current rules allow extremely significant prime agricultural lands, including those with water rights, to be sold. As noted above, such properties may never be sold back and the opportunities for Australia to develop the economy through its agricultural strategy is being undermined by its own policy settings.

Although there has been some tightening of the rules governing foreign ownership, they do not differentiate: (a) business based investment intended for trade from (b) investment intended for food security. These are important distinctions and clearly appreciated by investors in food security but not by the Australian government.

It is recommended that measures be put in place to ensure that prime agricultural land with water rights and good average rainfall is retained in Australian ownership.

### **Differentiating overseas investment in food security from business**

Overseas investment in food security in the case of agricultural land purchases needs to be differentiated from business investment because they are separate propositions.

The draft Framework assumes that the vast majority of all property purchases by overseas buyers constitutes a business investment that is favourable to the Australian economy. This is based on historical data and has not kept up-to-date with recent strategically driven purchases where the intention is not business and trade but food security.

It is unclear what analysis has been carried by Government to test the assumption that any foreign purchases of agricultural land are a benefit to Australia. The produce from properties purchased for food security will be delivered to the purchasing country and will not be available on the open market. This removes Australia's capacity to use those farms for crop production and trade and as the availability of these farms to overseas buyers is ongoing, the number of farms left to Australia reduces proportionally.

It would be difficult to imagine a more self-defeating policy than the one contained in the draft Framework as it directly undermines its Australia's national food plan, export opportunities and economic growth from the agricultural sector. More particularly it denies future generations the ability to raise revenue from sold farmlands that are effectively excised.

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Politicians frequently say, in reply to concerns over the availability for overseas investment of agricultural land, that they cannot take it with them. This misses the point completely which is that the means of production output is being excised from the Australian economy when the investment is for food security.

### **The Australian geography**

The Australian continent comprises seventy percent desert or arid regions and while stock can be supported in parts of these areas, high quality prime agricultural land comprises only a very small percentage of the continent. It is these holdings that are increasingly being bought up by overseas buyers but are under the radar of the Government owing to the thresholds for FIRB/Treasurer approval.

By allowing the sale of high quality prime agricultural land to overseas buyers and with the current policy settings favouring such sales, the availability to Australia of such properties is diminishing rapidly without accountability.

### **Differentiating types of agricultural land**

The draft Framework does not differentiate types of agricultural land, for example agricultural land with highly productive soils, water rights and in an area of good rainfall, is undifferentiated from land used for agriculture in the desert regions where stock are fattened and where stocking densities are low. This lack of differentiation means that all agricultural lands are treated equally in relation to the scrutiny triggers, although the output capacity of prime agricultural land is vastly higher than desert based agricultural properties.

The lack of prime agricultural land in Australia owing to its geography is not contemplated in the strategy of the draft Framework and this is considered a gross error of judgement and strategy. This oversight means that the agricultural properties that can contribute to Australia's strategic economic objectives in agricultural trade to Asia in particular, is being sold to overseas interests. Where the sale is for food security those land parcels are effectively excised from use by Australia for its own economic objectives.

### **Scrutiny triggers**

The only scrutiny triggers in the draft Framework are: (a) property values as specified in the consultation paper and as currently specified in the Foreign Acquisitions and Takeovers Regulation 2015 (FATR) and (b) a national interest test which tends to be a process of last resort as it does not appear to have a definition in FATR. This invariably leads to diplomatic issues and is at present a suboptimal process.

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### **Fee schedule in Attachment A of Consultation paper**

The fee schedule in Attachment A of the Consultation paper shows that the fees associated with the purchases are a one-off, yet the ownership and its advantages are ongoing. This appears to be another conceptual flaw in the draft Framework and one that disadvantages the Australian economy and future generations through lack of equity in the property. Further, the only basis for the fee is the price paid for the land. This is a particularly narrow basis on which to apply the fee.

The fee payable needs to take account of the significance to Australia of the agricultural land in terms of its production capability, water availability and scarcity. Further, there needs to be an assessment of the opportunity costs to Australia with the removal of each parcel of agricultural land when it is sold to foreign ownership, particularly as food security investment.

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It is considered that foreign ownership of agricultural land needs to be reconceptualised so that the fees paid for the investment are ongoing based on a scale, rather than one off. Annual access to water fees need to be introduced.

The preferred option would be no foreign ownership but instead, longer term leaseholds. In the UK, long term property leases are available but in Australia we do not appreciate the concept of property ownership reverting back. This was not always the case as Australia previously owned pastoral leaseholds but the recent approval to sell the Kidman properties, constituting over one percent of the Australian land mass, demonstrates the abandonment of leaseholds and therefore the ongoing opportunity losses to Australia where properties are co-owned or owned outright by overseas interests.

There is a need to differentiate the quality of agricultural lands across Australia and to ensure that prime agricultural land is identified and made not negotiable for foreign ownership on the grounds that it undermines Australia's capacity to generate revenue from agricultural production. This strategic initiative will prevent future diplomatic issues regarding last minute interventions on the sale of land to foreign ownership.

### **Water assets and adding revenue stream**

Water assets are a major source of wealth production particularly as the climate continues to warm but this seems to be completely disregarded in the draft Framework.

Associated with prime agricultural lands are rainfall levels and in some cases water rights. Food production relies on appropriate water availability and when overseas investments are made in Australian agricultural land, the water access appears to be taken for granted. This needs to be addressed by initiating appropriate annual charges.

Accordingly there is a need to undertake research to:

- a) identify the geographical distribution of prime agricultural land;
- b) identify and quantify water and aquifer entitlements associated with prime agricultural land; and
- c) identify average rainfall over prime agricultural land.

In summary, it is recommended that the draft Foreign Investment Framework be reconceptualised by:

1. Reviewing the following foreign investment drivers and using them to inform the strategy of the Framework: (a) climate change and global warming, (b) diminishing water availability, (c) the global population of 7 billion and growing, and (d) the limits to the capitalist model of growth in relation to the depletion of natural resources and dramatic plant and animal biodiversity loss;
2. Differentiating foreign investment in agricultural land for food security from business investment;
3. Disallowing foreign ownership of prime agricultural land outright;
4. (a) If foreign ownership of prime agricultural land is not disallowed outright, then a reconceptualization of foreign ownership to be made by: (a) extending the fees payable as outlined in Attachment A to the draft Foreign Investment Framework to an annual fee in recognition that the opportunities arising from the investment are ongoing; and (b) introducing annual water levies;
4. (b) revising elements of the fee schedule in Attachment A to the draft Foreign Investment Framework so that the payment made is not the only basis for determining the fee but also its strategic significance (this relates to differentiating agricultural land in relation to its productive capacity and water access);
5. Tightening the scrutiny triggers so that the total amount of prime agricultural land available for purchase is restricted to no more than five percent of the total of such land;
6. Differentiating types of agricultural land for example land with highly productive soils and water access from land in the arid regions so that preferably, prime agricultural is not negotiable for sale to foreign ownership;
7. Taking account of the Australian geography and acknowledging the limited area available as prime agricultural land;
8. Articulating how the sale of prime agricultural land to foreign ownership for the purposes of food security: (a) benefits Australian agriculture; and (b) supports the stated objective of expanding the Australian economy through the growth of agricultural produce for trade;
9. Removing red tape as an undesirable element in applying scrutiny to foreign ownership of prime agricultural land; and

10. Introducing a higher level of accountability and transparency associated with the sale of agricultural land through ensuring that the ABS provides data annually on such sales, their locations and the produce that was associated with them together with an accumulated annual aggregate.

Thank you for considering the matters raised in this submission.

Yours sincerely

L Burton