



Australian Government

National register of foreign ownership of water access entitlements

Consultation Paper
February 2016

NOTE TO PARTICIPANTS

The principles outlined in this paper have not received Government approval and are obviously not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

CONTENTS

National register of foreign ownership of water access entitlements	1
1. Introduction	1
Introduction to the register of foreign ownership of water access entitlements.....	1
Foreign investment in Australia	1
Australia's foreign investment framework	2
Agricultural land register	4
Existing data on foreign investment in water resources	4
Current water entitlement and registration framework	5
2. Objectives of the register	8
3. Implementation approach	9
4. Register definitions and scope	10
Water access entitlements	10
Information to be collected	11
Utilising existing data	12
Foreign ownership.....	12
Types of foreign interests.....	13
Registration requirements	13
Thresholds.....	14
5. Initial stocktake	14
6. Reporting	15
Glossary.....	16
Abbreviations.....	17
Generic unbundling of water rights	18
Existing water data collection processes	19
Bureau of Meteorology	19
Australian Bureau of Statistics.....	19
Australian Bureau of Agricultural and Resource Economics and Sciences.....	20

CONSULTATION PROCESS

Request for feedback and comments

The Australian Government (the Government) welcomes feedback from all interested stakeholders on the issues outlined in this consultation paper.

The consultation paper includes focus questions. Stakeholders are invited to address any issue raised in this paper and should not feel obliged to address every question. The information obtained through this process will inform the Government's approach on the way forward. Comments in submissions that are substantiated with reasons and evidence will carry the most weight.

Email: ForeignInvestmentConsultation@treasury.gov.au

Mail: Water Access Entitlements Register Consultations Working Group
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries: Department of Agriculture and Water Resources

Phone: 1800 218 478 or + 61 02 6272 4030 (from outside Australia).

Closing date for submissions: 11 March 2016

Treatment of confidential information

The submissions and all information contained in them (including names and address details) will be **made available on the Treasury website** unless respondents clearly indicate that they would like all or part of their submissions to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who wish that all or part of their submissions remain in confidence should provide this information marked as such in a separate attachment.

Any request made under the *Freedom of Information Act 1982* (Cth) for all or part of a submission provided in confidence will be determined in accordance with that Act.

The Government reserves the right to refuse to publish submissions, or parts of submissions, which contain offensive language, potentially defamatory material or copyright infringing material.

NATIONAL REGISTER OF FOREIGN OWNERSHIP OF WATER ACCESS ENTITLEMENTS

1. INTRODUCTION

Introduction to the register of foreign ownership of water access entitlements

- 1.1. On 25 November 2015 the Australian Government passed reforms to strengthen the integrity of Australia's foreign investment framework.
- 1.2. The reforms represent the most significant changes to Australia's foreign investment framework in 40 years. They modernise the framework and provide greater certainty and transparency for investors and the Australian community.¹
- 1.3. As part of the foreign investment framework reform package, the Government agreed to introduce legislation for the establishment of a register of foreign ownership of water access entitlements before 1 December 2016.
- 1.4. The Government has established a whole-of-government working group jointly led by the Treasury and the Department of Agriculture and Water Resources (DAWR). It includes representatives from the Department of Prime Minister and Cabinet (DPM&C), the Australian Taxation Office (ATO), the Bureau of Meteorology (BOM) and the Australian Bureau of Statistics (ABS). The Government is now seeking views from interested stakeholders on the implementation of the register of foreign ownership of water access entitlements (Water Access Entitlement Register).
- 1.5. The working group will also work with state and territory governments to implement the Water Access Entitlement Register and discuss how it may interact with existing water rights registration systems and the register of foreign ownership of agricultural land (Agricultural Land Register).
- 1.6. While the Commonwealth has lead responsibility for foreign investment policy and screening, and a significant interest in the management of Australia's water resources, state and territory governments have primary responsibility for managing water resources which includes: allocating water among users, water licensing, water extraction conditions, water processing (including buying and selling conditions) and water monitoring.

Foreign investment in Australia

- 1.7. The Government welcomes foreign investment that is in the national interest because it can play an important and beneficial role in the Australian economy. It has helped build Australia's economy and can continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.
- 1.8. Foreign investment provides additional capital for economic growth, creates employment opportunities, improves consumer choice and can promote healthy competition, while increasing Australia's capacity to compete in global markets. It can also help improve

1 Further information on the foreign investment reform package is at www.firb.gov.au.

competitiveness and productivity by introducing new technology, providing much needed new infrastructure, enabling access to global supply chains and markets, and enhancing Australia's skills base.

- 1.9. Ongoing access to foreign funding has enabled Australia to sustain higher growth than it otherwise could. Without the injection of additional capital, technology and skills through foreign investment, production, employment and income would all be lower.

Australia's foreign investment framework

- 1.10. Notwithstanding the benefits of foreign investment to the economy in general, there is a need to review foreign investment proposals to ensure proposals are consistent with Australia's interests.
- 1.11. The Government reviews foreign investment proposals against the national interest on a case-by-case basis. This flexible approach maximises investment flows, while protecting Australia's interests and providing assurance to the community.
- 1.12. The foreign investment review framework is set by the legislative framework and supported by Australia's Foreign Investment Policy (the Policy) and Guidance Notes on the specific application of the law.
- 1.13. The legislative framework includes the *Foreign Acquisitions and Takeovers Act 1975* (FATA) and the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* and their associated regulations. The legislation defines the term 'foreign persons' as per Box 1.
- 1.14. FATA allows the Treasurer to review foreign investment proposals that meet certain criteria. The Treasurer has the power to block foreign investment proposals or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest.
- 1.15. The Policy outlines the Government's approach to administering the foreign investment framework, including national interest considerations.
- 1.16. The Foreign Investment Review Board (FIRB), a non-statutory advisory body, is responsible for examining proposals and advising on the national interest implications of investment proposals. The Treasurer retains responsibility for making decisions.
- 1.17. Factors typically considered in assessing the national interest for business acquisitions include: national security, competition and other government policies such as taxation; the impact on the economy and the community; and the investor's character.
- 1.18. Generally, proposals to acquire an interest of 20 per cent or more in any business valued at over \$252 million (or \$1,094 million for non-government investors from Chile, China, Japan, Korea, New Zealand and the United States) must be notified to the FIRB for examination. In addition, proposed investments in agricultural land generally require approval where the cumulative value of a foreign person's agricultural land holdings would thereby exceed \$15 million, and proposed direct interests in agribusiness generally require approval where the value of the investment is more than \$55 million.
- 1.19. All foreign government investors must get prior approval before acquiring a direct interest in an Australian business, starting a new business or acquiring an interest in land, regardless of the value of investment.

- 1.20. Further information on the foreign investment framework is available at: www.firb.gov.au.
- 1.21. Currently, foreign acquisitions of interests in water are not directly screened under Australia's foreign investment screening framework, but may be part of screening other types of investments. As interests in water can be attached to land, or are assets of Australian businesses, such acquisitions may be screened through the agricultural land screening requirements, or through the acquisition of securities or business assets.
- 1.22. When assessing the national interest in relation to the agricultural sector, the Government typically considers a range of specific factors including the quality and availability of Australia's agricultural resources including water; land access and use; agricultural production and productivity; Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners; biodiversity; and employment prosperity in Australia's local and regional communities.
- 1.23. Once the Water Access Entitlement Register has been established and there is data available, the Government is committed to reviewing the treatment of water entitlement assets under Australia's foreign investment framework.

Box 1: Foreign persons

The FATA defines the terms foreign person and foreign government investor.

A foreign person is generally:

- an individual that is not ordinarily resident in Australia²; or
- a foreign government or foreign government investor; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20 per cent; or
- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40 per cent.

A 'foreign government investor' is:

- a foreign government or separate government entity, a corporation or trustee of a trust, or a general partner of a limited partnership in which:
 - a foreign government or separate government entity holds a substantial interest of at least 20 per cent; or
 - foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate substantial interest of at least 40 per cent.

2 As defined in section 5 of the *Foreign Acquisitions and Takeovers Act 1975*.

Agricultural land register

- 1.24. The Government has established the Agricultural Land Register to increase scrutiny and transparency of foreign investment in agricultural land.
- 1.25. The *Register of Foreign Ownership of Agricultural Land Act 2015* (Agricultural Land Register Act) implemented the Agricultural Land Register. The ATO administers both the Act and the register.
- 1.26. The Agricultural Land Register will contain a record of foreign persons with interests in Australian agricultural land.³ The Agricultural Land Register Act provides for the Commissioner of Taxation (Commissioner) to regularly give the Minister a report, including statistics from the register, for presentation to Parliament.
- 1.27. Data collection started on 1 July 2015 and includes a stocktake of existing ownership to provide a clear picture of the level and sources of foreign investment in Australia's agricultural sector. Further information on the Agricultural Land Register is available at www.ato.gov.au/General/Foreign-investment-in-Australia/Agricultural-Land-Register.

Existing data on foreign investment in water resources

- 1.28. Water resources are a necessary input for most sectors of the economy. The agriculture sector consumes the greatest proportion of water resources and is expected to account for the highest proportion of foreign owned water access entitlements (WAEs). There is also significant water use by the mining, manufacturing, energy sectors and households. These sectors, or the water utilities that service them, may have some WAEs and to the extent that they do, they may use water obtained through access entitlement and/or allocation trades.
- 1.29. The only official source of national data on foreign investment in water resources is the ABS Agricultural Land and Water Ownership Survey (ALWOS).
- 1.30. The June 2014 release of ALWOS found that as at 30 June 2013 there had been an increase of 55 per cent or 0.6 million megalitres from the previous ALWOS of 2010 in the amount of water entitlements with some level of foreign ownership, to a total of 1.8 million megalitres. This equated to an increase over three years from 9 per cent to 14 per cent of total water entitlements with some level of foreign ownership. However, the survey only captures foreign interests in water entitlements for agricultural purposes and excludes other industry sectors such as mining, manufacturing and energy sectors where it is likely foreign investors also hold water entitlements.
- 1.31. The FIRB collects data on approvals given by the Australian Government for proposed foreign investments that require FIRB scrutiny according to relevant thresholds, however, foreign investment in water entitlements is not specifically captured and measured by the Government's foreign investment screening regime.

³ The Agricultural Land Register is subject to provisions under the *Taxation Administration Act 1953* about confidentiality of information, which control what can be done with information in the register (apart from published statistics).

Current water entitlement and registration framework

- 1.32. Primary responsibility for water resource management resides with the states and territories and approaches differ between jurisdictions and regions.
- 1.33. The nature of water rights is complex and differs across Australia. Water rights can have different characteristics and can be tied to land or not recorded in existing water registers and water planning systems (for example, certain mining arrangements).
- 1.34. A water access right is a state or territory statutory right to hold and/or take water from a water resource. It includes stock and domestic rights, riparian rights, water access entitlements (WAEs) and water allocations. Of these, water access rights, which include WAEs and water allocations, are tradeable and may be separated from land.
- 1.35. WAEs, which are statutory rights to a perpetual share in a water resource, separate from land, have not been fully established in all regions and in all states and territories. A WAE may be defined for groundwater⁴ or surface⁵ water which can be regulated water (if the flow of water is controlled by regulating structures such as dams or weirs) or unregulated.
- 1.36. Other types of tradeable water rights are irrigation rights and water delivery rights.

Box 2: Water facts

The largest natural water systems in the country are the Murray-Darling Basin (approx. 1.1 million km²), the Great Artesian Basin (approx. 1.7 million km²) and the Lake Eyre Basin (approx. 1.2 million km²). These water systems overlap jurisdictional boundaries.

As at 16 February 2016, the volume in storages across the country was 42,961 GL.⁶ The average rainfall in Australia in 2015 was 443.7mm, which was 5 per cent below the long-term average.

Figure 1 shows a national breakdown of water consumed in 2013-14 by different sectors of the economy by volume (GL) and percentage. As the figure shows, agriculture is the largest consumer of water, followed by households.

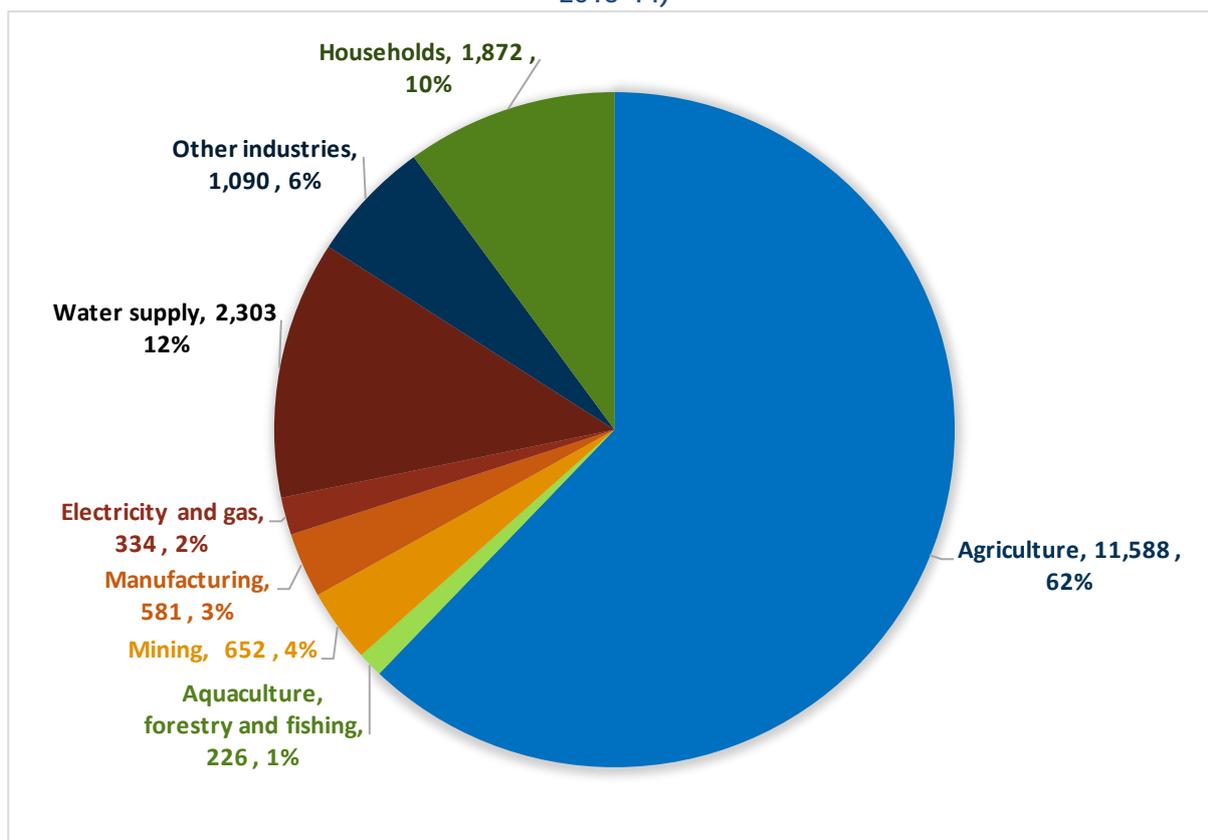
The Murray-Darling Basin (MDB) is one of the most important natural water resources in the country. It is home to more than 2 million people and includes over 53,000 farm businesses. In 2013-14 the gross value of agricultural production in the Basin was \$19.4 billion (including \$7.1 billion irrigated production). The volume of available water in storages in the MDB as at 12 February 2016 was 7,755 GL, which was 35 per cent of total MDB storage capacity.

4 Groundwater is water below the surface of the earth that infiltrates from the surface through the ground and becomes stored in porous soils and rocks.

5 Surface water is any body of water on the surface of the earth including rivers, lakes, wetlands and dams.

6 One gegalitre (GL) is one thousand megalitres (ML). An Olympic-sized swimming pool has a volume of 2.5 ML.

Figure 1: Water consumption in Australia in 2013-14 (source ABS Water Account, Australia 2013-14)



National Water Initiative

- 1.37. The overarching water reform agenda at the Commonwealth level is the National Water Initiative (NWI), which was agreed among all governments in 2004. Under the NWI all governments agreed to the definition of clear and nationally compatible characteristics of water entitlements.
- 1.38. Historically, most states and territories bundled land property titles with associated water rights. As part of the NWI reform the separation of land and water, or unbundling, has been progressing but is not complete. Thus, water rights (entitlements) can be bundled or unbundled from land assets. Once unbundled, water rights can be traded separately from land. This means that the Water Access Entitlement Register must be flexible enough to allow for the different stages of development across jurisdictions and water systems. It must be robust enough to allow for the different water entitlement products to coexist irrespective of their characteristics.
- 1.39. Attachment A presents a generic breakdown into different rights resulting from the NWI reforms, however not all these are available in all jurisdictions or regions.

Reporting arrangements for entitlements and trade in entitlements and allocations

- 1.40. The states and territories, in their capacity as water resource managers, maintain a number of registers for water entitlements, water trade (WAE and allocations — sometimes in combined systems but often separate) and water use. In some cases these registers, although administered by different entities, operate seamlessly. The states and territories provide public access to these registers, in the majority of cases free of charge.
- 1.41. The jurisdictions compile annual reports which generally include entitlements on issue (the number of and volume of WAEs issued each year per water system/catchment and for the whole of the state); and statistics on entitlement and allocation trade.
- 1.42. The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), using information collected by the states and territories, as well as information provided to the BOM by Irrigation Infrastructure Operators (IIOs), compiles annual water markets reports. These reports were previously produced by the former National Water Commission until the 2012-13 water markets report.
- 1.43. There are also other relevant national water reporting arrangements by the BOM, and by the ABS. Further information on water resources data is at Attachment B.
- 1.44. While there are various data sources covering different aspects of water resources, data on the level of foreign ownership of water resources is limited. The various data sources and registers generally do not identify foreign ownership of WAEs, or if they do, the scope of the data is limited to a particular sector, for example water for agricultural purposes in ALWOS. Further, there is no national level water register or license registration system.

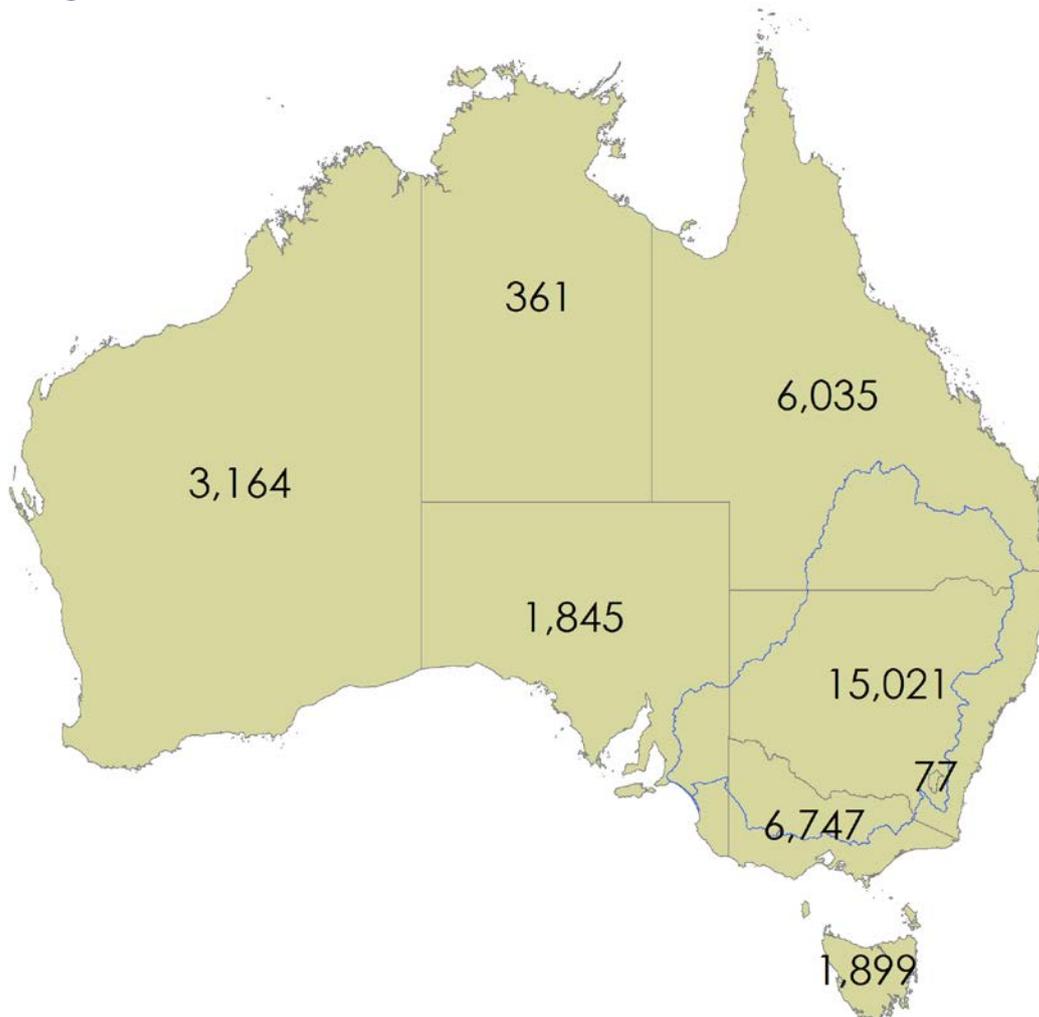
Box 3: Distribution of water entitlements in Australia (2013-14)

Figure 2 below shows the entitlements on issue as at 30 June 2014 by jurisdiction, in GL.

This figure also shows the outline of the MDB, which overlays the states of Queensland, New South Wales, Victoria and South Australia and all of the Australian Capital Territory. In 2013-14 the MDB accounted for 57 per cent of all national entitlements on issue and 88 per cent of national entitlement trade.

A number of factors affect entitlement prices including water availability due to climatic conditions, including the degree of inter-connectedness between systems, the characteristics of the water products (for example, reliability, location, whether surface or groundwater), demand and supply issues, willingness to pay, agricultural commodity prices, structural changes in the sector. In 2013-14 annual median national entitlement prices ranged between \$350 and \$2,800/ML, reflecting the location and characteristics of water products, among other things.

Figure 2: Distribution of water access entitlements in Australia in 2013-14 (GL)



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.
- 2.2. Although the states and territories collect a range of water related information, there are significant gaps of information on the levels of foreign ownership of WAEs.
- 2.3. A Water Access Entitlement Register should assist in informing the Government and the community about emerging investment trends and enhance the information available to the Government for future policy development.
- 2.4. A Water Access Entitlement Register could also complement data gathered by the existing Agricultural Land Register that is administered by the ATO.

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?

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.
- 3.3. A Commonwealth administered Water Access Entitlement Register can be established more quickly and at less cost compared to state-based approaches that may impose a regulatory burden on all entitlement holders.

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

- 3.4. The working group considered possible models for a Commonwealth administered register, including a stand-alone Water Access Entitlement Register and expanding the existing Agricultural Land Register to include WAEs.
- 3.5. The working group considers that amending the Agricultural Land Register Act to include WAEs is the preferred way forward.
- 3.6. Closely aligning the Water Access Entitlement Register with the existing Agricultural Land Register will reduce compliance burden for investors, reduce implementation costs and provide a more comprehensive picture of foreign ownership of agricultural land and WAEs.
- 3.7. Foreign persons often, but not always, hold WAEs as well as land so a combined register should also minimise compliance costs for foreign persons.
- 3.8. The Agricultural Land Register Act already has timeframes for registration, penalties for non-compliance and reporting obligations. The same rules could be adopted for the Water Access Entitlement Register to reduce duplication and the potential for confusion. This approach would avoid imposing a regulatory burden on all entitlement holders, including those who are not foreign persons.
- 3.9. The Agricultural Land Register Act is taxation law for which the Commissioner of Taxation has the general power of administration. The Agricultural Land Register, being taxation law, enables the use of the existing administrative framework of the *Taxation Administration Act 1953* to support it.
- 3.10. Adding WAEs to the existing Agricultural Land Register should be cost effective as much of the information technology architecture required is already in place.

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?

4. REGISTER DEFINITIONS AND SCOPE

Water access entitlements

- 4.1. The terms water entitlements and water rights are often used interchangeably. The full extent of water rights is complex, and capturing the full spectrum of water entitlements (rights) in the Water Access Entitlement Register was not envisaged. See the Glossary and Attachment A for further details on terminology and the water entitlement system.
- 4.2. The working group considers that the register should only capture WAEs as the unit of measurement as opposed to the full gamut of water rights (entitlements). This is consistent with the Government's stated position as part of the foreign investment reform package.
- 4.3. A WAE is a perpetual or ongoing entitlement, by or under a state or territory law, to exclusive access to a share of the water resources of a water resource plan area. The WAE is analogous to the capacity of a tank which may be filled or topped up throughout the year with allocations. It defines the percentage of the overall capacity that the owner is entitled to, not the actual volume of water that the owner can access. This may be greater or smaller than the entitlement, depending on the overall availability of water that affects both allocations and allocation trade.
- 4.4. An allocation is the specific volume of water assigned to a WAE in a given water year.
- 4.5. The working group considers that water allocations should not be included as they only enable access to water allocated to WAEs for one given year, (allocations are not a perpetual entitlement). Capturing this type of entitlement would result in significant complexity and compliance costs for investors and the administrator of the Water Access Entitlement Register. The primary aim of the register is to establish how much of the overall entitlement capacity is foreign owned, not to track the physical movement of water allocations in and out of entitlements over a water year.

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

- 4.6. The unbundling of land and water has not been completed across Australia and the approach to unbundling is not uniform across the jurisdictions. It is proposed that the register should focus on WAEs alone and not capture related rights such as water delivery and water use rights.
- 4.7. Some irrigators within the area of operation of Irrigation Infrastructure Operators⁷ (IIOs) hold rights against the IIO to have water delivered through the IIO's infrastructure network. In these instances the WAEs are held by the IIO on behalf of the irrigators. The register would be able to capture foreign ownership of the WAEs for the corresponding irrigation rights to the extent

⁷ Any person or entity who owns or operates water service infrastructure for the purpose of delivering water to another person for the primary purpose of being used for irrigation.

that IIOs meet the requirements of foreign persons. In 2013-14, IIOs held 21 per cent of the entitlements on issue in the Murray-Darling Basin, where the large majority of water trade occurs.

- 4.8. The working group therefore does not propose inclusion of irrigation rights in the Water Access Entitlement Register. However, consistent with current state and territory requirements for registration of WAEs, the legislation would ensure that a foreign person who transforms⁸ irrigation rights into WAEs is required to undergo registration in the same way as if acquiring them through the market. This would not capture foreign ownership of irrigation rights, but it would prevent a loophole where a foreign person could circumvent reporting requirements by buying irrigation rights and then transforming them into WAEs.

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

- 4.9. Unlike the Agricultural Land Register, the Water Access Entitlement Register is proposed to capture all industry sectors, not just WAEs for agricultural purposes. This approach will provide a more comprehensive understanding of the extent of foreign ownership of Australia's water resources, regardless of the intended use of WAEs. However, it should be noted that in some states, water issued for some uses, for example mining, is administered by separate legislation. Therefore the information in the Water Access Entitlement Register will be more inclusive, but not necessarily complete.
- 4.10. It is not proposed for the register to capture water uses. This is because the register would only be able to capture intended use at the time of a reportable transaction, but in practice water use changes frequently. Accurate water use information is captured on an ongoing basis by the water use licensing systems administered by the states and territories.

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?

Information to be collected

- 4.11. The Water Access Entitlement Register seeks to enable the derivation of statistics such as the level of foreign ownership of WAEs as a proportion of the total entitlements on issue by water system, state and territory and nation-wide.
- 4.12. It is proposed that the Water Access Entitlement Register collect the following information:
- details of the foreign investors including the legal name and address of relevant foreign persons or companies and ABN if applicable;
 - whether the investor is a foreign government;
 - Nationality;
 - level and type of foreign interest;
 - WAE number;

⁸ Transformation is the process by which an irrigator permanently converts their entitlement to water under an irrigation right against an IIO into a water access entitlement held by the irrigator (or anybody else other than the IIO), thus reducing the share component of the IIO's water access entitlement.

- f. water resource area/system;
- g. WAE type (reliability/security, whether surface — regulated/unregulated, or groundwater);
- h. volume of the entitlement.

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

Utilising existing data

- 4.13. The existence of different water entitlement registration systems and various data collection processes may provide an opportunity for the Water Access Entitlement Register to utilise information already available in various forms or to cross-check the information on the register.
- 4.14. Potential sources of data are BOM Australian Water Resources Information System (AWRIS) and ALWOS. Consideration will be given to what other types of information could be harvested.

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?

Foreign ownership

- 4.15. The definition of foreign ownership is central to data collection for the Water Access Entitlement Register. It is proposed that the definitions of foreign persons should be consistent with those adopted for the Agricultural Land Register under the Agricultural Land Register Act, to ensure consistency with the two registers, and to lower complexity and compliance costs for foreign persons.
- 4.16. The Agricultural Land Register Act adopts the definition of a foreign person from the FATA (see Box 1 for further details).
- 4.17. The use of the definition of ‘foreign person’ under FATA by the Agricultural Land Register ensures that foreign-owned companies that have direct interests in agricultural land are required to report those interests. The same approach could be adopted for the Water Access Entitlement Register so that the definition of a foreign person would achieve the same outcome for foreign ownership of agricultural land and WAEs.
- 4.18. For consistency with the approach adopted by the Agricultural Land Register, it is proposed to focus on direct legal ownership of WAEs, that is, the first level of ownership based on the details of the foreign person identified as the legal owner. Therefore, only the legal WAE owners meeting the definition of foreign persons would be required to register.

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?

Types of foreign interests

- 4.19. Several types of interests could be collected for the purpose of the Water Access Entitlement Register. These include: interests under a long-term lease; interests in arrangements involving the sharing of profits or income from the use of, or dealings in, WAEs; and security interests (interests held by financial institutions).
- a. The Agricultural Land Register captures leases for terms longer than five years. If the Water Access Entitlement Register were to capture similar long-term leases, both the WAE owner and the lessee would be required to register, if they are foreign persons. However, there would not be double-counting of WAEs as the statistics would be presented for the different type of interests, i.e. ownership versus lease arrangements, in this case.
- 4.20. The Agricultural Land Register provides for rules to be made for exemptions. It is proposed that a similar rule-making power be available for the Water Access Entitlement Register, so that certain interests can be made exempt from the register, if appropriate.

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?

Registration requirements

- 4.21. As is the case with the Agricultural Land Register, it is proposed that the Water Access Entitlement Register be a post-acquisition register, which would give foreign persons 30 days to register from the occurrence of a registrable event (subsequent to the initial stocktake, see section 5). The WAE registration would also be subsequent to registration in state or territory systems.
- 4.22. The proposed 30 day timeframe would enable consistency with the Agricultural Land Register and therefore minimise the impost on foreign persons.
- 4.23. The Agricultural Land Register includes an obligation for foreign persons to register their investments as well as divestments of interests in agricultural land. It is proposed to adopt the same approach with the Water Access Entitlement Register so that it can reflect an accurate account of foreign interests in WAEs at any particular period of time.
- 4.24. Foreign persons would also be required to update their details when changes occur to their 'foreign person' status. They would be required to register or de-register, as appropriate, in line with changes to their ownership composition.

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

- 4.25. 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.
- 4.26. 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?

5. INITIAL STOCKTAKE

- 5.1. The introduction of the Agricultural Land Register included an initial six-month stocktake period. It is proposed to adopt the same approach for the Water Access Entitlement Register by which WAE foreign owners would be given six months to register, from the Government's announcement of the commencement of the stocktake. This will provide a baseline against which changing levels of ownership can be assessed.
- 5.2. The working group considered whether the information collected by ALWOS in 2010 and in 2013 could be used as the stocktake. However, as information held by the ABS is provided to them under strict confidentiality provisions, only aggregate level information is available, and therefore that information is not suitable to establish the baseline.
- 5.3. Nevertheless the ALWOS, as well as the future agricultural censuses planned for 2016 and 2021, will provide information that can be used to corroborate statistics derived from the Water Access Entitlement Register.
- 5.4. In establishing the baseline for the Agricultural Land Register, the Government aimed to reduce compliance costs involved in defining the baseline by contacting known owners. Similarly, it is proposed that the Government would undertake an information campaign designed to notify potential WAE owners of the requirements of the legislation. Foreign persons, would need to self-identify if they meet any of the terms of the definition and register their WAEs with the administering agency within six months from the Government's advice.

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?

6. REPORTING

- 6.1. The Water Access Entitlement Register aims to provide transparency of foreign ownership of WAES to the community. However, complete and open public access to information contained in the register needs to be balanced against commercial sensitivities and privacy considerations.
- 6.2. While the Agricultural Land Register is capturing a broad range of data, only aggregate information will be published to protect private and commercially sensitive information. It is proposed to adopt a similar approach with the Water Access Entitlement Register and to publish aggregate information on level and national source of foreign ownership of WAEs at catchment, region, state and national level.
- 6.3. This approach would be in line with maintaining confidentiality of the information, providing more transparency to the community and meeting key policy and public interest requirements of the register. It would also be consistent with the position adopted by the Agricultural Land Register.

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?

GLOSSARY

Item	Meaning
Delivery share	A share of delivery capacity in an irrigation supply channel or water course (Victoria only).
Gigalitre (GL)	One GL is one thousand megalitres (ML).
Groundwater	Water below the surface of the earth that infiltrates from the surface through the ground and becomes stored in porous soils and rocks.
Irrigation Infrastructure Operator (IIO)	Any person or entity who owns or operates water service infrastructure for the purpose of delivering water to another person for the primary purpose of being used for irrigation.
Irrigation right	A right that a person has against an IIO to receive water which is not a water access right or water delivery right — an irrigation right can usually be transformed into a water access entitlement.
Megalitre (ML)	One ML is one million litres. One Olympic-sized swimming pool has a volume of 2.5ML.
Surface water	Any body of water on the surface of the earth including rivers, lakes, wetlands and dams.
Transformation	Transformation is the process by which an irrigator permanently converts their entitlement to water under an irrigation right against an IIO into a water access entitlement held by the irrigator (or anybody else other than the IIO), thus reducing the share component of the IIO's water access entitlement.
Water access entitlement (WAE)	Perpetual or ongoing entitlement, by or under a law of a state or territory, to exclusive access to a share of the water resources of a water resource plan area.
Water access right	Any right conferred by or under a law of a state or territory to hold and/or take water from a water resource and includes: stock and domestic rights, riparian rights, a water access entitlement and a water allocation.
Water allocation	The specific volume of water allocated to water access entitlements in a given water accounting period.
Water delivery right	A right to have water delivered by an infrastructure operator.
Water use licence	The rights and obligations relating to the use of water on a specific parcel of land.

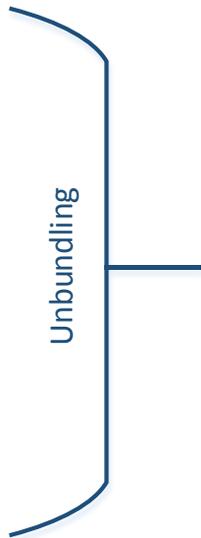
ABBREVIATIONS

Acronym	Meaning
ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
AWRIS	Australian Water Resources Information System
ALWOS	Australian Land and Water Ownership Survey
BOM	Bureau of Meteorology
DAWR	Commonwealth Department of Agriculture and Water Resources
FATA	<i>Foreign Acquisitions and Takeovers Act 1975</i>
FIRB	Foreign Investment Review Board
GL	Gigalitre
IIO	Irrigation Infrastructure Operator
IT	Information Technology
MDB	Murray-Darling Basin
ML	Megalitre
NWI	National Water Initiative
WAE	Water Access Entitlement

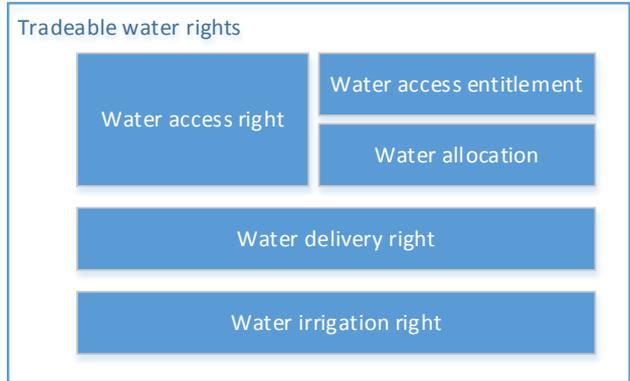
ATTACHMENT A

GENERIC UNBUNDLING OF WATER RIGHTS

Pre-water reform



NWI reforms



ATTACHMENT B

EXISTING WATER DATA COLLECTION PROCESSES

Bureau of Meteorology

The Bureau of Meteorology (BOM) collects and publishes a wide range of water information from all jurisdictions as part of its Improving Water Information Program mandated under the *Water Act 2007*.

The program includes nationally consistent information on water entitlements, allocations, trade and water use. The entitlement data is collected from the state and territory registers and lead water agencies.

The Bureau has established procedures to automate data collection from the states and territories and upload into the Bureau's system to reduce the burden of information provision. The data is stored in the Bureau's Australian Water Resources Information System (AWRIS) and is updated regularly on the Bureau's water market information web page (www.nationalwatermarket.gov.au/water-market-reports/index.html). The data is publicly available by water plan area and higher levels of aggregation.

Australian Bureau of Statistics

The Australian Bureau of Statistics (ABS) undertakes a range of surveys that collect information on the supply, use, value and ownership of water in Australia. It uses data from its statistical program and information from state, territory and local government agencies, water authorities and industry organisations to produce a range of regular and one-off data outputs related to water.

The Water Account, Australia (cat. no. 4610.0) is an annual publication that presents information on the physical and monetary supply and use of water in the Australian economy, broken down by state/territory. This publication also provides information on the water use and consumptive practices of key industries (including 'Agriculture', 'Water supply, sewerage and drainage services'), and households. The publication integrates data from a range of sources including the following ABS surveys:

- Energy, water and environment survey (EWES) is conducted every three years and collects data on the usage of water and environmental management activities by Australian businesses.
- Water supply and sewerage services survey (WSSS) is an annual survey that collects information on the amount of water extracted, supplied and discharged by the water supply and sewerage service industry in Australia.

The ABS also produces other information annually on water use from its agricultural statistical program, including:

- *Water Use on Australian Farms* (cat. no. 4618.0), and
- *Gross Value of Irrigated Agricultural Production* (cat. no. 4610.0.55.008).

This information is collected from the ABS Rural Environment and Agricultural Commodities Survey, Agricultural Census and Value of Agricultural Commodities Produced survey.

Following the introduction of the Foreign Acquisitions Amendment (Agricultural Land) Bill in late 2010, the ABS was asked to collect information on the level of foreign ownership of agricultural businesses, land and water entitlements used for agricultural activity to inform the Government policy in this area. The ABS undertook the Agricultural Land and Water Ownership Survey (ALWOS) in 2010 and 2013. Data from the 2013 survey were released in mid-2014 in Agricultural Land and Water Ownership, June 2013 (cat. no. 7127.0).

The target population for the ALWOS was businesses owning, leasing or operating land for agricultural purposes in Australia, or businesses owning or leasing water entitlements for agricultural purposes in Australia.

The main findings from the ALWOS indicated that the volume of water entitlements for agricultural purposes owned by businesses with a level of foreign ownership increased from 1.2 million megalitres at 31 December 2010 to 1.8 million megalitres at 30 June 2013. This represented 14 per cent of all reported water entitlements for agricultural purposes in Australia in 2013, significantly up from 9 per cent of all reported water entitlements for agricultural purposes in Australia in 2010.

Limitations of the ALWOS data with respect to objectives of the Water Register include the fact that the scope of ALWOS was limited to businesses owning or leasing water entitlements for agricultural purposes only, and historically comparatively few foreign businesses have had investments in water entitlements for agricultural purposes. So it is difficult to fully assess the overall investment situation via a survey — this is especially the case when trying to look at small regions or specific industries where sampling errors can get large or where confidentiality requirements necessitate the suppression of data outputs.

In January 2012, the Australian Government announced an ongoing and expanded statistical collection by the ABS to improve transparency of foreign investment in agriculture. The extra data collection is to include two standalone surveys on foreign ownership and two supplementary surveys with the next two agricultural censuses. This was intended to build on the 2011 ALWOS. The first of the subsequent standalone surveys was completed in July 2014; the second is scheduled to be undertaken in 2016 and published in 2017.

The next opportunity to collect information on foreign ownership will be through the Agricultural Census to be held in 2016.

Australian Bureau of Agricultural and Resource Economics and Sciences

The Australian Bureau of Agricultural and Resource Economics and Sciences, using information collected by the states as well as information provided by IIOs to the BOM, compiles annual water market reports.

The *Australian Water Markets Report* series started from the 2007-08 water year. It informs market participants about the different markets structures, trading activity, prices and policy decisions influencing market performance.

These reports are retrospective summaries of the market activity at national, state, catchment and Murray-Darling Basin level.