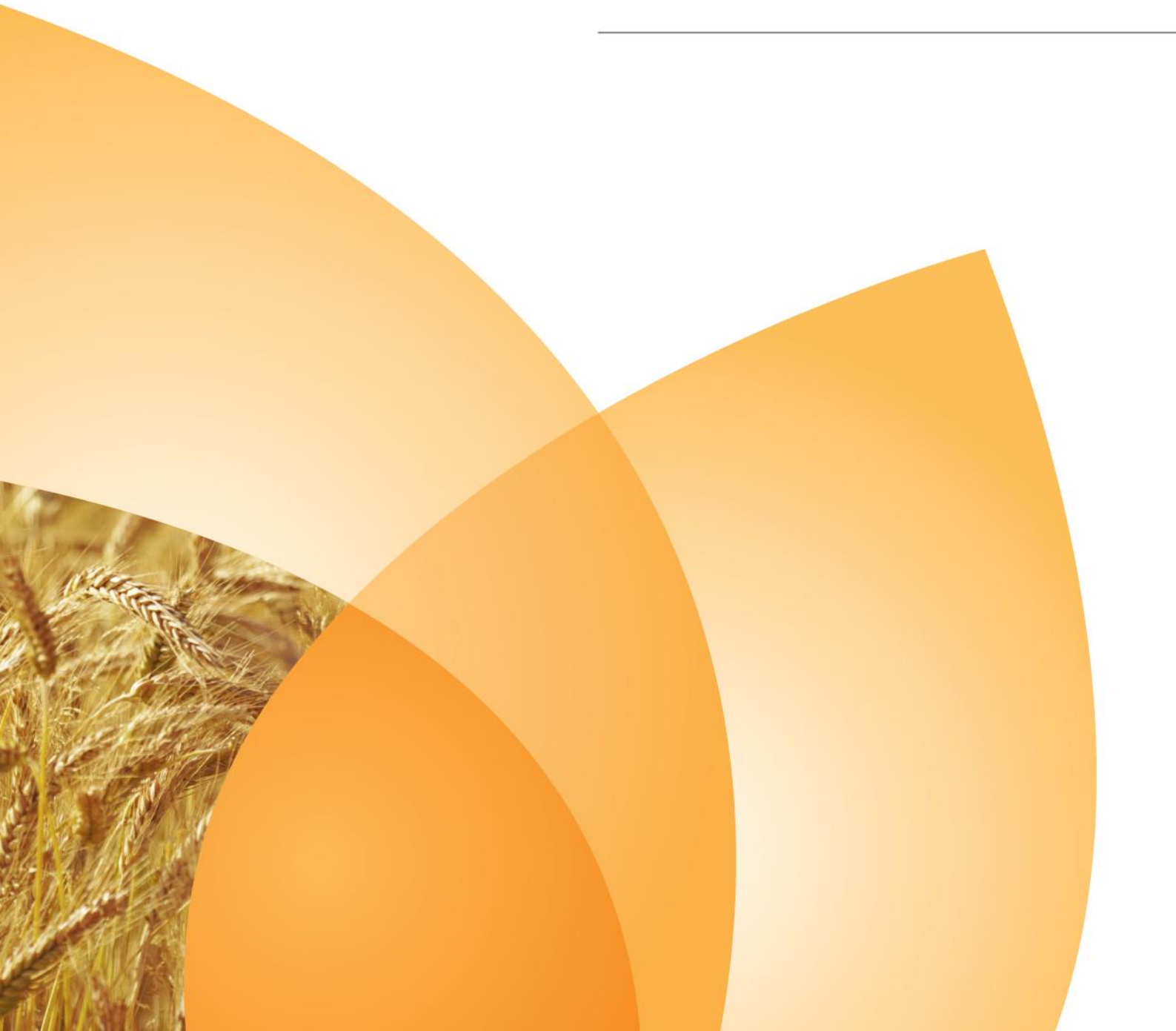


**GrainGrowers feedback on Australian  
Government options paper for  
*Strengthening Australia's Foreign  
Investment Framework***

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# GrainGrowers

GrainGrowers is Australia's only national, independent, member-based, financially sustainable, technically resourced, grain producer organisation.

We're working to make a more efficient, sustainable and profitable grains industry for all Australian grain producers. With our strong member base of 18,500+ we are well placed to reflect and assist the needs of growers.

We achieve this by:

- Having a strong policies and submissions process which is underpinned by our National Policy Group
- Running education courses and events which help our people to thrive
- Developing and distributing a wide range of products and services which directly benefit the industry

## **1. Introduction**

The Australian agricultural sector has a long history of overseas investment, with international capital playing a critical role in the development of many industries, including grains. An important public policy area that must be improved is transparent asset ownership. Australia currently has no reliable data available about the extent of foreign ownership of farm land, irrigation water and agriculture supply chain infrastructure, which is in stark contrast to almost all developed nations. As such, GrainGrowers welcomes the development of this options paper and the broader debate regarding how to best balance foreign investment in Australian agriculture.

As grains commodity member, GrainGrowers supports the submission to this process by the National Farmers' Federation. This includes the current need to re-balance Competition Policy settings to ensure the proposed Foreign Investment Framework adequately addresses issues arising from consolidation and possible negative impacts on the supply chain flowing from reduced competition. The perception of an inadequate understanding of Australia's agricultural supply chains within the Australian Competition and Consumer Commission (among other Australian Government agencies), is just one example of the need to ensure appropriate focus and alignment of interrelated Australian Government policy settings.

GrainGrowers fully appreciate the concerns held in relation to overseas investment, but also recognise the foregone benefits when international investment policy is too restrictive. To this end, it is concerning that the proposed Foreign Investment Framework does little to explore the opportunities for inward investment that Australian agricultural businesses would warmly welcome. Rather, the paper focusses on compliance mechanisms and the definitional aspects of what may be included for screening and register purposes.

## **2. Attracting the Right Investment**

While the Australian Government has acknowledged the benefits of, and the need for, foreign investment, there is little discussion about what may be an appropriate way of attracting the types of investment that the Australian community and farmers would like to see.

This paper was a missed opportunity for exploring the types of foreign investments that appeal to both foreign investors and Australian farmers and how to encourage these. The exploration of the factors that could help drive greater use of models such as joint ventures and equity partnerships will be important in coming years to allow required capital inflows while addressing community concerns. GrainGrowers encourages the Australian Government

to take a proactive role in the policy settings around foreign investment, particularly through the upcoming Agricultural Competitiveness White Paper.

### **3. National Interest Test**

While much of the focus on foreign investment policy has been on thresholds and definitions, GrainGrowers would welcome a greater focus on transparency regarding the process for foreign investors and ultimately the National Interest Test. While investors may accept there are enough benefits in Australia to outweigh the high cost of doing business here, the lack of certainty and transparency around process and greater focus on compliance, rather than appropriate opportunities may have negative impacts on the many agricultural businesses who would benefit from an injection of capital. Disappointingly, the National Interest test does not seem to be a focus of the options paper.

To ensure foreign investment transparently meets the needs of the investor and also the Australian public, the following issues must be incorporated into consideration under the National Interest test before investment is approved:

- The acquisition strategy (such as food security) of any international government investing in Australia, and the commercial operation of its subsidiary businesses in Australia, needs to be examined.
- Investment should not be undertaken with the intent or outcome of reducing competition within the marketplace to the detriment of the Australian agriculture sector.
- Purchase of a water license in Australia by a foreign investor should be an automatic trigger for FIRB review condition.
- Investment should not compromise existing trade agreements and should be flexible enough to acknowledge the importance of future comprehensive trade agreements to the Australian farm sector.
- The legislated time-frame for assessing international investment should be equitable with assessment time-frames for domestic investors.
- International investors need to contribute to public good functions established in Australia (e.g. levies, when applicable)
- Ongoing monitoring of compliance conducted on the overseas investor with any government conditions of any investment including the impacts on local economies and communities.

### **4. State-Owned Enterprises**

In order to protect Australia's ongoing economic interest, domestic legislation needs to be developed sufficiently to handle a dispute with a State-Owned Enterprise, in a way which limits the potential cost (financially or diplomatically) to Australia. This does not appear to be addressed in the options paper.

### **5. New Penalty Regimes**

If the foreign investment framework is clear for not only the Australian public, but also foreign investors, the extension of penalty regimes should not be a significant impediment for attracting the much-needed inward investment into Australian agriculture. It is therefore important that this is not a stand-alone measure, but is clearly integrated into a sound Australian Foreign Investment Framework.

GrainGrowers supports in-principle the proposal to extend civil pecuniary penalties and infringement notices to agricultural investors who acquire land without following due process and receiving approval. This in-principle support would be based on regulatory efforts

focussed on communications and proactive participation with Australian regulatory systems, rather than a belated follow-up of non-compliance. A comparison of other countries penalty regimes would have provided the basis for a more considered comment from stakeholders on this matter.

## **6. Introduction of Fees**

The Australian industry has gradually seen a transfer of costs from the Australian Government onto industry, particularly to fund regulatory activities (for example, those relating to Biosecurity and Agricultural Chemicals). However, the application of fees proposed within the options paper for the processing of foreign investment applications would seem inconsistent with the Australian Government Cost Recovery Guidelines<sup>1</sup> for the recovery of administration costs. Further, they may reduce the attractiveness of Australia as a place for undertaking business if not considered in a holistic manner, along with the other costs of doing business in Australia.

Comparisons with other countries as outlined in the options paper are useful to the extent that they provide a basic benchmark. However, the comparisons provided in the paper do not tell the entire story, given the various other inbuilt business costs related to operating in Australia. For example, the company tax rates on the countries compared vary significantly<sup>2</sup> and may have just as significant impact on the countries considering their investment options. The cost of doing business in Australia is already high and while there is an element of benefit to the individual corporation from the activities of the Foreign Investment Review Board, it will be important that the process acts as a 'screen', not as a 'deterrent'.

While the paper rightly outlines that any foreign investor has to comply with Australian tax rules, it fails to also acknowledge that foreign investors are also able to utilise the concessions available to Australian businesses under Australia's taxation arrangements. This is another angle that must be considered when exploring the attractiveness of Australia as an investment destination.

In 2007-08, Australia ranked 68th in terms of burden of government regulation – in 2013-14 we rank 128th<sup>3</sup>. As a result Australian businesses (including those owned by local and foreign companies) are becoming less competitive against our international competitors. When developing policies on matters such as fees for applications to the Foreign Investment Review Board, it is important that the Australian Government considers the range of factors that influence the investment behaviour of foreign entities.

## **7. Definitions – Agricultural land**

It is noted that a new \$15 million cumulative threshold for agricultural land will initially be implemented through Australia's Foreign Investment Policy. It is also noted that the term 'agricultural land' is not currently used within the foreign investment framework and the intention is to use existing definitions for 'rural land', until legislative change can be enacted. Again, there is a strong need to provide certainty for investors and the Australian community in these definitions.

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<sup>1</sup> <http://www.finance.gov.au/resource-management/cost-recover/>

<sup>2</sup> <http://www.kpmg.com/Global/en/services/Tax/tax-tools-and-resources/Pages/corporate-tax-rates-table.aspx>

<sup>3</sup> The Global Competitiveness Report 2012-13, World Economic Forum, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf)

The options paper appropriately identifies the limitations with the current definition of 'rural land', including its parameters regarding 'wholly and exclusively for carrying on a business of primary production'. This is clearly not adequate for the purpose of collecting information on foreign investment into Australian farms.

Any new definition of 'agricultural land' must allow for land that has the capacity of agricultural functions, but may currently (wholly or partially) be (or proposed to be) utilised for other activities such as mining, tourism, or recreational purposes. To maintain the integrity of the system, situations such as land-banking and selling formerly productive land for purposes other than agriculture must be captured through both the lower screening threshold and the foreign ownership register to the extent possible.

## **8. Definitions – Agribusiness**

It is noted that a new \$55 million screening threshold (based on the value of the investment) for investments in agribusinesses will be implemented through Australia's Foreign Investment Policy. It is also noted that the term 'agribusiness' is not currently used within the foreign investment framework and the options paper does not clearly articulate any way forward for agricultural water assets.

Any definition of agribusiness must capture the ability of the business to reduce competition within the Australian marketplace to the detriment of the Australian agriculture sector. This may differ depending on the industry, but in the grains industry it may relate to storage and handling facilities, freight infrastructure, or processing facilities. The ANZSIC codes<sup>4</sup>, as outlined in the options paper do not seem to appropriately capture the variety of circumstances where a new owner in the supply chain may exert influence to the detriment of Australian agriculture and ultimately against the Australian National Interest.

For example, while the ANZSIC codes capture first stage supply chain businesses (Grain wholesaling, storage and milling (3319, 5301, 1161)), it will also be important that the definition provides flexibility to capture logistics owners/operators (including rail, road, shipping, air freight, sea and airports) and input suppliers (fertiliser, plant protection) whose operation may influence primary producers and/or commodity markets.

Further to the above, GrainGrowers seeks clarification on whether the agribusiness threshold will apply cumulatively.

## **Summary**

A range of capital sources will be required to underpin the future competitiveness of Australian agriculture. The challenge will be balancing the desires of Australian farmers and communities, with the incentive for foreign capital to participate in the Australian market. For Australia to benefit, the Foreign Investment Framework must provide the transparent rules of engagement for foreign investors, without unnecessarily acting as a barrier.

GrainGrowers welcomes this process to more clearly articulate Australia's Foreign Investment Framework, and encourages the Australian Government to ensure focus remains on how Australian farmers can optimise benefits from foreign investment.

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<http://www.abs.gov.au/Ausstats/abs%40.nsf/66f306f503e529a5ca25697e0017661f/7cd8aebb a7225c4eca25697e0018faf3!OpenDocument>