

25<sup>th</sup> March 2021

## **NSWIC Submission: Register of Foreign-owned Water Entitlements**

To whom it may concern,

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems. NSWIC has member organisations in every inland river valley of NSW, and multiple coastal valleys.

NSWIC welcomes the opportunity to provide a submission to the Productivity Commission inquiry into the effectiveness, costs and benefits of the Register of Foreign Ownership of Water Entitlements (herein, the Register).

NSWIC fully supports the objective of the Register to increase transparency about foreign ownership of Australian water assets and maintain community confidence in this regard. NSWIC notes that foreign-ownership of water is a topic of significant public interest, and transparency is critically important.

NSWIC notes that despite significant public interest, the Register is not widely known to exist, and people generally are not aware of the actual level of foreign ownership of water. NSWIC recommends options are explored to improve public awareness of this Register, its accessibility, and the communication of the data it contains. For example, significant work programs at a State and Commonwealth level are currently underway to develop 'single sources of truth', as information platforms that bring together multiple registers and knowledge resources. NSWIC recommends the Foreign Ownership Register is incorporated into those platforms to improve awareness and accessibility. In particular, integration with WaterInsights<sup>1</sup> could be an opportunity. NSWIC also recommends that media releases are prepared when yearly reports are released, that provide the information in a simple and clear way.

Increased granularity of data on foreign ownership, particularly in the Murray-Darling Basin, where access to water is constrained and competitive is of also significant public interest. It is essential that the Register breaks foreign-owned entitlements by type and by valley, so that the public can clearly understand the proportion of different entitlement types that are foreign-owned at a valley level. Not all entitlement types are equal in the market, and this transparency assists in public understanding of the degree to which foreign entities may control water security and accessibility in each valley.

The annual reports have improved the extent of information on foreign ownership. The timeliness of annual reports could be improved, with the 2019/20 report not released until 1 March 2021, nine months after the end of the financial year.

The *Foreign Acquisitions and Takeovers Act 1975* defines a 'foreign person' to include individuals and entities with foreign ownership of 20 per cent or more. This means that a significant portion of Australian equity in a water entitlement may be considered 'foreign-owned'. The effective amount of foreign ownership in water can be consequently overstated, particularly in headline figures that do not

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<sup>1</sup> <https://waterinsights.watarnsw.com.au>

account for data nuances and technicalities. For this reason, it is important that the Register continues to capture the share of Australian investors' equity in a water entitlement. Additionally, for the purpose of the public understanding accurately the degree of foreign control of water assets, it is likely that a secondary measure is required that gives consideration to this definition. For example, if a 10ML entitlement is 20% foreign-owned, this could be expressed through an additional and separate 'effective index' as an effective 2ML of foreign ownership (20% of the 10ML). The purpose of this secondary measure is to develop a simple and accurate measure to communicate to a general public audience.

A limitation of the Register is that the BOM Water Markets Dashboard does not capture water rights issued outside State Water Planning frameworks. In 2019, 17 GL of foreign-held water entitlements were attributed in the Water Register to water rights outside the State Water Planning frameworks. As the report itself states, "as the 17 GL is included in the tables in the Water Report 2019, the level of foreign ownership is marginally overstated"<sup>2</sup>. Overcoming this limitation would be beneficial to gauge more accurate data.

NSWIC also recommends that the Register includes explanatory material to show that not all water is under a water entitlement (for example, Planned Environmental Water in NSW makes up a significant proportion of the total water resource). This is necessary as otherwise there are assumptions that figures represent the total resource, rather than total entitlements on issue. For example, the media reported foreign ownership accounting for 10.8% of entitlements on issue in the Basin in 2019 as foreign investors owning 10.8% of water in the Basin – which is completely inaccurate and misleading.

Any changes or new registers should not impose additional administrative burdens on organisations like Irrigation Infrastructure Operators who are reliant on their members co-operation and honesty to report ownership status.

NSWIC notes the relevance of this Inquiry to other concurrent inquiries, such as the ACCC Inquiry into Water Markets in the Murray-Darling Basin, and the Productivity Commission Review into National Water Reform. NSWIC strongly encourages that the outcomes and recommendations from these numerous inquiries and reviews are linked, to produce the most effective outcomes without duplication.

Yours sincerely,

NSW Irrigators' Council.

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<sup>2</sup> <https://firb.gov.au/sites/firb.gov.au/files/2020-05/2019-rfo-water-entitlements.pdf>