

18 March 2016



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

Email: ForeignInvestmentConsultation@treasury.gov.au

Dear Working Group Members

RE: National Register of Foreign Ownership of Water Access Entitlements

The NFF is the peak national body representing farmers and the broader agriculture sector. The NFF's membership comprises all of Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. Together, these organisations form the NFF.

NFF welcomes the opportunity to provide feedback on the Consultation Paper that has been issued to inform the development of the register.

NFF's policy position on foreign investment & the registration of foreign interests in land and water

The NFF supports foreign investment in Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain. To date, foreign investment has proven to be overwhelmingly positive for Australian farmers and regional communities. It has delivered significant amounts of capital into our production systems, at a time when finance from the banks has been harder to access. This capital has improved our efficiency and ensured that our farmers can continue to compete in a highly distorted global marketplace for agricultural commodities.

The NFF's view is that a national foreign ownership register for both land and water are critical to respond to the community concerns around investment in Australian agriculture. The register should provide a robust and accurate database that can be used to monitor and report on trends and developments that are likely to have an impact on the agricultural supply chain in Australia and should include land and water.

The register should provide beneficial and transparent information to the wider community regarding the current level of foreign investment in water, and how this changes over time. It is anticipated that this information will help clarify what is actually happening in terms of investment, who is investing and where, and also look at the impact any investment might be having. The register will assist in understanding the flow-on benefits from foreign investment to Australian agriculture and will reduce anecdotal misconceptions surrounding the level of investment and any fears associated with the process.

NFF's policy statement on foreign investment is contained in attachment 1.

NFF's response to the proposed design of the water register

NFF broadly supports the approach proposed by the working group to extend the architecture of the Agricultural Land Register to encompass water rights – including the proposal for an initial stocktake period. NFF's view is that consistency in the model would facilitate reporting of foreign interests in both land and water. Further, it provides a single regulatory approach for foreign persons.

NFF supports the proposal that the register not capture water allocated to the entitlement in any one year, but rather focus on the ownership of or long term lease arrangements over the of the perpetual right. Consistent with the land register, NFF supports a 5 year lease period as a definition of a “long term lease arrangement”.

NFF supports the proposal to capture all water access entitlements, regardless of their use, size or monetary value.

NFF notes that there may be some challenges for investors reporting on entitlements in areas where the National Water Initiative has not been fully implemented (eg where water and land have not yet been separated), or where water markets are not established or are still emerging. An example of this would be reporting on the value of the entitlement. In these circumstances, provisions need to be made to support reporting of available details and for these to be updated at a later date when markets are more established.

NFF takes this opportunity to raise concerns around the proposed approach. Central to our concerns is the nature of water rights in some jurisdictions and the proposal for the register to only capture state issued water access entitlements.

In NSW particularly, many water access entitlements are held by cooperatives, corporations or trusts (Private Irrigation Infrastructure Operators) that were established when the state Government transitioned ageing irrigation schemes to private ownership. The share or unit holders of these entities were the irrigator customers of the schemes, with shares issued proportional to the volume of water right held. As flagged in the discussion document, around 21 per cent of entitlements issued in the Murray Darling Basin are held under this type of arrangement.

The proposal as presented in the discussion document has a number of short-comings including:

- Potentially 21 per cent of entitlements issued in the Murray Darling Basin being excluded from registration. In some water markets (eg the southern connected market) and for some water access entitlement types (eg NSW General Security Licences), the proportion of WAEs

held in bulk licences held by IIOs is significantly greater. The need for transparency of foreign investment in these markets is paramount.

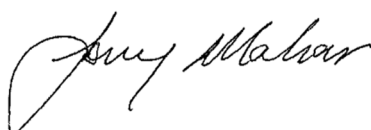
- The risk of gaming the water market. Foreign entities wanting to avoid the transparency sought by the register could focus their water ownership by purchasing rights issued by the IIO. This has the potential for distortionary effects in some water markets.
- The onus of regulatory compliance would sit with the IIO and not the foreign person that has purchased shares in the IIO. To ensure regulatory compliance with the register, the IIO would have to have the processes in place to track the level of foreign ownership of their shares, and report when the threshold of 20 per cent ownership by a substantial interest or where two or more foreign persons hold an aggregate substantial interest of at least 40 per cent. While this threshold is high in the context of large IIOs, for smaller schemes or trusts this could threshold could be reached with one or two members being foreign owned.
- Limited transparency. The entry on the register would be the entry of the IIO. The nuance of data is potentially lost through the aggregation under the bulk licence. The details of the foreign ownership (government or non-government, nationality, type of foreign interest, volume etc) are important details to build confidence in the community of the extent of foreign ownership.

NFF's view is that these limitations need to be worked through in close consultation with IIOs to enable the register to be comprehensive, robust and transparent. In establishing a solution to these limitations, NFF's view is that the following principles are important:

- Full transparency of foreign investment in water is essential. The register must transparently capture the details of foreign investment in both state issued water access entitlements and shares in state issued water access entitlements held by IIOs on behalf of their shareholder customers.
- The regulatory burden for complying with the register must sit with the foreign person and the cost of ensuring compliance with the register with the Commonwealth. Additional regulatory burden on IIOs is not desirable as the costs of regulation on IIOs are costs that are ultimately paid by all customers and shareholders of the IIO.
- Administrative efficiency for IIOs.

Should you wish to discuss NFF's submissions further, please do not hesitate to contact Ms Jack Knowles, Manager of Natural Resources Policy by telephoning 02 6269 5666 or by email at jknowles@nff.org.au.

Yours sincerely,



TONY MAHAR
Chief Executive Officer

Attachment 1 - NFF Policy Principles on Foreign Investment

The NFF has developed a series of principles that guide its policy on foreign investment in Australian agriculture - including land, water and critical infrastructure. The principles are focussed on building confidence and transparency around the importance of foreign investment in Australian agriculture, and ensuring that there is no negative implications for the farm sector.

The NFF supports foreign investment into Australian agriculture and recognises the important role it has and will continue to play in a vibrant agriculture supply chain.

The NFF supports foreign investment in Australian agriculture provided that it:

- Requires adherence to all Australian laws, especially tax and competition laws.
- Does not create negative distortions in resource allocation or output returns.
- Does not undermine the existing marketing mechanism, storage or handling facilities, critical infrastructure and logistics or pricing transparency where these underpin farm gate price determination.
- Is not undertaken with the intent or outcome of reducing competition within the marketplace to the detriment of the Australian agriculture sector.
- Allows for legislated time frames for assessing foreign investment to be equitable with the regulatory times frames for consideration of domestic investors.
- Ensures compliance with existing and new industry production and/or transaction levies.
- Does not compromise existing trade agreements and is flexible enough to acknowledge the importance of future comprehensive trade agreements to the Australian farm sector.