



National Irrigators' Council

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Foreign Water Entitlements Inquiry
Productivity Commission
GPO Box 1428
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Dear Commissioners

Re: Register of Foreign Owned Water Entitlements

The National Irrigators' Council (NIC) appreciates the opportunity to make brief comments on the Commission's draft report regarding the Register of Foreign Owned Water Entitlements established in 2017 under the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (Cth) (the Act).

We refer to [NIC previous submission](#) to the Commission earlier in 2021 on this matter.

NIC is the peak body representing irrigators in Australia, supporting 31 member organisations covering the Murray Darling Basin states, irrigation regions and many of Australia's major agricultural commodity groups. Council members collectively hold approximately 5,500,000 mega litres of water entitlements.

We note that at 30 June 2020, 11 per cent of water entitlements on issue in Australia were owned by entities that met the Register's definition of a foreign person. Most foreign-owned water entitlements are used in the agriculture sector, except in Western Australia, where the bulk is used in the mining sector.

This inquiry is conducted against the backdrop of the Government's intention for a new registration scheme, due to commence by December 2024. This will amalgamate the existing (Water) Register, the Register of Foreign Ownership of Agricultural Land and the Register of Foreign Ownership of Residential Land.

NIC does not propose to make specific comments regarding the Commission's draft findings, which appear to be broadly practical. The **key points** highlighted in the draft report provide a useful lens on the Commission's overall assessment of the draft findings in the report, most particularly: *"There is no compelling case for major changes to the Register of Foreign Ownership of Water Entitlements. It plays a small, yet useful, role and apart from a few tweaks should continue for now, provided its costs remain low."*

These comments are noted. With regard to any case for a change to the Register relating to its effectiveness, which is the Commission's key focus, we noted earlier that it is outside NIC's knowledge and/or capability to understand the effectiveness of the Register and whether the information provided in the Register delivers on the objectives. It is also outside NIC's scope to determine whether the information available is sufficient to satisfy the public interest and/or concern about levels of foreign ownership in Australia.

However, the Commission's view is that the transparency provided by the Register helps maintain community confidence in Australia's approach to foreign investment.

We again highlight the importance of ensuring a tight check on costs for irrigated infrastructure operators (IIO) of complying with the Register and it is pleasing to see the Commission's reference to the issue of costs.

We provided general comments in our earlier submission about costs to irrigation infrastructure operator businesses in particular, in complying with the Register. We acknowledged that the value of the Register is in the collection of data that can inform any public debate and/or underpin government policy making in a factual way.

We highlighted that irrigation infrastructure operators are fully aware of their obligations to inform their own membership of their responsibility to provide information regarding any foreign ownership of water status. We have also noted previously that given the purpose of a national Register was to assist governments and the broader Australian community to understand the level of foreign ownership of water access entitlements, therefore:

- the cost of any regulatory burden involved in complying with a proposed register should sit with the foreign person, not with the irrigation infrastructure operator, and
- the cost of ensuring compliance with the register should sit with the Commonwealth.

We continue to expect that the cost of the Register should remain proportional to the information provided, and the key question for Governments therefore, is to understand what the public might be willing to pay for transparency.

The Commission rightly notes that the Register is not designed to address all concerns but suggests community concerns are often broader than foreign ownership of water entitlements. These include:

- the potential for large water holders and brokers to manipulate prices; and
- a perception that the taxation system (specifically, the capital gains tax) disadvantages domestic water holders compared with foreign owners.

The Commission recognises that *“Foreign investment provides capital for businesses to grow, introduces new technologies, practices and technical expertise and enables Australians to enjoy higher standards of living than they otherwise would.*

There is support for foreign investment within the agricultural and mining industries, but a sizeable share of the broader community has some unease with foreign investment, and it can be conflated with other water market concerns, such as water market manipulation.”

The latter statement brings into focus issues raised in the context of the ACCC inquiry into water markets in the Murray Darling Basin. NIC suggested in our submission¹ to the inquiry that the ACCC should take a continued role in monitoring, and if necessary, acting to ensure no anti-competitive behaviour or market manipulation in the water market, particularly focusing on periods of low supply.

The [ACCC's final report](#) made a range of comments with regard to foreign owned water, while noting the Commission's current examination of the effectiveness of the Register. Specifically with regard to the Register, the ACCC recommended at **Recommendation 4**²:

Require identifiers on trade forms. Traders should be required to include a unique common identifier on trade forms. This could be their ABN, ACN and/or the unique identifier issued to them by the centralised regulator. The ability to identify market participants, and trace and follow transactions, is a foundational issue for protecting market integrity and maintaining market confidence. This will improve the regulator's ability to detect misbehaviour and enforce against it.

The Government has not yet provided a response to the ACCC report, though will do so through the proposed panel to be established by Government to oversee the report. In the interim, our own NIC working group has examined the ACCC report, and broadly agrees with the recommendation, noting that if accepted, a move in this direction would improve transparency in decision making and efficiency of transactions (allocation and entitlements).

¹ NIC submission to ACCC interim report on the operation of water markets, October 2020

² ACCC final report, Murray Darling Basin water markets inquiry, February 2021

Potential further tweaks to the Register

The Commission notes the scope for some 'tweaks' to the current Register that would improve the performance and quality of the Register. These appear to be practical, namely:

- The statistical reports should include data on the proportion of foreign owners of water entitlements that also hold agricultural land.
- The statistical reports should clarify a number of misperceptions, by stating that registration is compulsory, and that foreign ownership need not entail foreign control.
- The States and Territories should link to the Register from their water information portals.

The Commission notes such changes would be low-cost. We would not disagree with practical changes to the Register to improve performance and quality though we note that neither irrigators nor IIOs find the information provided by the Register of particular benefit for their own purposes.

We suggest that the cost of any further proposed changes, if implemented to satisfy community confidence and provide public benefit, should be met via a user pays approach.

It would appear a practical step to ensure that the *statistical reports should include data on the proportion of foreign owners of water entitlements that also hold agricultural land* given the intention to amalgamate the existing (Water) Register, the Register of Foreign Ownership of Agricultural Land and the Register of Foreign Ownership of Residential Land, for the new registration scheme to commence in December 2024.

The Commission suggests there is scope for the statistical reports to be more accessible for the general public to support community confidence, particularly for those who do not have a background in water markets.

In conclusion

As noted in our earlier submission, we would expect a variety of views across the NIC membership regarding foreign investment in Australian agriculture. Those involved in agriculture related businesses understand the importance of investment and the need for capital to underpin the agriculture supply chain. And many will recognise the role foreign investment will play in the aspiration to reach \$100 billion in farm gate output by 2030.

NIC appreciates that the information captured in the Register is valuable and is used to support development of government policy in relation to foreign ownership. This assists governments when seeking to access data and analytical capability to monitor and assess applications to the FIRB (Foreign Investment Review Board) in the national interest.

We thank you for the opportunity to provide these comments.

Yours sincerely

Isaac Jeffrey

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National Irrigators' Council

9 September 2021