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The Treasury  
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Tuesday 8 March 2022

Dear Manager,

Thank you for the opportunity to provide a submission to the 2022 Foreign Investment Review Board (FIRB) Framework Reform proposal.

NIC is the peak body representing irrigators in Australia, supporting 31 member organisations covering the Murray Darling Basin states, irrigation regions and many of Australia's major agricultural commodity groups. Council members collectively hold approximately 5,500,000 megalitres of water entitlements.

As noted by the discussion paper, approximately eleven percent of the water entitlements are currently owned by foreign entities. Most foreign-owned water entitlements are used in the agriculture sector, except in Western Australia, where the bulk is used in the mining sector.

Under Tranche 2: Broader Legislative and Regulatory Reforms, Investments Requiring Greater Scrutiny, there is a proposal for foreign acquisitions of rural water entitlements to be subject to FIRB assessment.

The National Irrigators' Council (NIC) is supportive of the proposal. NIC welcomes foreign investment in agriculture to build capital, grow, and increase access to new technologies, knowledge, research and development, but it must be in Australia's interests and in the interests of the irrigated agriculture sector.

Since the decoupling of water entitlements from land, the water market has operated to exchange entitlements and allocations. While not having seen evidence to date, however, like other markets water could be subject to foreign interference. Market manipulation has the potential to drive up prices or move the market into or out of different commodities which in turn could have significant impacts on cost of living, business closures and jobs, and more broadly, our food security and trade relationships. This is a particularly heightened concern during times of global uncertainty.

NIC's submission to the Australian Competition and Consumer Commission's Water Market Inquiry suggested the Government should take a continued role in monitoring, and if necessary, acting to ensure no anti-competitive behaviour or market manipulation in the water market, particularly focusing on periods of low supply.

The ACCC's final report made a range of comments with regard to foreign owned water. Specifically, Recommendation 4, which NIC supports, said:

*Require identifiers on trade forms. Traders should be required to include a unique common identifier on trade forms. This could be their ABN, ACN and/or the unique identifier issued to them by the centralised regulator. The ability to identify market participants, and trace and follow transactions, is a foundational issue for protecting market integrity and maintaining market confidence. This will improve the regulator's ability to detect misbehaviour and enforce against it.*

Increased scrutiny from the FIRB, coupled with the Register of Foreign Interests of Water Entitlements and the implementation of the Recommendation 4 of the ACCC's report, would be a significant deterrent for market manipulation.

While likely outside FIRB's remit, NIC wanted to raise with Treasury the possibility that the taxation system disadvantages domestic water holders compared with foreign owners, in particular in relation to capital gains tax.

In terms of the operation of such a scheme, NIC recommends the FIRB review all foreign investments in water. Cognisant of regulatory burden for FIRB and investors, we would advocate for FIRB to provide Exemption Certificates to approved entities and individuals engaged in the water trade. On implementation, FIRB could review existing foreign owners of water to ensure they are suitable and issue Exemption Certificates to those deemed to be suitable without the need for new application processes. It should be a user pays system, but with costs kept to a minimum. The FIRB should work with the agency which takes on responsibility for Recommendation 4, noted above, if implemented by Government and the Inspector-General of Water Compliance to ensure the market remains free from manipulation and interference. NIC would also welcome other relevant information, for example, number of applications approved or denied, being made public to ensure transparency.

If you would like any further information or to discuss, please feel free to contact me on 0407 083 890 or at [ceo@irrigators.org.au](mailto:ceo@irrigators.org.au).

Thank you again for the opportunity to contribute.

Kind regards,

A handwritten signature in black ink, appearing to read 'Isaac Jeffrey', written over a horizontal line.

Isaac Jeffrey  
Chief Executive Officer