

# Update on Senate inquiry into foreign investment in Australian farmland

*Partner, Simon Venus looks at the Senate inquiry into the proposed amendments to the Foreign Acquisitions and Takeovers Act which would, if passed, see significant changes to the notification and disclosure requirements for foreign acquisitions of Australian agricultural land.*

The *Foreign Acquisitions Amendment (Agricultural land) Bill 2010* is a private member's Bill that was introduced into the Australian Senate in late November 2010. The Senate subsequently referred the Bill to the Economics Legislation Committee for inquiry and report in early 2011.

The Bill proposes amendments to the *Foreign Acquisitions and Takeovers Act 1975* to:

- implement a national interest test to be applied against proposed foreign acquisitions of agricultural land
- require any interest in agricultural land greater than five hectares to be notified to the Treasurer
- require online publication of information about foreign acquisitions of interest in agricultural land
- impose penalties for not notifying the Treasurer of a proposed acquisition.

If passed, these proposed amendments would significantly alter the current regime for foreign acquisitions of agricultural land in Australia, which generally do not require notification to the Foreign Investment Review Board for acquisitions less than AU\$231 million for non-US investors.

Eleven submissions were received by the Senate inquiry from a broad cross section of individuals, community and industry groups and government. The tenor of the submissions ranges from strong support for the reforms as they are outlined in the Bill, to those advocating a more cautious approach to reform and emphasising the need for any new legislation to be based on sound data about the nature and extent of foreign ownership of Australian agricultural land.

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Of all of the submissions, the most comprehensive was that of the Department of the Treasury (the body charged with administration and screening arrangements under the *Foreign Acquisitions and Takeovers Act*). Treasury was not glowing in its endorsement, noting that “*the Bill does not present a sufficiently strong case to justify the regulatory changes it is suggesting*”.

Treasury’s key findings were:

- there is a lack of data to gauge the level of foreign ownership of rural land and water entitlements and whether that level is detrimental to the wellbeing of Australians
- the Bill proposes regulatory changes that could be better informed about what problems need addressing
- the Bill’s economic and administrative impact has not been adequately addressed
- the regulations proposed in the Bill may be in breach of Australia’s international obligations under its various free trade agreements.

Although, as Treasury notes, there is a lack of substantive information on the extent of foreign ownership of Australian farms, there is data to suggest a gap between perception and reality in so far as the populist, and arguably protectionist, view which has emerged in recent years on the back of food security concerns and which has driven the Bill, is unjustified. In 2007-08 the Australian Bureau of Agricultural and Resource Economics and Sciences indicated that 99% of broad acre and dairy farms in Australia are family operated and that of the 1% of non-family farms, only 0.1% are foreign owned. Broad acre and dairy farms account for around 70% of Australian farm businesses.

Undoubtedly since 2008 Australia has continued to be a destination for foreign capital into the agribusiness sector, but the extent to which the earlier data from 2007-08 has changed remains unknown. This gap in knowledge will hopefully be met by more detailed data which is being collected under the Agricultural Land and Water Ownership (ALWO) Survey. The ALWO survey is being undertaken by the Australian Bureau of Statistics and is intended to provide data on foreign ownership in Australia of agricultural businesses, agricultural land and water entitlements used for agricultural purposes. The survey is expected to be dispatched at the end of May 2011, with the results available by the end of September 2011.

The Economics Legislation Committee is due to report to the Senate by 15 June 2011. Clearly the Senate inquiry will not be in a position to assess the data coming out of the ALWO survey. In any event, we will continue to provide updates on the Senate inquiry and course of the proposed legislation.

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