

Register of Foreign Ownership of Water Entitlements

Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016

When do you have to notify the ATO?

Foreign Persons who hold, or will hold, a Registrable Water Entitlement and/or Contractual Water Right as at 1 December 2017 need to notify the ATO before the later of:

- (a) 1 December 2017; and
- (b) 30 days after the day the Foreign Person starts to hold those water rights,
BUT notification cannot be made before 1 July 2017.

An obligation to notify the ATO may also be triggered after 1 December 2017 where:

- (a) a Foreign Person starts to hold or ceases to hold a Registrable Water Entitlement and/or Contractual Water Right;
- (b) a person becomes or ceases to be a Foreign Person while holding a Registrable Water Entitlement and/or Contractual Water Right;
- (c) a right becomes or ceases to be a Registrable Water Entitlement and/or Contractual Water Right while held by a Foreign Person; or
- (d) the volume of a Registrable Water Entitlement and/or Contractual Water Right held by a Foreign Person changes or there has been some other change of a kind specified in the rules.

Who is a Foreign Person?

“Foreign Person” has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* (Cth), namely:

- (a) an individual not ordinarily resident in Australia; or
- (b) a foreign government; or
- (c) a corporation, trustee of a trust or general partner of a limited partnership where a person from (a) or (b) or a foreign corporation holds a substantial interest of at least 20%; or
- (d) a corporation, trustee of trust or general partner of a limited partnership where two or more persons from (a) or (b) or a foreign corporation hold an aggregate substantial interest of at least 40%; or
- (e) foreign government investors who would not otherwise be foreign persons without the application of the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

What is a Registrable Water Entitlement and what is a Contractual Water Right?

A Registrable Water Entitlement is:

- (a) an Irrigation Right (within the meaning of the *Water Act 2007* (Cth)); or
- (b) a right conferred by or under a law of a State or Territory to hold or take water from a water resource in Australia (including a perpetual or ongoing entitlement to exclusive access to a share of the water resources of an area in the State or Territory),

BUT EXCLUDES:

- (a) stock and domestic water rights;
- (b) riparian rights;
- (c) an annual water allocation; and
- (d) rights of a kind specified in the rules.

A Contractual Water Right is:

a contractual right (including a deed) held by a person (alone or jointly) to another person's:

- (a) Registrable Water Entitlement; or
- (b) right of a kind specified in the rules,

BUT NOTE THAT notification is only triggered where the term of the Contractual Water Right (including any extension or renewal) is reasonably likely to exceed 5 years (calculated from the applicable trigger date set out in the Bill).

How will the changes affect someone acting as an agent of a Foreign Person?

A Foreign Person, who is under an obligation to notify the ATO of an interest in a Registrable Water Entitlement and/or Contractual Water Right, is taken to have complied with that obligation if the notice is given on the Foreign Person's behalf.

How will the changes affect liquidators, executors and administrators?

If a Foreign Person, who is under an obligation to notify the ATO of an interest in a Registrable Water Entitlement and/or Contractual Water Right:

- (a) is a corporation which is wound up before the notice has been given, then the liquidator of the corporation must make the notification; or
- (b) is an individual who dies before the notice has been given, then the executor or administrator of the person's estate must make the notification.

How will the changes affect Irrigation Infrastructure Operators and their members?

Irrigation Infrastructure Operators will need to notify the ATO if:

- (a) the Irrigation Infrastructure Operator meets the definition of Foreign Person; and
- (b) the Irrigation Infrastructure Operator holds a Registrable Water Entitlement or portion of a Registrable Water Entitlement that is NOT subject to an Irrigation Right (for instance, water entitlements held by an Irrigation Infrastructure Operator for transmission loss or for investment purposes).

An irrigation Infrastructure Operator member will need to notify the ATO if the member:

- (a) is a Foreign Person; and
- (b) holds an Irrigation Right with an Irrigation Infrastructure Operator.



Richard Beissel
Partner



Kathryn Walker
Partner



Judith Bradsen
Special Counsel



Nicole Bennett
Senior Associate



Leah Cowell
Associate