



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 provide feedback 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).

NIC is the peak body representing irrigators in Australia, supporting 32 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 the Act obliges foreign persons to notify the Australian Government of their interests in certain Australian water entitlements and keep it informed of any changes to these interests. As a result of the Register being contested during Parliamentary debate on the Bill proposing its introduction, we note that a requirement was incorporated in the Act that the Productivity Commission conduct an inquiry into the effectiveness of the Register within five years of relevant provisions coming into effect. The Commission will complete the inquiry by 7 December 2021.

The issues paper relating to this inquiry notes that the Commission will seek to provide advice that is useful in preparing for the new arrangements and/or guiding future policy in this area. This might be, for example, focusing on aspects of the existing scheme that will continue under the new arrangements, lessons learned, or, if appropriate, any low-cost modifications that will return material benefits while the Register continues to exist.

The primary aim of the Register is to increase transparency about foreign ownership of Australian water assets, to satisfy public concern and to maintain community confidence in Australia's foreign investment policy.

As it is the role of the Australian Government to make decisions regarding the level of foreign ownership in Australia through the mechanism of the Foreign Investment Review Board (FIRB), for the purpose of this submission, we will seek to focus on implications for NIC members in both complying with the Register.

The Commission has been asked to examine:

- whether the information provided in the Register delivers on the objective of increasing transparency on foreign ownership of water entitlements
- the direct and indirect costs and benefits of maintaining the Register and producing the annual Report
- the direct and indirect costs borne by foreign owners of water entitlements to ensure they are compliant with the legislation.

With regard to the direct and indirect costs and benefits of maintaining the Register, NIC is able to provide general comments regarding the costs imposed on irrigation businesses in particular.

The existence of the Register provides no benefit or disbenefit to entitlement holders (except for the compliances costs involved), whether they are foreign or domestic.

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.

Irrigation infrastructure operators are mindful of their obligations to inform their own members of their responsibility to provide information regarding any foreign ownership of water status. Members of irrigation businesses are required to notify the irrigation business (of which they are a member) on the occasion when the particular member notifies the Commissioner of Taxation that the member is, has become, or has ceased to be, a foreign person. This information then enables the irrigation infrastructure operator business to track their own ownership status.

At the time of the development of the Register in 2016, NIC provided two submissions. We highlighted 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.

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

In our earlier submissions, we pointed to the considerable Government regulatory obligations and reporting requirements where irrigation businesses are already captured. These obligations place significant costs on irrigation companies which are invariably passed on to irrigated agriculture producers who are repeatedly bearing the cost of regulation 'for the greater good'.

Reporting obligations include multiple state and federal requirements, many of which are duplicative and involve a complex process of data collection, collation, analysis and presentation. This often necessitates the employment of multiple, full time dedicated staff to meet these regulatory obligations.

While appreciating the aims and objectives of the Register, it would be a perverse outcome if further regulatory requirements were imposed on these businesses for the purpose of the Register. This would have the effect of further disinvestment in regional areas, where it is a constant challenge for businesses to reduce their input costs to remain competitive.

NIC has not canvassed members directly on their views regarding foreign investment in Australian agriculture though it would be reasonable to expect a variety of views. Many 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.

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 difficult to determine whether the information available is sufficient to satisfy the public interest and/or concern about levels of foreign ownership in Australia.

The information currently available notes that in 2019, water entitlements with a level of foreign ownership accounted for 10.5 per cent of total water entitlements on issue in Australia, compared to 10.4 per cent in the previous year. Specifically, this is China with 1.9 per cent of total water entitlements, the USA with 1.8 per cent and the United Kingdom with 1 per cent.

The Register also details:

- The percentage of foreign held water entitlements in Australia by state and territory.
- The use of foreign held water entitlements by state and territory and the industries to which foreign owned water is applied, that is, mining, agriculture, industry (forestry, manufacturing, transport, other).

The Commission's issues paper notes the concerns around whether foreign investors may be bidding up water prices or potentially speculating in rights or hoarding water. It also notes the potential impacts on local irrigators' capacity to acquire water entitlements. It is appropriate that any examination of these types of concerns are addressed within the remit of the Australian Competition and Consumer Commission (ACCC).

By way of background, NIC's submission ¹ to the ACCC inquiry regarding the operation of water markets in the Murray Darling Basin, suggested 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 draft report² into the operation of water markets in the Murray Darling Basin noted similar allegations that investors hoard water. The ACCC referred to the limits, for example, on carry over as well as spill rules. The ACCC observed the capacity of investors to make their water available to irrigators through leases and forward contracts, and also offer carryover parking arrangements – and noted: *these benefits are possible irrespective of whether the investor is foreign or not, and if there are gaps in the existing regulatory framework that allow harmful behaviours by market participants, then those gaps should be addressed rather than certain market participants excluded.*

Further considerations might also include whether foreign investment is vertically integrated (through the supply chain) or whether it is purely an investment in water; does it represent a sovereign risk to Australia or is foreign ownership adding value overall? This recognises that water ownership changes hands from time to time, and particularly so during times of drought when the market is more likely to be volatile.

Other questions arise relating to whether a particular foreign owner is a foreign state enterprise or a private enterprise; if the former, then perhaps there are questions around national security implications. Again, these are all determinations for the ACCC to make.

From our perspective, the issues for examination within the Productivity Commission's remit include:

- The compliance costs associated with irrigation companies' obligation to identify the level of foreign owned water in their respective organisations.
- Whether the costs of maintaining the Register are proportional to the information available to satisfy transparency.

With regard to any direct and indirect costs borne by foreign owners of water entitlements to ensure they are compliant with the legislation, it will be prudent to ensure that the cost of regulation does not act as an administrative barrier to foreign investment in Australian agriculture.

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

² ACCC draft report, Murray Darling Basin water markets inquiry, June 2020

We note that the Australian Government will introduce a new Register for foreign interests in Australian assets by no later than 1 January 2025 and abolish the existing water (and agricultural land) Registers when the new scheme commences. We also note that most aspects of the existing Register will continue under the new arrangements, including:

- rules on who must register
- the types of water interests that must be registered, and
- publication of information.

A new integrated Register which includes both land and water will be beneficial. The new Register should not impose additional administrative burdens on irrigation businesses who are reliant on their members' co-operation and honesty.

NIC appreciates that the information captured in the Registers 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 in the national interest.

We thank you for your consideration of these matters.

Yours sincerely

Isaac Jeffrey
Chief Executive Officer
National Irrigators' Council

24 March 2021