

Submission

Water Access Entitlement Register Consultations Working Group Foreign Investment and Trade Policy Division The Treasury

National register of foreign ownership of water access entitlements

24 March 2016

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 water access licence holders across NSW. These licence holders access regulated, unregulated and groundwater systems. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This submission represents the views of the Members of NSWIC with respect to the *National register of foreign ownership of water access entitlements* - Consultation Paper. However, each Member reserves its right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

General Comments

NSWIC welcomes the opportunity to make a submission to the consultation paper on the *National register of foreign ownership of water access entitlements*. As we outlined in our previous submission to the *Land Register Consultation Working Group* (Foreign Investment and Trade Policy Division - Treasury) in January 2013, NSWIC has been supportive of a foreign ownership register that incorporates both land and water. We have reiterated this support in our response to the Federal Agriculture Competitiveness Green and White Papers.

In both our responses to the Federal Agricultural Competitiveness Green and White Paper we stated that NSWIC welcomes the recognition by the Federal government that communities are concerned about foreign ownership and are pleased to see the Federal Government increasing the scrutiny and transparency around foreign ownership.

As water entitlements are an integral part to food and fibre production, NSWIC submitted that foreign ownership of water entitlements be captured alongside foreign ownership of agricultural land.

Given the importance of water access entitlements (and associated allocations) for food and fibre production, NSWIC believes that both the size and location of foreign ownership of water entitlements must be recorded. Such a record must be complete, meaning that all foreign ownership holdings must be included independent of its size or its value. The reason for this 'completeness' condition is that the value of water entitlements can vary over time and hence could potentially distort the picture of foreign ownership holdings in Australia.

Furthermore, in order to present an accurate and up-to-date picture of any foreign ownership holdings (land and water assets), the national register should be notified of changes in ownership within a reasonable timeframe, preferably within 90 days of the date of acquisition or transfer.

In addition, NSWIC believes it to be important that both the acquisition and disposal of water access entitlements by foreigners is recorded. For that reason, the national foreign

ownership register will need to include an obligation for investors to register their new investment and divestment in water access entitlements. However, NSWIC agrees that a foreign ownership register for water access entitlements must be robust enough to allow for the different water entitlement products to be included in the register irrespective of their characteristics¹.

These requirements combined will provide irrigators and rural communities with a better understanding of current foreign ownership distribution of water resources within Australia - in particular since the consultation paper indicated that around 1800GL of water entitlements are to some degree foreign owned².

NSWIC submits that all foreign ownership holdings of water entitlements must be recorded in the Foreign Ownership Register.

However, NSWIC stresses that the onus and responsibility for registering foreign ownership (i.e. investment and divestment) must lie with the foreign entity at no cost or risk to the domestic seller, including the irrigation infrastructure operators. Furthermore, there must be no further administrative or reporting burden and costs imposed on the domestic seller and irrigation infrastructure operators.

Specific Comments

NSWIC would like to provide the following specific comments to the Consultation Paper:

1. Do you agree with the Government's decision to establish a register to collect information on foreign ownership of water access entitlements? If not, what alternative could be used instead of a register?

While NSWIC has supported the establishment of a foreign ownership register for water access entitlement, our response to this question depends on whether the register will be administered by the Federal or State Government. Should the State Governments administer the foreign ownership register, NSWIC believes that this would be a simple extension of the existing registers and involve minor administrative burden.

Should the register however be administered by the Federal Government, NSWIC does not yet have enough information available to determine how the register would operate and be administered and hence we would be unable to fully comment on this question.

Furthermore, NSWIC suggests that the challenge of a foreign ownership register will lie with the identification of a foreign entity (or the extent of foreign ownership) and hence the question of reporting, monitoring and compliance arrangements will be of importance. NSWIC again stresses that if there is ambiguity around the extent of foreign ownership, the Federal Government must assure domestic entities, including the irrigation infrastructure operators, that the responsibility of reporting foreign ownership is not on them but rather the responsibility of the foreign entity.

¹ Page 6.

² Page 4.

2. What are the main advantages and disadvantages of a Commonwealth administered register?

While NSWIC acknowledges the benefits of aligning the national foreign ownership register of water access entitlements with the existing Agricultural Land Register, we are concerned that the establishment of a Commonwealth administered register could potentially duplicate existing State registers and hence increase the complexity and costs for its administration.

NSWIC acknowledges that the working group intends to establish a Commonwealth administered register and work with State and Territory governments for its implementation however we would like to raise the issue of complexity of having two registers. In addition, we would like to seek further information around the 'exclusion requirements' that are mentioned in the Consultation Paper and would like more definite information on the Federal Government administered mechanism.

3. Is the existing Agricultural Land Register the most effective vehicle for registering WAE's? If not, what alternative(s) do you propose and why?

As we outlined in our response to the previous questions, NSWIC acknowledges the benefits of aligning the Agricultural Land Register with a foreign ownership register for water access entitlements. We do however believe that the current State registers are sufficiently developed to provide an appropriate platform that would enable the State Governments to capture foreign ownership of water entitlements. As such (and without further detail of the Government's plans for a water register), we consider the State registers to be a viable, appropriate and low cost alternative to the Agricultural Land Register. Should there be a need to consolidate all the State based information, an appropriate annual reporting arrangement could be considered in line with other water related matters associated with the Water Act 2007 (Cth) and the Murray Darling Basin Basin Plan 2012.

4. Is the proposed approach to exclude water allocations from the register appropriate? If not, what alternative(s) do you propose and why?

NSWIC believes that the exclusion of water allocations in the foreign ownership register is a sensible approach, as these vary from year to year. The important information to capture is the water access entitlement.

5. Should the register exclude irrigation and water use rights? If not, what alternative(s) do you propose and why?

As we outlined previously in this submission, NSWIC stresses that the onus and responsibility for registering foreign ownership (i.e. investment and divestment) must lie with the foreign entity at no cost or risk to the domestic seller, including the irrigation infrastructure operators. Furthermore, there must be no further administrative or reporting burden and costs imposed on the domestic seller and irrigation infrastructure operators (IIOs).

NSWIC submits that Treasury must provide more detail on who is responsible for the accuracy of the foreign ownership registrations in the context of the IIOs and who will bear the cost of administering and complying with the foreign ownership register.

6. Should the register capture WAE's for all industry sectors, not just for agricultural use? If not, what alternative(s) do you propose and why?

NSWIC is supportive of the inclusion of any foreign ownership holdings of water entitlements by all industries. Given the increased competitive pressure for water resources in NSW, NSWIC considers it important that all foreign owned water entitlements are recorded.

7. What other types of information would be important for the register to collect and why?

NSWIC believes that it would be useful to also include information on specific licence conditions (i.e. relating to mining/CSG) as part of the foreign ownership register.

8. What other information on water is available that the working group could consider utilising for the Water Access Entitlement register?

In principle, NSWIC considers it important to utilise existing data sources and established State water registries as the basis for the foreign ownership register for water entitlements, in order to minimise costs and avoid duplication. The question that needs to be answered prior to a discussion about appropriate data sources and information is the extent to which the register will be an addition to existing State registers or a newly established Federal Land register. Our feedback on this issue is included in our response to question 1 and 2.

9. Assuming registration details were similar to the Agricultural Land Register, what would be the likely compliance costs from the requirement to register foreign ownership of WAEs?

As NSWIC is not directly involved in the administration and monitoring of foreign ownership, we would rely on the Treasury and the various Departments to provide an estimate about compliance costs involved with the register. NSWIC recommends though that Treasury make contact with our members on already existing administration and compliance obligations imposed on them. For any other costs associated with the register, please see our response to question 5.

10. What experiences can be drawn from the introduction of the Agricultural Land Register?

NSWIC is not directly involved in the Agricultural Land Register and hence is unable to comment on this question.

11. Should the register adopt the definition already used by the Agricultural Land Register to minimise complexity and compliance costs? If not, what alternative(s) do you propose and why?

NSWIC would support an alignment of the definition between the foreign ownership register for water access entitlements and the Agricultural Land Register. Having said this however, NSWIC would like to point out that the definitions must be broad enough to ensure that foreign ownership of water entitlements for all industries can be captured in the existing definition. Should there be a gap, NSWIC recommends to broaden the definition

for the foreign ownership register of water access entitlement to ensure this can be captured.

12. What types of interests should the Water Access Entitlement Register capture and why?

NSWIC is unsure about the complexity and consequences of the proposed question and would like to withhold its comment until further details become available in due course.

13. Should a similar approach to the Agricultural Land Register be adopted so that rules for exemptions can be made?

As the consultation paper does not provide any detail on what constitute an 'exemption', NSWIC cannot support it. We request Treasury and the Department to provide further detail related to this question.

14. Should a similar approach to the Agricultural Land Register be adopted so that there is a 30 day period for foreign person?

NSWIC reiterates our preference for a 90 day timeframe.

15. Should the register capture all water access entitlements regardless of their size (volume or monetary value)? If not, what alternative(s) do you propose and why?

As NSWIC outlined in the preamble to this submission, we have been supportive of a comprehensive approach that would register and record all investment and divestment of foreign ownership in water access entitlements.

16. Is a six-month stocktake period appropriate? If not, what alternative(s) do you propose and why?

In order to establish a benchmark, NSWIC would support an initial six month stocktake. Should ongoing assessments of foreign ownership be conducted in the future, NSWIC would support a longer timeframe given the complexities involved in the transfer of water entitlements in individual states.

17. What experiences can be drawn from the stocktake period for the Agricultural Land Register?

As NSWIC was not directly involved in the set-up of the Agricultural Land Register, we are unable to comment on this question.

18. Should aggregate statistics derived from the Water Access Entitlement Register be published on a regular basis? If not, what alternative(s) do you propose and why?

As NSWIC has outlined in its response to question 16, we would recommend a longer timeframe (more than 6 months) for any ongoing assessments. As further detail about the set-up and mechanics of the register are not yet finalised, NSWIC considers it pre-emptive to consider a valuation framework. NSWIC submits that questions about evaluation and data provision should be revisited once there has been further progress made on the register.

ENDS.