

5 June 2013

Manager
Capital Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600



Quality
ISO 9001

Dear sir / madam

Waterfind appreciates the opportunity to provide comments and feedback on the Corporations Amendment (Water Trading Exemptions) Regulations 2013.

These amendments are supported by Waterfind and we believe that these amendments are a substantial improvement to the legislative base governing water markets.

Waterfind's view of the current water rights has been the same as expressed in the Explanatory Statement for the Regulations, that

Tradeable water rights are not likely to fall within the general definition of a 'financial product', as provided for in section 763A of the Act. However, if not excluded from the definition of derivative by this sub-regulation, they may be categorised as a derivative and included within the definition of financial product under paragraph 764A(1)(c)

Waterfind believes that the uncertainty on the position of water rights and the Corporations Act has cast a concerning shadow over regional development and our water market reforms. Waterfind further believes that this uncertainty has limited the ability of water markets in recent years to provide full economic and social benefits that can accrue to water rights holders and regions fully engaging with water markets.

Damaging unintended consequences would occur in the event that a formalised legal view was established requiring water rights to be administered by the Corporations Act. These consequences may impact the operation of government water regulators, environmental water holders, irrigation infrastructure operators, legal practitioners, joint water supply schemes, water market intermediaries, irrigation consultants and advisors, banking institutions, water market operators and local governments.

As such Waterfind believes that this move to carve out common water rights from the Corporations Act is important and would be of further benefit if each State Government took the necessary steps to specifically define water rights as tangible property within State legislation, which to date only one state Government has done.

If this next step was taken it would provide complete legal security to water rights and confidence to water market intermediaries. The Corporations Amendment (Water Trading Exemptions) Regulations 2013 however are a big and important step towards this goal.

Apart from these general comments on the regulations there are two specific issues about the proposed regulations that require further consideration in the final drafting. One of these issues relates to how certain arrangements are considered while the other is a request for clarification of the terms used in the regulations.

Issues within the Corporations Amendment (Water Trading Exemptions) Regulations 2013 that require further consideration;

1. Treatment of Leases of Water Rights in terms of 'set-off' arrangements.

Leases of Water Rights are common in water markets and consist of a transfer of Water Rights from a Lessor to a Lessee for a specified period of time, after which point the Water Rights are transferred back to the Lessor.

Waterfind is concerned that lease arrangements may be inadvertently caught up as being set-off arrangements when this is not the reality of the transfer. It would be an improvement to the Regulations if leases of Water Rights were specifically excluded as being set-off arrangements.

To take an example, Person A has leased permanent Water Entitlements to Person B for a period of 5 years, and in the 3rd year Person B sells the allocation provided to those entitlements back to Person A.

In Waterfind's view this arrangement is not a set-off as Party A is not a Seller but is instead a Lessor and the sale of allocation from Person B to Person A does not offset Person's A to lease the Water Rights to Person B over the life of the lease.

2. Clarification of the definition of rules in section (10)

In the Explanatory Statement it states that;


Operators of markets in tradeable water rights and certain arrangements in relation to tradeable water rights that satisfy subregulation 7.1.04(8) will not be required to hold Australian Market Licences for those markets or be required to apply to be exempt from holding such a licence.

In section (10) of the proposed Regulations it states that

*(10) In subregulation (8):
rules means the rules of:
(a) a licensed market; or
(b) a licensed CS facility.*

Given that the regulations provide that there is no requirement that operators of markets in water rights hold licenses Waterfind would appreciate further clarity in the regulations as to what licenses are being referred to in section (10).

Sincerely



Tom Rooney
CEO Waterfind