

## Introduction

The Register of Foreign Ownership of Water Entitlements (the Register) was established to ensure greater transparency on the level of foreign ownership of water entitlements in Australia and promote more informed public debate.

The NSW Government welcomes the inquiry into the Register by the Productivity Commission, and considers it is an important opportunity to confirm whether the Register is achieving this objective, and consider opportunities to improve the effectiveness of the information collected and reported.

The NSW Government strongly supports efforts to improve access to water information and increase the transparency of water markets. This transparency provides certainty and confidence to water users and other stakeholders in how water resources are being managed and used. It also gives water users the confidence to participate in water markets to support their business decisions.

Within that context, the NSW Government supports the Register and the associated statistical reporting in its objective of improving transparency, although considers that improvements are needed to ensure it achieves that objective and addresses perceived concerns regarding foreign investment.

The NSW Government acknowledges that regulation on foreign water ownership is outside the jurisdiction of NSW. This submission therefore focuses on the transparency of water information and issues that have been raised by stakeholders in NSW and does not comment on regulatory matters associated with foreign ownership of water entitlements.

## Stakeholder concerns about water markets and foreign water ownership

The Issues Paper released by the Productivity Commission raises several questions seeking to better understand stakeholder concerns around foreign water ownership.

In recent years there has been increased scrutiny of water markets, including scrutiny of the conduct of some market participants. This has been driven by severe drought in the Murray-Darling Basin (MDB) that resulted in reduced allocations and high-water prices.

Concerns have been raised that the water market is not working to its full efficiency and can be distorted due to a lack of transparency. Of specific relevance to this Inquiry, media and stakeholders have raised concerns about:

- The potential for market manipulation, particularly by large water holders and brokers
- The potential impact of non-land holding licence holders ('speculators' or 'investors') driving up water prices
- Multiple and fragmented water information sources that are difficult to access.

Multiple, complex factors have contributed to these concerns, including:

- Unprecedented dry and warm conditions resulting in low water availability. The Southern MDB saw the lowest total allocations to licences since the Millennium Drought.
- Sustained high water prices, including record breaking water allocation prices in the Southern MDB
- Changing demand patterns, with large development of horticulture creating increasing competition for available water, as well as delivery of water through physical constraints

- Changing market behaviour with water users increasingly accessing water through the temporary allocation market rather than purchasing permanent entitlement
- Increasing use of secondary market products such as leases, forward contracts and carryover parking
- Emerging market participants such as water funds
- Media reporting on the influence of speculators and foreign investors
- Media allegations of misconduct by water users and mismanagement by agencies.

While these concerns have been raised in the context of water markets, they have general relevance to foreign ownership of water, particularly in relation to issues of market influence by large water holders and speculators.

Feedback from stakeholders suggests that some of these concerns can be addressed by increasing the transparency of market information, including making information on all water holders more easily accessible. Transparency of information is fundamental to resolving both actual and perceived issues in the market, including issues relating to the conduct or influence of some market participants.

## Recent NSW consultation on water market transparency

In response to stakeholder concerns, the NSW Government has undertaken significant work to improve access and transparency of water market information, through the development of targeted and specific information platforms such as water information dashboards and the WaterInsights Portal. These are in addition to the existing NSW Water Register, the NSW Water Access Licence (WAL) Register the Environmental Water Register.

Within this context, the Department of Planning, Industry and the Environment (the Department) recently undertook public consultation on these water information platforms to understand what information should be published and how the accessibility of these platforms could be improved.

As part of this consultation, the Department also asked specific questions about the transparency of foreign ownership of water entitlements. In the survey, stakeholders were advised that information gathered would be shared with the Commonwealth Government. This information has relevance to the inquiry being conducted by the Productivity Commission.

In the survey, stakeholders were asked questions which included:

- Are you aware of the requirement to register foreign water ownership?
- The Australian Taxation Office (ATO) publishes aggregate statistics on foreign water ownership each year. Are you aware of the ATOs annual reports on foreign water ownership?
- Some stakeholders have raised concerns about transparency of foreign ownership of water entitlements. How appropriate is the information published by the ATO to address these concerns?
- If not, what information on foreign ownership of water would be useful for you?
- How much do you agree with the following statement: I feel that the same information should be made publicly available for all water access licences equally? (i.e. large and small water holders equally).

A total of 177 surveys and 38 written submissions were received, with more than half of respondents from the NSW Riverina region or western NSW.

The survey results showed:

- Only half the survey respondents were aware of the need to register foreign ownership.
- Only 30 percent were aware of the annual statistical reports prepared by the ATO.
- Half the respondents felt the information published by the ATO was 'highly appropriate' or 'very appropriate' to address concerns relating to transparency of foreign ownership. Only 12 percent believed it to be inappropriate.
- Almost 70 percent of respondents felt that information about water licences should be made publicly available for all water licences equally.

Through survey comments and written submissions, respondents provided feedback on what additional information on foreign water ownership would be useful. In summary, there was support for:

- Full public access to all information on the Register of Foreign Owned Water Entitlements.
- Detailed information to be provided at the water source or catchment scale.
- Information on how foreign-owned entitlements are being used, specifically whether they are being used for speculation or irrigation.
- Improving awareness of the Register and associated reporting by the ATO, as well as improving access to the information, such as providing links from existing water information portals.

Survey comments also demonstrated:

- A lack of awareness of the existing information available in the Register and statistical reports
- An incorrect understanding that the Register is voluntary.

Considering this feedback, the NSW Government encourages the Productivity Commission to examine options for improving awareness of the Register and associated reporting. The Productivity Commission should also consider options for improving accessibility of the information, potentially linking the Register to existing sources of water information.

## Effectiveness of the ATO's reporting

The Issues Paper raises several questions related to the effectiveness of the Register, the information collected, and the reports prepared by the ATO. Overall, while the NSW Government is strongly supportive of increasing water market transparency, the current statistical reports prepared by the ATO are only providing limited value in improving the transparency of foreign owned water entitlements and are unlikely to address community concerns regarding the foreign ownership of water.

The main reason that these reports are considered ineffective is because they only report information at the national or state scale (or within then northern/southern MDB). This does not enable policy makers or stakeholders (including water users) to understand whether the presence of foreign companies is having an impact on a particular market.

Policy, operational, market and water use decisions are generally based on localised factors at the water source scale. For this reporting to be useful, it must provide information at the equivalent water source or catchment scale. This position was reflected during stakeholder consultation, with multiple submissions requesting detailed information to be provided at the water source or catchment scale.

This data exists within the Register, as Registrants are required to provide information on the 'water system' as part of the Water Entitlement Form. However, the NSW Government understands that the ATO are required to only report on data from the Register in an aggregated format.

The ATO has explained<sup>1</sup> that this is because the broader foreign investment regime in Australia requires that the details of investors not to be made publicly available. The ATO have also stated that taxation law restricts the release of information that could identify, or be used to identify, an individual or entity. However, the way in which the Commonwealth Government is managing the confidentiality of investor information is arguably hindering the effectiveness of the Register. The NSW Government considers that data could be aggregated at the water source scale without compromising privacy.

The NSW Government provides much greater public access to information about water entitlements while still ensuring the privacy of water users is protected. For example, the NSW Water Register provides public access to information about water licences (e.g. share components (volume), extraction component, water source, and conditions), water user and works approvals, trade, environmental water and other matters related to water entitlements in NSW. This is complemented by the Water Access Licence (WAL) Register which provides more detailed information about every water access licence in NSW, including the name of the licence holder.

The NSW Government notes that the *National Register of Foreign Ownership of Water Access Entitlements: Consultation Paper*, released in February 2016, proposed that the Register would publish aggregate information on the level and national source of foreign ownership of water entitlements at the catchment, region, state and national level<sup>2</sup>.

The NSW Government encourages the Productivity Commission to consider options for the ATO to provide information at a more detailed geographic scale in the reports of registration, while still protecting the confidentiality of investors. This would provide more meaningful information for policy makers, assist in addressing some of the community concerns regarding the lack of transparency of foreign ownership, as well as improve the overall effectiveness of the Register.

## Integrating the Register with existing platforms

The Issues Paper raises questions relating to efficiencies and effectiveness of having multiple water information registers. Feedback from various consultation forums demonstrates that water users want to be able to access all water information from one location.

In its Interim Report for its Murray-Darling Basin Water Markets Inquiry, the Australian Competition and Consumer Commission (ACCC) proposed options for better integrating State and Commonwealth water information platforms, or even developing a single national register.

The Final Report from the ACCC is due to be submitted in late February and is likely to provide recommendations on this matter. The NSW Government encourages the Productivity Commission to consider how information within the Register could be better integrated into existing or proposed platforms to aid accessibility, as well as consider any relevant recommendations the ACCC may make on these matters.

<sup>1</sup> Australian Taxation Office (2019) Register of Foreign Ownership of Water Entitlements: Report of Registrations as at 30 June 2019

<sup>2</sup> Paragraph 6.3 in Treasury (2016) National register of foreign ownership of water access entitlements: Consultation Paper

## Conclusions

Transparency provides confidence in water markets. Transparency also alleviates concerns around foreign ownership of water entitlements. In this context, the NSW Government supports any improvements to the transparency of foreign ownership that can be achieved whilst maintaining necessary privacy provisions. To achieve this, the information provided by the ATO needs to be better publicised, more detailed, and more easily accessible.