



23 March 2016

Water Access Entitlements Register
Consultations Working Group
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: ForeignInvestmentConsulation@treasury.gov.au

Dear Sir/Madam

The Minerals Council of Australia (MCA) appreciates the opportunity to respond to the consultation paper for the development of a national register of foreign ownership of water access entitlements.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible attuned to its communities' needs and expectations.

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 resources.

Industry water use

The minerals sector is a relatively small user of water, representing around 3 per cent of national water consumption. By comparison, agriculture consumes 62 per cent and households 10 per cent of national water resources.¹ In the Murray-Darling Basin, where mature water markets exist, the industry uses only 0.55 per cent of available water.²

Minerals industry water use differs to that of agriculture. For example, the industry uses a wide variety of water sources of varying quality, including that which is not fit for purposes other than industrial applications. Furthermore, operations are often remotely situated. Accordingly, water used by the industry is primarily self-sourced and operations frequently supply and operate their own water infrastructure. Much of the industry's water take is incidental as a result of dewatering activities to make mines safe for operation. In some circumstances the water infrastructure provided and maintained by industry is shared with other stakeholders, benefitting neighbouring communities, farmers and pastoralists by providing access to reliable water supply.

¹ Australian Bureau of Statistics, [Water Account, Australia, 2013-14](#), ABS catalogue no. 4610.0, released on 26 November 2015.

² MCA calculation based upon figures provided in the *Proposed Basin Plan*, Murray-Darling Basin Authority, released on 28 November 2011

Unnecessary regulatory burden should be avoided

The only information available on foreign water ownership is the Australian Bureau of Statistics Agricultural Land and Water Ownership Survey.³ Nonetheless, it is clear that the proposed register will impose an additional regulatory burden on companies.

The minerals industry is already subject to broad ranging regulatory and other water reporting requirements at the state and Commonwealth levels. The industry is required to secure access to water through state-based entitlements, allocations or licenses. In addition, the industry is subject to a range of other regulatory requirements which include water reporting. These include (where relevant):

- Australian Bureau of Statistics - National Water Account
- Bureau of Meteorology requirements
- Commonwealth environmental approvals
- Commonwealth bioregional assessments (coal developments)
- State-based approval reporting requirements
- State-based water access/entitlement registers.

It is imperative that the development of a water access entitlement register does not create additional unnecessary regulatory burden. Wherever possible, data should be accessed through existing channels, whether through existing state-based registers or other Commonwealth requirements.

The following comments are provided in the event a company driven approach similar to the agricultural land register be further considered.

Water access entitlements to be captured

The MCA agrees that only water access entitlements should be captured and it will be important to ensure such entitlements are defined with precision to take into account differences between jurisdictions. Non-perpetual entitlements or licences (where ownership is not conferred) should be excluded from the register. The inclusion of the plethora of non-permanent licenses and permissions in place across Australia would serve only to create unnecessary burden on companies and confound users of the register. Furthermore, their inclusion would not align with the objective of the proposed register, 'to enhance transparency about the level of foreign ownership'. It will also be important to ensure exemptions from the requirement to register are clearly defined.

The MCA is concerned the proposal to capture 'longer term' non-perpetual water entitlements/licenses with terms of more than five years will create an additional layer of complexity for the minerals sector. The MCA considers that the costs of this complexity – particularly for rolling licences – warrant careful analysis and should be included in the regulatory impact statement on the national water entitlements register.

The MCA understands that water access entitlements outside of water resource plans will be excluded from the requirement to register. This should be stated explicitly in the draft exemption rules, if not elsewhere in the regulation.

The MCA agrees that water use data should not be captured. The minerals sector may use water for a range of different purposes, both directly related and unrelated to the mining activity. These uses are subject to frequent change, dependent on environmental conditions or the nature of the mining activity. Accordingly, the volume of data needed to be collected would place an unnecessary burden on companies without adding any value to the register. Commercial-in-confidence issues may also arise should water use data be made publicly available.

³ Australian Bureau of Statistics, [Agricultural Land and Water Ownership](#), ABS catalogue no. 7127.0, released on 19 June 2014.

With respect to the type of information collected, this should be restricted to the minimum required to achieve the stated policy objective to inform government policy and the community. Data on water access entitlements should be collected in a form that is consistent with existing requirements, making it easily transferrable.

Reporting and compliance

A water register aligned with the requirements of the agricultural land register would impose the same reporting obligations and penalties for non-compliance. Water access arrangements are likely to be traded or modified more frequently than the purchasing of agricultural land. The MCA questions what mechanism would be used to inform a potentially foreign owned purchaser of their reporting obligation and avoid incurring penalties for non-compliance. Furthermore, it is unclear what the obligation on the company would be in circumstances where a company which already holds a water access entitlement is sold (or part sold above the trigger threshold) to foreign owners. The MCA recommends this be further clarified.

It is important to note that securing water access for individual mine sites is not necessarily a corporate function and there may not be a single coordinating person continuously monitoring changing water access arrangements within a company. Instead, responsibility may fall to regional or operation level water managers who may also have responsibility for other environmental and regulatory matters. Accordingly, there needs to be a clear and simple process put in place which will enable company officers to determine whether they trigger the requirements of the foreign ownership register and avoid unintentional non-compliance.

The MCA has concerns with the proposed 30 day timeframe for reporting. By-and-large, mining companies collect and aggregate data on an annual basis to meet corporate and other reporting requirements. The MCA considers that a similar timeframe should be employed for the water entitlements register. This would enable the foreign ownership position of a company to be most effectively reconciled with changes to water entitlements held.

Publishing aggregate data

Context will be important in any aggregate public reporting of foreign owned water entitlements. As provided above, the industry may remove water incidentally to allow for safe operation. This water may be returned to the catchment or on-supplied to other users. The volume of water required will vary from year to year depending on rainfall and other environmental conditions. Companies are often required to hold water licenses at the upper limit of what may be actually abstracted, but actual water use may be much less. Accordingly, any sector specific data which is made publicly available should include all appropriate caveats to ensure users do not misinterpret the data and the relative size of sector water take.

The MCA agrees that any information to be made publicly available should account for commercial sensitivity and privacy considerations.

Reducing red tape and encouraging foreign investment

The MCA supports the Government's commitment to reducing red tape and unnecessary regulatory burden on business and to drive productivity. Principle 6 of the *Australian Government Guide to Regulation* provides 'policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens'.⁴ It is important these commitments be recognised in the development of the water access entitlement register.

⁴ Department of the Prime Minister and Cabinet, [The Australian Government Guide to Cutting Red Tape](#), Australian Government, 2014

It is essential that any changes to reporting obligations under Australia's foreign investment framework achieve the policy intent of greater transparency without discouraging capital inflows – or detracting from existing productive activity – through excessive compliance burdens. As the Assistant Treasurer has noted 'foreign investment has played a vital role in the development of our modern and successful society and [the government] recognises that this will continue to be the case in the future.'⁵

In conclusion, it is critical that the national register of foreign owned water access entitlements is designed in a way that does not increase unnecessary regulatory burden. The MCA considers there is more work to be done before the implications of the water access entitlements register on the minerals sector can be fully understood. All options for the proposed register should remain on the table until the merits of each are fully examined – including greater cooperation with state and territory agencies to minimise duplicative reporting of water data by companies. Given the potential for unnecessary regulatory burden, it is vital the design of the register should not be rushed nor a single approach pursued without proper consideration of all alternatives. This will ensure the policy aims are met while in keeping with regulatory best practice.

The MCA would welcome the opportunity to discuss any of the above comments further. Should you have any questions regarding this submission, please do not hesitate to contact me on 02 6233 0600 or chris.mccombe@minerals.org.au or Dr Matthew Steen – Director Economics and Industry Policy on 02 6233 0634 or matthew.steen@minerals.org.au.

Yours sincerely



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⁵ The Hon Kelly O'Dwyer, Assistant Treasurer and Minister for Small Business, [Second Reading Speech on Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015, Foreign Acquisitions and Takeovers Fees Imposition Bill 2015, Register of Foreign Ownership of Agricultural Land Bill 2015](#), 17 September 2015, Hansard, p. 10533.