

AUSTRALIAN WATER BROKERS ASSOCIATION INC.

**Submission on the proposed National
register of foreign ownership of water
access entitlements**

March 2016

PROPOSED NATIONAL REGISTER OF FOREIGN OWNERSHIP OF WATER ACCESS ENTITLEMENTS

1. INTRODUCTION

The Australian Water Brokers Association (AWBA)

- 1.1. AWBA is an Incorporated Association which represents the interests of voluntary Water Broker members (Water Market Intermediaries) on issues concerning the membership and more particularly the wider Irrigation Industry and issues affecting irrigation industries.
- 1.2. All members operate under the Constitutional rules of the Association together with a detailed Code of Conduct. Both of those documents are available on the AWBA website www.awba.org.au.
- 1.3. Members are responsible for negotiation and completion of greater than 60% of all water transactions conducted throughout Australia.

Foreign investment in Australia

- 1.4. The AWBA welcomes foreign investment that is in the national interest.

2. OBJECTIVES OF THE REGISTER

- 2.1. **The purpose of the Water Access Entitlement Register is to enhance transparency about the level of foreign ownership of WAEs in Australia.**

Question 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?

The AWBA in principle support the concept of a Register recording Foreign ownership in Water Access entitlements in line with the legislation already passed dealing with the register in the Agricultural Lands Act. However, as mentioned in Section 1.5 of the Consultation Paper:

"the Government is committed to reviewing the treatment of water entitlement assets under Australia's foreign investment framework."

And as such it is clearly the intention of Government to first establish the Register and then to act upon the data received under other measures.

The AWBA in principle support of a Register does of itself not necessarily flow onto measures which may be taken by Government once the necessary Register has been established.

3. IMPLEMENTATION APPROACH

- 3.1. The working group has considered two broad approaches to implement the Water Access Entitlement Register:
 - a. Establishing a Commonwealth administered Water Access Entitlement Register where foreign persons are required to self-identify and register their interests in WAEs.

- b. Altering existing data collection systems in the states and territories to enable collection of additional information on foreign ownership status to compile the national Water Access Entitlement Register.
- 3.2. The working group considers that a Commonwealth administered register is the most appropriate approach to meet the Government's commitment, notwithstanding that the states and territories are responsible for current water registries and a jurisdiction-based approach may reduce the potential for duplication.

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

- 3.3 The main advantage is a centralised Registry system which will reduce compliance costs and complexity. The AWBA in support of a Register believes the concept of a centralized Register is the only viable alternative.

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

- 3.4 The AWBA raises no objection to the use of the Agricultural Land Register in registering WForeign Ownership of interests in water.

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

- 3.5 The AWBA is of the opinion that the control of significant volumes of allocation by foreign entities whether by way of seasonal allocation purchases, forward purchases or long term leases may (or may not be) still in Australia's national interest.

Accordingly, the AWBA is of the opinion that all water allocation ownership above certain thresholds should also be included in any Water Register.

As a guide perhaps the cumulative acquisition of greater than 10GL of allocation in any given season by a foreign entity should also form part of the Register.

This may necessitate the individual States as administrators of the various water systems to change their procedures in relation to their application processes so that the necessary data is collected.

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

- 3.6 The AWBA is most strongly of the opinion that for any Register to be complete and provide transparency it needs to include all irrigation rights and water use rights. The principle purpose of the Register is to facilitate a more complete picture to inform Government about the levels and sources of foreign ownership of Australia's water assets. To deliberately restrict the types of assets on which data is collected is in our opinion to start from a flawed premise. It is acknowledged in the Consultation Paper provided by Government that Irrigation Rights in particular make up a significant proportion of the water rights held on issue in Australia. To exclude them would seem to destine the Register to a portion only of the water markets, it would

distort the full transparent picture being made available to Government for policy decision making.

It is also conceivable that by restricting the operation of the Register to just WAE's it may (subject to any future actions of Government) have the prospect of distorting water markets by those foreign persons who may wish to exercise preference of holding water rights which do not get picked up through any foreign ownership Register.

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

- 3.7 Refer our comments at 3.6. The AWBA is of the opinion that all interests in water entitlement and allocation (perhaps with some low minimum thresholds) held by foreign persons should be recorded. This is irrespective of the 'end use' of such water.

Information to be collected

Question 7: What other type of information would be important for the register to collect and why?

- 3.8 The AWBA believes that the nature scope and type of information (subject to necessary changes if allocation and irrigation rights were included) should be sufficient. The AWBA questions also whether as a matter of public policy is it advisable to also have the country of residency also stipulated so that public policy decisions may become more apparent if ownership were to be held by a greater extent by foreign persons who may reside in countries who may become hostile towards Australia's national interest in the future.

Utilising existing data

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

Question 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?

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

- 3.9 The AWBA believes that each of the State Registers for Water Access entitlements could relatively simply include additional questions on their respective application forms relating to the potential registration of foreign interests in water. As such this may act as a suitable cross-check against a Water Register. In addition, a similar approach can be taken with Irrigation Rights held through IIO's and their application processes.
- 3.10 It is estimated that the compliance costs (where there was no foreign acquisition) would be small from an AWBA member's perspective. However, where there are foreign acquisitions involved the additional time taken could be between 0.5 hrs – 3.0 hours per trade (subject to complexity). As such the cost of compliance (making no allowance for statutory registration fees) would be within the range of \$30 for a very simple matter to in excess - \$600 per trade.
- 3.11 The AWBA has no experience of the introduction to the Agricultural Lands Register Act and therefore has no comment.

Foreign ownership

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

- 3.12 The AWBA agrees that consistency of definition is important to reduce the complexity of any system of registration. However, any limitation to registration on WAE's only is strongly objected.

Types of foreign interests

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

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

- 3.13 Please refer to previous comments concerning the capture of all information including long term leases and irrigation rights and allocation ownership above certain suitable thresholds.
- 3.14 The AWBA is not aware of circumstances where exemptions should be made which would not potentially prejudice the transparency and completeness of the proposed Register. As such, the AWBA does not believe that any exemptions should apply.

Registration requirements

Question 14: Should a similar approach to the Agricultural Land Register be adopted so that there is a 30-day period for foreign persons to register their interests in WAEs? If not, what alternative(s) do you propose and why?

Thresholds

- 3.15 The Agricultural Land Register requires registration of all land parcels, regardless of their area size or monetary value (subject to definitional exclusions). It is proposed that the same approach for the Water Access Entitlement Register is adopted so that no monetary or volume size thresholds apply below which registration of WAES would not be compulsory.
- 3.16 This approach would capture all WAEs, irrespective of their size, without waiting for accumulation of water interests to reach a pre-defined threshold level before they are included in the register.

Question 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?

- 3.17 Refer previous comments. Some thresholds would in the examples of allocation (in particular) be warranted.

INITIAL STOCKTAKE

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

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

- 3.18 The AWBA believes that a 6 month stocktake period associated with necessary promotion of the commencement of the Register would be appropriate to allow stakeholders to adjust systems, contact clients and prepare and lodge necessary Registration forms.
- 3.19 The AWBA has no experience with the Agricultural Lands Register Act and therefore has no comment to make on this point.

REPORTING

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

- 3.20 The AWBA is of the opinion that only aggregate statistics should be published whilst full details should be held.

For further information or consultation concerning this submission please contact the Australian Water Brokers Association Inc.

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