



31 March 2021

Mr Jonathan Coppel
Commissioner
Productivity Commission
Register of Foreign-owned Water Entitlements Inquiry
GPO Box 1428
CANBERRA CITY ACT 2601

By email: foreign.water.entitlements@pc.gov.au

Dear Commissioner

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission in response to the Productivity Commission's issues paper on the Register of Foreign-owned Water Entitlements (the Register).

Australia's minerals industry is a global leader in providing the essential elements of modern life while growing the nation's economy and sustaining regional communities. Combined with its social contribution and responsible environmental management, the minerals industry plays a critical role in the modern world.

The MCA is the leading advocate for Australia's minerals industry, a strong and effective voice at the national and international level as well as through its divisions in the Northern Territory and Victoria.

The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally and socially responsible and attuned to community needs and expectations.

Australia's minerals industry is a major contributor to investment, exports and government revenues. It directly employs 238,000 Australians. Australia's innovative mining, equipment, technology and services (METS) sector, which sells goods and services here and overseas, is also a major economic contributor. Across the supply chain, mining and METS supports a total of 1.1 million direct and indirect jobs – or one in every ten jobs in Australia – as well as thousands of regional businesses.

MCA member companies are signatories to *Enduring Value – the Australian Minerals Industry Framework for Sustainable Development* and have a long-standing commitment to the effective and responsible management of Australia's water resources¹.

While a small water user at a national level, the industry can be a significant user at a local level. As such, mining projects are subject to rigorous and extensive environmental approvals process. The minerals industry is at the forefront of consistent water accounting and reporting, developing a sector-leading water accounting framework in 2011.

¹ Minerals Council of Australia, *Enduring Value*, 2015 Edition.

The water accounting framework has been adopted by MCA members and by industry globally, with components adopted by the Global Reporting Initiative corporate standard. The framework's metrics are used in company reports or on a regional basis. Water availability and security of supply is a critical business risk for the minerals industry. Mining and minerals processing cannot occur without secure access to reliable water supplies.

MCA member companies have also adopted Towards Sustainable Mining (TSM)², an award-winning accountability framework which helps minerals companies evaluate, manage and communicate their sustainability performance. Adopting the independently verified system will reinforce the sector's commitment to continuous improvement in safety, environmental and social governance.

TSM strengthens *Enduring Value – the Australian minerals industry's sustainable development framework* – by providing a consistent approach to assess and communicate site level performance in a transparent and accountable way.

Access to international investment, especially foreign direct investment, remains vital to ensuring Australian mining keeps its strong comparative advantage in resources exports and continues to generate the revenues and high paying jobs needed for a sustained recovery from the COVID-19 pandemic.

Register of Foreign-owned Water Entitlements

The MCA notes that in addition to looking at the effectiveness, costs and benefits of the Register, the Productivity Commission will also seek to provide advice in preparation for the new arrangements and/or guiding future policy in this area, given the Register will be abolished once the new registration scheme for foreign interests in Australian assets is established by 1 January 2025.

To assist the Productivity Commission with the advice on preparing new arrangements the MCA has taken this opportunity to restate relevant positions put to the Treasury when the Register was being developed³ and the Economics Legislation Committee as part of its review of the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020⁴.

The register captures a broad range of water access entitlements

The definition of *registerable water entitlement* under 5A (1) of the Act is very broad, capturing a wide range of water access arrangements. These include not only perpetual, tradable water entitlements which are effectively 'owned' and the target of the register, but a range of other rights conferred under law by states or territories to hold or take water, including water licenses and other approvals.

The minerals industry accesses and uses water differently to other industries and water access is largely non-tradable. The capture of these arrangements by the register would be inconsistent with the aforementioned policy objectives.

Capturing the spectrum of industry water access arrangements is likely to mislead users of the register. For example, register users are likely to assume that all water entitlements are 'owned', tradable, consumed and be of a type suitable for agriculture or even domestic purposes, which for the minerals industry is not the case.

² Minerals Council of Australia, [Towards Sustainable Mining](#), MCA March 2021.

³ Minerals Council of Australia, [Submission on consultation paper national register of foreign ownership of water access entitlements](#), MCA, 23 March 2016.

⁴ Minerals Council of Australia, [Submission on Foreign Investment Reform \(Protecting Australia's National Security\) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020](#), MCA, 10 November 2020.

It is noted that the Australian Taxation Office assigns a zero volume to water rights issued outside of State Water Planning frameworks to avoid overstating foreign ownership of water when comparing to the entitlements reported on the BOM Water Markets Dashboard.

The MCA considers these entitlements should be exempted from the definition of *registrable water entitlement* in the same way other water rights have been excluded such as stock and domestic rights, riparian rights, water allocations, and a right of a kind specified in the rules.

Recommended exemptions under the registrable water entitlement

The MCA considers certain water entitlements sit outside the intent of the register which captures 'ownership' of a saleable asset. Accordingly, exemptions should be given in the circumstances outlined below.

Saline and hypersaline water used for mining and mineral processing

The industry uses a wide variety of water sources of varying quality, including saline water that is not fit for any purpose other than industrial applications. In some cases, such as the gold fields in Western Australia, deep hypersaline aquifers (up to ten times saltier than seawater) are pumped and treated at significant cost to supply water for critical mine processes. Accordingly, this water is not a catchment flow, nor is it transferrable to other users after consumption.

The reporting of this water gives the impression this water is comparable or substitutable to other water, which is not the case and distorts the perception of the sector's water use or water ownership.

Water accessed for safety, not consumption

As a result of dewatering activities to make mines safe for operation, much of industry's water take can be incidental. This water is known as associated water. This associated water, extracted from the ore body and surrounding groundwater is not consumed, but discharged into the environment in line with an operation's comprehensive state-based licence conditions. In some cases, this water may be treated to make it suitable for the environment or other uses, including agriculture, before it is released. Additionally, in some circumstances offsets may also be required for the take of this associated water.

Dewatering volumes can vary from year to year depending on rainfall patterns and other climatic factors. State authorisations often require mining companies to hold water licences set at the maximum predicted water take for any given year over the anticipated life of an operation. This can include a large contingency volume to enable companies to manage extreme rainfall events (e.g. cyclonic events) and flooding. For example, there are mining operations in the Pilbara where the average annual take of associated water is only 30 per cent of licenced water take.

The contingency built into a water licence can be many times that of the actual annual water take by an operation, the reporting of which again distorts the perception of the sector's water use or water ownership.

There needs to be clear contextual information with the register data in the report of registrations.

Reporting requirements

The MCA notes that the current Register of Foreign Ownership of Water Entitlements allows a foreign person to register at any time during the financial year, but requires the registration by no later than 30 days after the end of the financial year in which the transaction occurred.

The explanatory notes for the Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020, maintains an annual reporting requirement. Annual reporting also aligns with the publication of the annual statistical report.

Given the reporting requirements already present a cost and resources burden on the mining industry and the benefits of which are unclear, the MCA supports no increase in the frequency of reporting requirements.

Benefits of the register should be clarified

The MCA encourages the Productivity Commission to quantify the benefits of the register to ascertain:

- Who are the users of the register and how many times has the statistical report been retrieved
- Does the register meet the needs of these users
- Whether mining industry water entitlements have been a focus.

The MCA would welcome the opportunity to provide further input on these important reforms. Should you have any questions, please do not hesitate to contact Matthew Jeffries, Senior Manager, Environmental Policy:

Yours sincerely

**TANIA CONSTABLE PSM
CHIEF EXECUTIVE OFFICER**