



National Farmers' Federation

**Submission to the
Senate Standing Committee on Economics inquiry into
the Foreign Acquisitions and Takeovers Legislation
Amendment Bill 2015 and related bills**

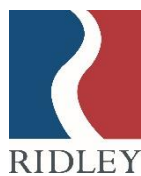
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NFF Member Organisations



Australian Chicken Growers' Council Ltd





The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

Following a restructure of the organisation in 2009, a broader cross section of the agricultural sector has been enabled to become members of the NFF, including the breadth and the length of the supply chain.

While our members address state-based 'grass roots' or commodity specific issues, the NFF's focus is representing the interests of agriculture and progressing our national and international priorities.

The NFF has for 36 years consistently engaged in policy interaction with government regarding a range of issues of importance to the sector including trade, education, environment, innovation to name a few.

The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental sustainability.

Social >

There are approximately 115,000 farm businesses in Australia, 99 percent of which are family owned and operated.

Each Australian farmer produces enough food each year to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 percent of the total volume of food consumed in Australia.

Economic >

The agricultural sector, at farm-gate, contributes 2.4 percent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2013-14 was \$51 billion – a 6 percent increase from the previous financial year.

Yet this is only part of the picture. When the vital value-adding processes that food and fibre go through once they leave the farm are added in, along with the value of all economic activities supporting farm production through farm inputs, agriculture's contribution to GDP averages out at around 12 percent (over \$155 billion).

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 52 percent of Australia's land mass.

Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 percent of Australian farmers actively undertaking natural resource management.

The NFF was a founding partner of the Landcare movement, which in 2014, celebrated its 25th anniversary.

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Summary of key recommendations

- The NFF supports foreign investment into Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain.
- The NFF supports the \$55 million screening threshold for agribusinesses.
- The NFF supports the \$15 million cumulative screening threshold for agricultural land.
- The NFF does not support the proposed fee rates to be applied to investors being screening by the Foreign Investment Review Board.
- The NFF maintains its support for a full cost-recovery model, whereby investors are charged only for the cost required to screen their investment proposals.
- The NFF supports a fast-track approval process whereby investor looking to invest long-term in the sector can present a business plan for assessment, allowing subsequent actions to be assessed against this in a streamlined fashion.
- The NFF does not support the definition of ‘agribusiness’ put forward in the draft regulations.
- The percentage of a business required to be considered an agribusiness for the purposes of the screening threshold should be raised to 50 percent, as to reflect the principle that companies captured by the definition should have the majority of their operations as an ‘agribusiness’.
- The threshold for an investor to have a ‘direct interest’ in a company is too low, and is redundant in the face of other regulations which provide appropriate safeguards against creeping acquisitions.
- The NFF requests the Committee investigate the impact of the proposed legislation and supporting regulations on the ability of current long-standing foreign owned agribusiness to reinvest in Australian agriculture.
- Public concerns focused on competition in the market place must be addressed as stand-alone concerns in the first instance and should not be spontaneously linked to foreign investment or vice versa.

1. Introduction

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Senate Standing Committee on Economics inquiry into the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 and related bills.

The NFF has participated extensively in the '*modernising Australia's foreign investment framework*' consultation process to date. In NFF's view, it is important that a balance is struck between incentivising investment into Australian agriculture and having in place the correct framework to ensure it is beneficial to all parties concerned.

The NFF fundamentally supports foreign investment into Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain. Foreign investment has proven to be overwhelmingly positive for Australian farmers and regional communities, injecting much needed capital into the sector.

The NFF has developed a series of principles that guide its policy on foreign investment in Australian agriculture - including land, water and critical infrastructure. The principles are focussed on building confidence and transparency around foreign investment in Australian agriculture, and ensuring that there is no negative implications for the farm sector. The principles are listed below.

The NFF supports foreign investment in Australian agriculture provided that it:

- Requires adherence to all Australian laws, especially tax and competition laws;
- Does not create negative distortions in resource allocation or output returns;
- Does not undermine the existing marketing mechanism, storage or handling facilities, critical infrastructure and logistics or pricing transparency where these underpin farm gate price determination;
- Is not undertaken with the intent or outcome of reducing competition within the marketplace to the detriment of the Australian agriculture sector;
- Allows for legislated time frames for assessing foreign investment to be equitable with the regulatory times frames for consideration of domestic investors;
- Ensures compliance with existing and new industry production and/or transaction levies; and

- Does not compromise existing trade agreements and is flexible enough to acknowledge the importance of future comprehensive trade agreements to the Australian farm sector.

This submission will address the issues within the draft legislation and regulations the NFF view as most pertinent. Additionally, the NFF has used this submission as an opportunity to bring to the attention of the Committee broader issues with regards to the legislation and foreign investment policy. These issues include the impact of the legislation on long-standing foreign owned companies and concerns relating to the relationship between the legislation and competition policy.

2. Investment screening threshold

For an agribusiness

The draft regulations prescribes that the screening threshold for an agribusiness by any foreign person (other than a relevant agreement country) is \$55 million. The NFF supports the \$55 million screening threshold.

Additionally, arrangements should be in place to ensure the threshold is not overly restrictive with regards to foreign owned businesses making minor and inconsequential investments. In the NFF's view all minor acquisitions by pre-existing foreign owned agribusinesses including easements, leases etc. that are under 1 percent of the total value of their overall investment are to be exempt from Foreign Investment Review Board (FIRB) approval as they are non-consequential. Similarly, all minor acquisitions by a State Owned Enterprise (SOE) for easements, leases etc. that are incidental to the business and under \$50,000 are also to be exempt from FIRB approval as they are non-consequential.

For agricultural land

The draft regulation prescribes that agricultural land acquired by a foreign person (other than a relevant agreement country investor or an enterprise or national of Singapore or Thailand) is screened at a threshold of \$15 million. The threshold will be a cumulative figure, capturing combined purchase values.

The NFF supports the \$15 million cumulative threshold. Though some NFF members oppose the threshold being cumulative, the NFF believes it is in the best interests of the broader sector to support a cumulative threshold.

3. Screening fees

The draft regulations states that the following screening fees will be borne on the part of the investor:

- *Acquisitions of rural land less than \$1 million = \$5,000*
- *Acquisition rural land equal to or greater than \$1 million = \$10,000 incremental fee per \$1 million in rural land value, capped at \$100,000.*
- *Investments in agribusinesses = \$25,000 or \$100,000 for agribusiness acquisitions where the value of the target's assets are greater than \$1 billion.*

The NFF does not support the proposed fee rates. The NFF maintains its support for a full cost-recovery model, whereby investors are charged only for the cost required to screen their investment proposals. In the NFF's view, such an approach will work to drive efficiency and transparency within the FIRB.

4. Proposal for fast-track approval process

While not addressed in the draft regulations, In terms of proposed approaches for a framework and fee structure for foreign investment applications, the NFF would request the consideration and further development of a system that provides a level of in principle “pre-approval” or “vetting” that streamlines the investment process. An appropriate process, if implemented, would allow an investor to outline the investment objectives to the FIRB via an investment plan that identifies at a high level, the ownership, intentions, and goals of the investment agenda.

The regime could work where a potential foreign investor would voluntarily lodge their investment plan for approval with FIRB. The investment plan would be required to identify sectors of interests that the investor would be focussed on and target. It would include a specific narrative on critical issues such as the identification of the ultimate shareholder(s), tax structures, marketing plans, proposed development plans, labour considerations, local and regional impact analysis and capital investment plans.

Once the foreign investor’s investment plan has been approved in-principle by FIRB, they would be able to make an application for approval from FIRB for specific transaction under a “fast-track” system which would provide a maximum 10 working day turnaround so long as the target acquisition was consistent with the strategy outlined in the investment plan. This fast-track approval process will allow foreign investors to compete with domestic investors for assets that are presented for auction or require fast resolution resulting in a more efficient market.

In essence the investor could be subject to a fee to register the investment plan, and a per transaction fee for a particular investment. The NFF would be cautious about nominating a specific level of fee in the first instance, but the fee structure should be at an appropriate level recognising that the majority of the work for FIRB would be around the approval of the investment plan, not the individual transactions. It should align with the full cost recovery guidelines principles but also incorporate a level of incentive and proactive business activity which facilitates flexibility.

The investor would be required to submit a revised investment plan for approval to FIRB should circumstances changes such as a change in ultimate shareholders, investment thesis or management. The investment plan would be reviewed and monitored by the FIRB and investors would be required to regularly report against the strategic plan to ensure that they and their respective activities are adhering to the aims and objectives incorporated as approved.

5. Definition of Agribusiness

The definition of agribusiness is prescribed by the regulations as:

Agribusiness is a business carried out wholly or partly in any of the following classes of the Australian and New Zealand Standard Industrial Classification Codes:

(a) any of the classes in Division A (agriculture, forestry and fishing);

(b) any of the classes in Subdivision 11 of Division C (food product manufacturing), other than any of the following:

(i) class 1113 (cured meat and smallgoods manufacturing);

(ii) class 1132 (ice cream manufacturing);

(iii) class 1162 (cereal, pasta and baking mix manufacturing);

(iv) a class in group 117 (bakery product manufacturing);

(v) class 1182 (confectionery manufacturing);

(vi) a class in group 119 (other food product manufacturing).

The NFF does not support the definition put forward in the draft regulations. In the NFF's view it is inappropriate that certain supply chain business types are automatically captured in the definition.

Clearly farm businesses are agribusinesses. However the nature of farms is changing as is the relationship with stakeholders along the supply chain. There are a range of businesses that deal with agricultural commodities that are beyond the farm gate production cycle. However drawing a definitive and exclusive characterisation is difficult and possibly counter-productive in the context of the FIRB review thresholds.

There are potentially unintended consequences of referring investment proposals for Australian businesses that fall within the 'first stage' and even 'second stage' supply chain business category beyond the farm gate to the FIRB. These consequences include but are not limited to a lack of liquidity, lack of access to capital and ultimately a decline in competitiveness. Reducing competitiveness in the food and fibre supply chain will also impact farmer profitability and competitiveness. The objective should be to encourage investment in the supply chain that will contribute to the growth and efficiency and ultimately the competitiveness of the sector.

NFF is of the view that the issue of control or influence over the market by a business should be an important consideration used to determine whether the agribusiness screening threshold should apply.

Additionally, Schedule 1 Subdivision 2 8(2) states that an Australian business is an agribusiness if the value of the assets of the business classified in the above definition represent at least 25 percent of the total asset value of the business.

In the NFF's view this is too low. The percentage may see businesses with the majority of their operations outside of the listed business types captured by the definition. This percentage may lead to perverse and unintended outcomes. This may stifle investment in these business types by companies as to avoid any added regulatory burden being placed on the entire operation.

In the NFF's view the percentage should be raised to 50 percent as to reflect the principle that companies captured by the definition should have the majority of their operations as an 'agribusiness'. As indicated above, the raising of the percentage value threshold must occur in conjunction with the development of a more appropriate definition for agribusiness.

6. Definition of direct interest in a business

The primary means by which the draft regulations define an investor taking a 'direct interest' in a company, is if a 10 percent or greater share of the company is acquired.

However 8(c) of the regulations states that if a foreign investor has a 5 percent stake and adds to it by even 1 per cent that this action requires a FIRB approval. At a time when a range of Australian businesses both listed and unlisted are seeking additional capital this provision is particularly onerous. If this provision is designed to respond to 'creeping acquisitions', passive investments between 5-10 per cent would appear to be somewhat arbitrary and low.

The remaining provisions ensure that any foreign investor with an interest which exerts control, will require FIRB approval. Hence 8(c) of the regulations is redundant and should be removed. If 8(c) is not removed, than the threshold in 8(c) (ii) should be raised to 10 percent.

7. Reinvestments by long-standing foreign owned agribusinesses in Australia

The NFF requests that the Committee investigate the broad impact of the proposed legislation and supporting regulations on the ability of current foreign owned agribusiness to reinvest in Australian agriculture.

8. Interaction between foreign investment and competition policy

The NFF requests that the Committee consider the interactions between foreign investment and competition policy. In the NFF's view, there is the potential for concerns regarding competition within markets to be addressed through Foreign Investment policy. While foreign investment policy is one element of ensuring competitive markets, in the NFF's view policy makers must be sure to address these issues individually.

Clearly there is a link between potential foreign investment in the agriculture industry resulting in consolidation and possible negative impacts on the supply chain flowing from reduced competition. However, concerns focussed on competition in the market place must be addressed as stand-alone concerns in the first instance and should not be spontaneously linked to foreign investment or vice versa.