



3 March 2017

Division Head
Foreign Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: ForeignInvestmentConsulation@treasury.gov.au

Dear Sir/Madam

The Minerals Council of Australia (MCA) appreciates the opportunity to provide comments on the draft register of foreign ownership of water or agricultural land draft rules 2017.

The MCA understands the objective of the register is to 'enhance the enhance transparency about the level of foreign ownership in water access entitlements' and inform 'Government and the community about emerging investment trends'.¹ Importantly, the Government has also committed to reducing red tape and unnecessary regulatory burden on business to drive productivity.² Accordingly, the MCA considers the register should focus solely on the collection and reporting of data that meets the policy objectives in an efficient and non-duplicative manner.

Water access entitlements

The definition of water access entitlement under 5A (1) of the Act is very broad, capturing a wide range of water access arrangements. These include not only perpetual, tradable water entitlements which are effectively 'owned' and the target of the register, but a range of other rights conferred under law by states or territories to hold or take water, including water licenses and other approvals.

As provided in the MCA's 2016 submission on the draft legislation, the minerals industry accesses and uses water differently to other industries and water access is largely non-tradable.³ The capture of these arrangements by the register would be inconsistent with the aforementioned policy objectives.

Capturing the spectrum of industry water access arrangements is likely to mislead users of the register. For example, register users are likely to assume that all water entitlements are 'owned', tradable, consumed and be of a type suitable for agriculture or even domestic purposes, which for the minerals industry is not the case. Accordingly, the MCA considers these entitlements should be exempted under the rules, as described below.

¹ Treasury, *National register of foreign owned water access entitlements Consultation paper*, Canberra, February 2016, p. 8.

² Australian Government, *Cutting red tape – The Australian Government's online resource for regulation reform*, viewed 6 September 2016.

³ Minerals Council of Australia, *Submission on the national register of foreign owned water entitlements*, MCA, 9 September 2016.

Recommended exemptions under the rules

Saline and hypersaline water used for mining and mineral processing

The industry uses a wide variety of water sources of varying quality, including saline water that is not fit for any purpose other than industrial applications. In some cases, such as the gold fields in Western Australia, deep hypersaline aquifers (up to ten times saltier than seawater) are pumped and treated at significant cost to supply water for critical mine processes. Accordingly, this water is not a catchment flow, nor is it transferrable to other users after consumption.

Water accessed for safety, not consumption

As a result of dewatering activities to make mines safe for operation, much of industry's water take can be incidental. This water, extracted from the ore body and surrounding groundwater is not consumed, but discharged into the environment in line with an operation's comprehensive state-based licence conditions. In some cases, this water may be treated to make it suitable for the environment or other uses, including agriculture, before it is released.

Dewatering volumes can vary from year to year depending on rainfall patterns and other climatic factors. State authorisations often require mining companies to hold water licences set at the maximum predicted water take for any given year over the anticipated life of an operation. This can include a large contingency volume to enable companies to manage extreme rainfall events (e.g. cyclonic events) and flooding. The contingency built into a water licence can be many times that of the actual annual water take by an operation, the reporting of which would distort any perception of sector water use.

Short-term non-tradable authorisations

The legislation provides that contractual water rights need only be registered where the term is reasonably likely to be extended beyond five years. There may be instances where the mining industry secures a non-tradable licence from a state authority to access water for a short period of time (less than five years). The MCA recommends short-term non-tradable entitlements be similarly exempted from reporting to the register.

Water register reporting

Context will be important in any aggregate public reporting of foreign owned water entitlements. Accordingly, any sector specific data which is made publicly available should include all appropriate caveats to ensure users do not misinterpret the data, including the relative size of sector water take. The MCA considers that any information to be made publicly available should account for commercial sensitivity and privacy considerations.

Guidance and notification

The MCA considers the form examples will be informative to users of the register however there may be opportunity to include additional examples for mining. Furthermore, it will be important to ensure all water users potentially affected by the requirements of the register are notified.

The MCA would welcome the opportunity to discuss any of the above comments further. Should you have any questions regarding this submission, please do not hesitate to contact me on 02 6233 0600 or chris.mccombe@minerals.org.au.

Yours sincerely



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