



SUBMISSION

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

WATER TRADING RULES

DRAFT ADVICE

FEBRUARY 1ST 2010



1st February 2010

ACCC
Water Branch
GPO Box 520
Melbourne Vic 3501

Dear Sir / Madam,

**Re: Water Trading Rules
Draft Advice
December 2009**

By way of background the Australian Water Brokers Association was established in May 2006 to represent the interests of water brokers and other participants of the water trading industry throughout Australia. The Association's primary role is to set and maintain the highest standards of professional practice, education, ethics and professional conduct for its members and the broader water broking industry.

Members of the AWBA include individuals who have been at the forefront of the emerging water trading markets within Australia. Indeed many have been responsible for pioneering water broking services to rural customers from as far back as 1991. As at today it is estimated that combined the members of the AWBA represent customers which account for more than 60% of the regulated temporary trading market and permanent water entitlement sales within southern connected system each year.

As our members are at the "coal face" providing services and advice to customers in respect to the trade water entitlements, we ask the ACCC to consider the following advice from members in respect of the water trading rules draft advice:

3) Water Access Rights – General Matters

Rule advice (3–A)

The Basin Plan water trading rules should provide that there are no specific restrictions on the ownership of water access rights based on the characteristic of a particular class of entity such as non-landholders (unless use has not been unbundled from water access rights), environmental water-holders and urban water authorities.

Response:

The AWBA considers this to be an appropriate Basin Plan water trading rule. In recent years members have seen the emergence of new purchaser types of water access rights for agricultural, investment and environmental purposes.

This has created additional demand and price growth together with liquidity in the market to enable sellers to exit.

It will also encourage additional water products to develop over time such as leases and options.

Recommendation (3–B)

The ACCC recommends that Basin state governments review the existing arrangements for trade or subdivision of co-held water access rights by members of a co-holding that are not related entities.

Response:

The AWBA supports this recommendation. AWBA members advise that the requirements for permanent and / or allocation trade associated with co held water access rights are often complex and restrictive. In many cases this results in trade delays and ultimately conflict between the owners of co held licences. The management of shared allocation and carryover liability etc within co held licences also is a constant source of confusion and angst.

Rule advice (3–C)

The Basin Plan water trading rules should provide that approval of an application to trade a water access right should not be conditional on the purchaser holding, obtaining, trading or terminating:

- a water delivery right, or
- a works approval, or
- a water use approval

where these rights or approvals are governed through separate instruments or processes.

Response:

The AWBA considers this to be an appropriate Basin Plan water trading rule. In NSW it is noted that a number of Irrigation Infrastructure Operators (IIO's) currently have a variety of rules and surrounding these issues notwithstanding the recent implementation of the new Water Market Rules. Some IIO's still prevent a purchaser from purchasing a water access right unless they own a delivery right and accordingly land within the district.

Furthermore in recent times a number of irrigators are wishing to sell their land and delivery rights but continue to hold their water access rights as a long term investment. In many cases they are currently prevented from doing this by the existing policies within IIO's.

In Victoria since the abolition of the 10% rule such restrictions are not evident. However one related restriction still operative is that if a purchaser obtains a water access right without a delivery right (WUL) they are prevent from trading allocation

into their nominated ABA. This often causes significant difficulties for such purchasers.

Rule advice (3-D)

The Basin Plan water trading rules should provide that approval of an application to trade a water access right should not be conditional on the purchaser being the owner or occupier of land where water access rights are unbundled from land.

Response:

The AWBA considers this to be an appropriate Basin Plan water trading rule. As previously discussed such restrictions would impinge on the development of new water products into the future.

Rule advice (3-E)

The Basin Plan water trading rules should provide that, in the case of tradeable water access rights:

- there should be no restrictions on trade due to the purpose for which the water has, is currently, or will be used

Response:

Such restrictions on the use of water may be better dealt with by other mechanisms such as water use licences or conditions associated with works approvals.

- fees or charges should not be charged by an IIO solely for the reason that a water access right has been traded and will be used outside the IIO's irrigation network

Response:

The AWBA agrees with this statement and understood that this was covered in the Water Market Rules and Termination Fees legislation.

- the purpose for which water arising from a trade is used should not be restricted as part of the trade approval process (water use on land should be separately addressed through use approvals).

Response:

The AWBA agrees with this statement.

Recommendation (3-F)

The ACCC recommends that:

- there should be no exemptions from water trading rules for, or additional restrictions placed on, environmental water holders.
- water access entitlements and water allocations held by environmental water holders should be treated no differently to water access entitlements and water allocations held by any other person.

Response:

The AWBA supports this recommendation. Advice from members is that their client base is suspicious and wary of Government entities that have purchased and obtained water access licence gaining rights in respect of trade over and above that of existing irrigators. The recent "shepherding" exercise of the Toralee allocation is a

case in point. The AWBA believes environmental water holders should be subject to the same rules as irrigators.

Recommendation (3–G)

The ACCC recommends that stock and domestic rights (including special purpose water access entitlements and unlicensed statutory stock and domestic rights) could be turned into volumetric water access entitlements that are tradeable where:

- no new stock and domestic rights (of any kind) will be issued, except where a water source is not fully allocated and it is considered appropriate to allocate additional stock and domestic rights as part of the water resource planning process
- adequate safeguards are in place to meet critical human water needs in the event of very low allocation levels.

Response:

Given the likely small number of trades and low capital value of each right the AWBA wonders if the size of the market would warrant the investment in development of appropriate market structures.

Installation of monitoring and metering devices on special purpose and unlicensed statutory Stock and Domestic rights, riparian rights and the like, is unlikely to be warranted given the small volume applications.

Recommendation (3–H)

The ACCC recommends that in fully or overallocated water sources, new stock and/or domestic rights (water access entitlements, riparian rights or otherwise) should not be issued. Where a water source is fully allocated, water for new stock and/or domestic needs should be sourced through the market.

Response:

The AWBA suggests further discussion and debate in respect of this recommendation. Such measures may cause third party impacts such as restricting the growth and development of rural residential development in Basin towns. Given the minimal volume and associated impact stock and domestic rights has on the water availability in comparison to irrigation entitlements, further analysis of the costs versus benefits may be required.

Rule advice (3–I)

The Basin Plan water trading rules should provide that a water access right trade should not be refused on the basis that the water will be used in an area outside the MDB (and the use of water inside the MDB should not be restricted solely because it was taken from a water resource outside the MDB).

Response:

The AWBA questions why a trade would occur in the first place if the water is intended to be used outside of the MDB.

Recommendation (3–J)

The ACCC recommends that:

- water trading should only occur within the environmental bounds set through the water planning process
- where environmental impacts result from the use of water on land (e.g. salinity), these impacts should be managed through separate use approvals, not restrictions on trade

However the ACCC considers that it is unnecessary for the Basin Plan water trading rules to incorporate these positions explicitly.

Response:

Whilst the AWBA agrees with this recommendation there is a need to ensure that market participants using trade are fully informed of the rules associated with the use of that water.

Rule advice (3–K)

The Basin Plan water trading rules should provide that water access right trades should not be conditional on a reduction in the trade volume to address overallocation.

Response:

The AWBA agree that over allocation should be dealt with by other means such as infrastructure upgrades, buy backs or other mechanisms agreed with stakeholders.

Rule advice (3–L)

The Basin Plan water trading rules should provide that trade within an overallocated system should not be restricted solely on the basis that the system is overallocated.

Response:

The AWBA agree that over allocation should be dealt with by other means such as infrastructure upgrades, buy backs or other mechanisms agreed with stakeholders.

Recommendation (3–M)

The ACCC recommends against allowing for conversion between priority classes of water access rights. The benefits of allowing conversion may be realised through more efficient water markets and the potential disadvantages may be severe in terms of third party impacts.

Response:

The AWBA agrees with this recommendation. Many irrigators are now differentiating between the characteristics of the various permanent water products and are making

investment decisions accordingly. For example in recent times many Victorian irrigators have acquired NSW High Security entitlements for use on a Victorian property because of the perceived higher reliability of allocation.

However a major factor in a functioning market is confidence in the legal framework of the underlying asset. Continual changes in water policy and the legislation which affects the various water products will undermine the market.

Irrigators (and their financiers) have been and are still making important and substantial investment decisions in water products based on the characteristics of the water products as they have been defined and stand at present. If conversion of priority classes is re introduced it may distort this existing pricing structure and signals.

Rule advice (3–N)

The Basin Plan water trading rules should provide that there are no restrictions on trade specific to water carried over, nor should there be any specific exclusion of traded water from having access to carryover (assuming other criteria, such as the possession of a water access entitlement, are met).

Response:

The AWBA considers this to be an appropriate Basin Plan water trading rule. In addition the AWBA would support further consistency between New South Wales, Victoria and South Australia in respect of carry over rules. The current mismatch of existing rules is creating market confusion and the emergence of “workarounds” to circumvent carryover restrictions within specific states.

Recommendation (3–O)

The ACCC recommends the use of continuous accounting, capacity sharing and spillable water account with no limits on carryover volumes to increase water holder’s access to water across seasons. Where these are not feasible, other methods to extend access to carryover water should be pursued.

Response:

The AWBA supports this recommendation. The AWBA supports a mechanism for High Security Holders in New South Wales and High Reliability Holders in Victoria to have the ability to carryover allocation without the risk of forfeiture in the following water year / season. Given the current drought it is an appropriate risk management strategy for permanent planting growers in particular to have the ability to carryover without penalty.

Recommendation (3–P)

The ACCC recommends that relevant agencies should determine appropriate signals about the likelihood of carryover water being available (and the timing of that availability in the season) and how this should be communicated to water access right holders. This could possibly be linked to the tiered water sharing arrangements in the Basin Plan.

Response:

The AWBA recommends that the water resources be managed in such a way that all carryover is guaranteed to irrigators within the first three months of the new water year other than in extreme circumstances which are defined and communicated to stakeholders.

Recommendation (3–Q)

The ACCC recommends that all jurisdictions should take steps to improve the accuracy and extent of metering in the MDB. Jurisdictions should ensure that all water access right holders have an approved meter installed at all off-take points, except where metering is assessed as not being cost-effective (although such assessments should be regularly reviewed with reference to changes in metering costs and expected benefits).

The ACCC recommends that meters should comply with relevant national standards or frameworks, such as that being developed through the Water Metering Experts Group.

Response:

The AWBA strongly supports this recommendation.

4) The 4 Per Cent Limit**Rule advice (4–A)**

The Basin Plan water trading rules should provide that:

- if not already removed, a limit on the volume of trade out of an area (other than a limit for environmental or physical reasons) should only be applied on permanent trades of water access entitlements (of any priority class) out of an irrigation area as defined in the NWI (i.e. the area under control of an individual water service provider (e.g. an irrigation corporation, cooperative or trust, or water authority), rather than a number of particular areas under the control of the one water service provider).
- if not already removed, any such limit should be raised according to the following minimum transition path:
 - 1 July 2011—raised to 6 per cent of the total water entitlement of the applicable irrigation area
 - 1 July 2012—raised to 9 per cent of the total water entitlement of the applicable irrigation area
 - 1 July 2013—raised to 12 per cent of the total water entitlement of the applicable irrigation area

and must be completely removed by 1 July 2014.

Response:

The AWBA have numerous members, all with a variety of individual views on this highly sensitive topic, some issues for consideration are as follows;

- The 4% trading limit is a restriction of the ability for an individual to trade water into the market place to achieve the best market price. It also creates

fluctuations in the market, not truly reflecting *Open Market Pricing*. This is unfair & unjust as some entitlement holders have the ability to sell their asset for *Best Market Price* and others are pressured to sell at a *Fire Sale Price* creating inequities amongst individuals.

- There is concern about the decline of profitability & sustainability of rural communities should the cap be removed. The main reasons for this decline is not entirely due to sale of Water Entitlements, but also due to the economic pressures & hardships that have been generated from a combination of climatic conditions, the “cost price squeeze” and de-regulation.

Until farmers are paid fairly for their produce, there will always be economic pressure on them to rationalize their assets, with detriment to local communities. Therefore restrictions on trade (4% cap) will not help communities into the long term, but more importantly Government investment in stabilising commodity prices will have a longer lasting effect on job creation and farm sustainability within rural communities. This will ultimately allow more sustainable irrigation & less removal of Water Entitlements from agriculture.

- In relation to Stranded Assets the move to implement *Delivery Entitlements/Shares* with the appropriate *Termination/Exit Fees* is definitely a positive decision to reduce the financial impost generated from Stranded Assets, further helping the viability of remaining farms within rural communities.

Recommendation (4–B)

The ACCC recommends that, as the rationales for the 4 per cent limit are better addressed through other mechanisms, the 4 per cent limit should be immediately removed by Basin states throughout the MDB.

Response:

In general the AWBA agree with the ACCC that the 4% cap should not exist, but communities do need to be protected. Such protection should be through other mechanisms that are not restrictive on some individuals. There should be proactive measures implemented to encourage investment & profitability within rural communities.

5) Water Access Rights – Approval Processes

Recommendation (5–A)

The ACCC recommends that Basin states provide to the MDBA the following information in relation to their approval authorities’ performance against the COAG / NRMCC standards for each month and water year:

- the number of water allocation and water access entitlement trades processed (both approved and rejected)
- the percentage of water allocation and water access entitlement trades processed (both approved and rejected) within the applicable COAG / NRMCC service standards.

Response:

The AWBA supports this recommendation. The AWBA suggests the reason for any rejection of a permanent or allocation trade should also be captured and reported on.

The feedback provided by this data will enable continual improvement in the approval process.

Recommendation (5–B)

The ACCC recommends that approval authorities' performance against the COAG / NRMCC service standards should be published by the MDBA (or another Australian Government agency nominated by the MDBA, such as the NWMS National Portal).

Response:

The AWBA supports this recommendation.

The AWBA also suggest that this data should be published on the various IIC's websites and State Government approval authorities websites.

The AWBA would welcome involvement.

Recommendation (5–C)

The ACCC recommends that the MDBA should:

- continuously monitor approval authorities' performance against the COAG / NRMCC service standards
- review the appropriateness and effectiveness of the COAG / NRMCC service standards at least every two years to consider whether the service standards can be further tightened and by how much. This review process should include an opportunity for stakeholder comment on the appropriateness and effectiveness of the service standards.

Response:

The AWBA supports this recommendation.

The AWBA suggest the MDBA create a “go to” point for stakeholders involved in permanent or allocation trade to lodge concerns or report any inappropriate activity in respect of the approval process by an approval authority.

Any received submissions could then be independently investigated. The AWBA believed the creation of an independent will go a long way to ensuring an efficient and functioning market in which all participants have confidence.

Again the AWBA would welcome involvement

Recommendation (5–D)

The ACCC recommends that if approval authorities are consistently not meeting the COAG / NRMCC service standards as they exist from time to time, or the service standards are not regularly reviewed, the MDBA should reconsider the need for a Basin Plan water trading rule mandating service standards for trade approval times.

Response:

The AWBA agrees with this recommendation.

Recommendation (5–E)

The ACCC recommends that a working group comprising representatives from the Australian Government, Basin states and approval authorities would be an appropriate forum to more formally consider the longer term potential for cross-delegating selected trade approval functions or consolidating particular trade approval functions relevant to the MDB into one entity. Relevant considerations—for both cross-delegating approval functions and consolidating approval functions into one entity—include:

- the types of trade approvals most amenable to such measures
- likely benefits to water market participants and approval authorities
- the initial and ongoing costs
- the extent of any legislative changes that would be required
- the future role and effect of the National Water Market System.

Response:

The AWBA supports this recommendation and would wish to be involved.

Recommendation (5–F)

The ACCC recommends that jurisdictions continue to prioritise work towards the National Water Market System and complementary interstate information-sharing arrangements.

Response:

The AWBA supports this recommendation and would wish to be involved.

Rule advice (5–G)

The Basin Plan water trading rules should provide that approval authorities are required to accept duly completed applications to trade a water access right submitted by email to an email address established by the approval authority for this purpose. This requirement would not apply to situations where an approval authority offers a web-based form for applications (although approval authorities may wish to offer both facilities), nor would it apply to applications to register a trade where this is conducted as a separate process. Approval authorities may also continue to accept trade approval applications by post and in person.

Response:

The AWBA supports this rule and notes the vast majority of approval authorities currently accept email trade applications. One current exception is DWLBC which still requires an original signature form the seller in respect of allocation trades. This causes significant logistical difficulties and delay. The AWBA also recommends that each IIC's be requested to design and provide consistent sets of permanent and allocation trade forms and associated processes.

Recommendation (5–H)

The ACCC recommends that approval authorities consider the development of web-based forms for applications to trade water access rights. Approval authorities may also continue to accept trade approval applications by post and in person.

Response:

The AWBA supports this recommendation.

Recommendation (5–I)

The Basin Plan water trading rules cannot directly regulate the conduct of water market intermediaries. The ACCC notes that industry-specific legislation is a matter for governments (federal and Basin state) to consider. The ACCC recommends that fair trading agencies also continue to monitor complaints against water market intermediaries.

Response:

The AWBA acknowledges the water broking industry is currently still self-regulating and to this end we have and continue to develop appropriate processes to ensure that members have the appropriate level of knowledge and skill and act professional in the best interest of their clients at all times.

For example in recent years we have developed and implemented:

- Code of ethics and standards which must be adhered to;
- New membership admission requirements such as professional interview's and requisite number of years of demonstrated experience;
- Continuing professional development (CPD) program;
- We are soon to launch an introductory training course for water broking developed by AG concepts Pty Ltd in co junction with the Real Estate Institute.

The AWBA would request that any complaints against members be referred the secretary so as they can be handled by our disciplinary procedure as specified in the constitution.

Rule advice (5–J)

The Basin Plan water trading rules should provide that a trade approval authority must not approve a trade unless it has first informed all other parties to the trade of any direct interest that it has (and, if so, the nature of that interest) in the trade (other than in its approval role).

An interest would include where a trade approval authority owns or operates a water market intermediary involved in the proposed trade.

Response:

The AWBA supports this rule but considers it to be insufficient to protect market participants from the issues associated with approval authorities also acting as intermediaries.

Some of these issues are summarized below:

Conflicts of interest concerns:

- Faster approvals for trades submitted by the same approval authority acting as an intermediary;
- Incentive to approve trades which may otherwise have been rejected when the approval authority is receiving remuneration for acting as an intermediary.
- As many approval authorities are also owner's of a water access license's, incentive is created to favour their own entity with favourable trade deals rather than their customers;
- Approval authorities may be privy to market sensitive information (eg inflow allocation data) before the rest of the market. If such approval authorities are also intermediary's it creates the potential for market manipulation.

Level playing field concerns:

- Approval authorities obviously have access to customer databases which can and have been used for marketing purposes for their intermediary business;
- By operating as an approval authority such bodies have access to customers water accounts to determine which customers require additional allocation and which customers may have excess to sell. Such data should not be used to generate leads for their intermediary business.

Confidentiality concerns:

- Members have reported instances whereby an allocation trade application has been lodged with an approval authority for processing. Such applications are required to contain information such as buyer details, seller details and price. Subsequently the approval authority has used this confidential information submitted as part of the approval process to contact buyers / sellers for the benefit of their own intermediary business.

The AWBA would question why the State's and Commonwealth Government would continue to invest such significant expenditure to develop the appropriate market structures if such blatant conflicts are allowed to continue.

Rule advice (5–K)

The Basin Plan water trading rules should provide that trade approval authorities must inform the market of any trade of a water access right to which they have been a buyer, seller, lessee or lessor. This disclosure should be made as soon as possible after the trade has been completed and on the approval authority's website.

Response:

The AWBA supports this rule.

Recommendation (5–L)

The ACCC recommends that approval authorities and Basin state governments develop policies and procedures to identify and appropriately manage potential or perceived conflicts of interest of trade approval authorities.

Response:

For the reasons outlined above the AWBA contends that the only way to appropriately manage potential of perceived conflicts of interest is to prevent approval authorities from acting as intermediary's.

6) Water Access Rights – Location Matters

Rule advice (6–A)

The Basin Plan water trading rules should provide that trade between regulated system trading zones should only be restricted based on physical constraints, environmental constraints, or hydrologic connections and water supply considerations. While the existence of a Basin state border may necessitate different trading zones, it should not (in isolation) limit trade between these two zones.

Response:

The AWBA supports this rule.

Recommendation (6–B)

The ACCC recommends that the MDBA considers requiring water resource plans to:

- Define trading zones for regulated systems, on which location-specific trading rules are referenced.
- Where trade is restricted between two zones, the rationale behind this restriction should be explicitly stated in the water resource plan and based on physical constraints, environmental constraints, or hydrologic connections and water supply considerations.

Trading zones and water trading rules that refer directly to these zones, should be reassessed and if necessary amended in the event that physical or environmental constraints or water supply considerations change.

Response:

The AWBA supports this recommendation. Where trade is restricted between zones it is vital that a clear set of criteria explaining the restriction is published and known to the market.

As the water markets continue to develop irrigators and investors alike are making investment decisions based on the known trading rules. Arbitrary and ill defined changes to these rules have caused significant market disruption and a loss of confidence in the water market.

A prime example is the moratorium on inter valley trade from the Murrumbidgee announced by NOW in 2009. Many irrigators in other valleys purchased Murrumbidgee licences for a variety of reasons. This unexpected restriction caused considerable angst as the criteria for putting it in place was not known to the market.

Furthermore the market is still not clearly informed as to the specific set of circumstances which will lift this restriction.

Recommendation (6–C)

The ACCC recommends that the MDBA considers requiring water resource plans to incorporate the following principles for trade in regulated systems:

- trades within a trading zone should generally not be restricted
- downstream trades between hydrologically connected systems should generally be possible
- where a downstream trade is impeded by a physical constraint to channel capacity (and delivery shares across that constraint have not been created), it should only be approved as back trade
- where an upstream trade is made into a separate hydrological system, it should only be approved as back trade
- trades should be possible between the upper reaches of regulated river systems that converge downstream, provided that any supply obligations of the original location's river below the point of confluence, which may be affected by the trade, are assumed by the destination location's river

upstream trades from a location supplied by more than one source to a location supplied by only one of those sources should be possible, but may be subject to special limits and conditions.

Response:

The AWBA generally agrees with this recommendation. We emphasize the need for a clear set of criteria to be published and released to the market so that as stakeholders are informed when trade between zones is likely to be restricted or not.

For example a clear set of criteria for allowing inter valley trade from the Lower Darling zone should be agreed upon and released to the market.

Recommendation (6–D)

The ACCC recommends that river operators and/or relevant infrastructure operators should regularly provide information to market participants about the likelihood of short-term changes to trading restrictions due to changes in hydrologic connectivity. This information should include relevant values (such as streamflow volumes, trading volumes or storage levels) relative to defined trigger values, estimates of transmission losses, the use of available delivery capacity and back trade opportunities. However, the ACCC is not recommending this be a requirement under the Basin Plan water trading rules.

Response:

The AWBA agrees with this recommendation however would argue that any short term changes to trading restrictions should be kept to a minimum to avoid disruptions to the water markets.

Recommendation (6–E)

The ACCC recommends that the MDBA coordinates a study to investigate the current and likely future magnitude and variability of river transmission losses in the MDB and, if these losses are found to be significant, options to account for these losses should be explored.

Response:

The AWBA supports this recommendation.

Rule advice (6–F)

The Basin Plan water trading rules should provide that exchange rates should not be used to manage the trade of water access entitlements between trading zones in regulated systems. The ACCC recommends a transitional exemption to this rule in cases where an exchange rate is being used to reverse the impact of past exchange rate trades (specifically, from the Murray to the Goulburn system up to the historical volume previously traded out using exchange rates).

Response:

The AWBA agrees with this rule. Many customers have made significant investment decisions based on the current water licence framework. For example New South Wales High Security products have recently become popular with Victoria and South Australia permanent planting irrigators due to their perceived higher reliability of allocation.

One of the main reasons for the higher reliability of allocation is the smaller volume of New South Wales High Security licenses in existence compared to say Victoria High Reliability. Accordingly by re introducing exchange rates it may impact on this framework which has been relied upon by the market.

Rule advice (6–G)

The Basin Plan water trading rules should provide that any current restrictions on the ability to trade water allocation between two zones apply equally to the delivery of water allocations pursuant to a tag between the same two zones, at the time when delivery is requested (i.e. when water is ordered against the tag).

Response:

The AWBA agrees with this rule.

Recommendation (6–H)

The ACCC recommends that the MDBA—in consultation with Basin states and other relevant stakeholders—revisits the advantages and disadvantages of various administrative options, such as automated allocation trade and improvements to tagging processes, and assess whether they should be reconsidered following the implementation of the National Water Market System.

Response:

The AWBA supports this recommendation. In recent years many irrigators have purchased licences for use on properties in a different valley or state to that of the

entitlement. Due to the complex and ill defined tagging process most irrigators thus far have opted to manually transfer the allocation from the licence to the property. A streamlined tagged automatic arrangement would be preferable.

Recommendation (6–I)

The ACCC recommends that Basin states should examine options for improving the clarity and excludability of water access rights in unregulated systems. This should include an investigation of a range of management strategies, including rostering, restrictions and options to ‘shepherd’ water through zones, while recognising that different management approaches may be better suited to different stream types.

Response:

The AWBA agrees with this recommendation however has some concerns associated with “shepherding” water through zones.

Recommendation (6–J)

The ACCC recommends that where the likely benefits outweigh the likely administrative costs, trading zones should be established for unregulated rivers, defining areas within which trade can occur without detailed assessment. Trading rules should be expressed with reference to these trading zones. Trading zones should consider:

- that hydrology should be homogeneous within the zone
- the location of important environmental assets and major off-takes
- the existing volume of available water and likelihood of further development
- transmission losses and local catchment inflow.

Response:

The AWBA agrees with this recommendation. The AWBA would welcome the opportunity for a more structured trading market in unregulated systems. Currently many owners of unregulated licences are uncertain of the rights associated with allocation and permanent trade or their entitlement.

Recommendation (6–K)

The ACCC recommends that the MDBA considers requiring water resource plans to provide for the assessment of individual trades between zones on a case-by-case basis in unregulated systems where trading zones (and related trading rules) have not been established.

Response:

The AWBA agrees with this recommendation.

Recommendation (6–L)

The ACCC recommends that the MDBA considers requiring water resource plans to explain the rationale behind transmission loss factors where these are applied to trades in unregulated systems.

Response:

The AWBA agrees with this recommendation.

Recommendation (6–M)

The MDBA and Basin states should investigate the potential for trade of water access rights along rivers that are intermittently connected. To inform this process:

- more detailed information should be established and publicly reported about delivery losses
- arrangements for better communication between water users about options to minimise delivery losses for such trades should be investigated

If triggers are used to define hydrologic connectivity, these should be clearly stated, reported against and communicated.

Response:

The AWBA agrees with this recommendation.

Recommendation (6–N)

The ACCC recommends that trade of water access rights from an unregulated to a regulated trading zone (or vice versa) should not be allowed until:

- property rights are clearly defined and unbundled from land within the unregulated catchment
- it has been demonstrated that third party interests will be appropriately protected
- a range of alternative approaches to managing such trade have been assessed (see recommendation 6–O below).

Response:

The AWBA strongly agrees with this recommendation and has significant concerns in respect of the potential for third party impacts.

Recommendation (6–O)

The ACCC recommends that further options to manage trade between unregulated and regulated systems should be considered by the MDBA and Basin states. The conditions for such trade may vary between catchments. Options such as tagging extraction conditions from the unregulated system to the regulated system, or crediting inflows from the unregulated system to storage associated with a regulated water access right should be considered. Where the market is thin in the unregulated system, the ability to use exchange rates to manage trade should be investigated to assess what conditions are required to ensure third party impacts are appropriately protected. The appropriateness of different methods to manage trade between unregulated and regulated systems would need to be assessed for individual catchments.

Response:

The AWBA has significant concerns in respect of the potential for third party impacts.

For example allowing allocation from unregulated licences to be available for trade in the regulated system may significantly distort the temporary market. Such

uncertainties and potential impacts to supply may also impinge on the development of new water products such as forward contracts, options etc.

Rule advice (6–P)

The Basin Plan water trading rules should provide that trade of water access rights should be permitted within appropriately set groundwater trading zones, and should not be permitted between groundwater zones that have low, or no, hydraulic connectivity.

Response:

The AWBA agree with this rule.

Recommendation (6–Q)

The ACCC recommends that the MDBA considers requiring water resource plans to ensure that trade of water access rights is not permitted between highly or moderately connected groundwater trading zones unless the following can be demonstrated:

- lag times are clearly understood
- where the zones have separate SDLs, accounting for trades can occur between the SDLs of the two zones
- water access rights in the two zones have substantially similar extraction conditions, or a tagging approach is in place
- where unbundling has not occurred, local extraction issues have been considered and extraction capacity is available in the destination zone and third party interests are appropriately protected.

While the existence of a Basin state border may necessitate different trading zones, it should not (in isolation) limit trade between these two zones.

Response:

The AWBA support this recommendation.

Recommendation (6–R)

The ACCC recommends that the MDBA considers requiring water resource plans to include definitions of groundwater trading zones and the levels of hydraulic connection within and between those zones.

Response:

The AWBA support this recommendation.

Recommendation (6–S)

The ACCC recommends that Basin states consider unbundling water access rights from extraction rights (or ‘partial unbundling’) within a trading zone. Impacts on neighbouring bores and surface water users could be assessed as part of the extraction right assessment process, rather than as part of a water access right trade assessment.

Response:

The AWBA support this recommendation.

Rule advice (6–T)

The Basin Plan water trading rules should provide that trade between surface water and groundwater systems with a low level of connectivity (or that are not connected) is prohibited.

Response:

The AWBA agree with this rule.

Recommendation (6–U)

The ACCC recommends that the MDBA considers requiring water resource plans to only permit trade of water access rights between highly or moderately connected surface water and ground water systems when it can be demonstrated that:

- lag times are clearly understood
- WRPs are integrated and specifically consider the relationship between the two water systems
- there is a process to ensure no double accounting of surface and ground water
- accounting for trades can occur between the SDLs of the two systems
- water access rights in the two systems have substantially similar extraction conditions, or a tagging approach is in place
- third party interests are appropriately protected.

The ACCC notes that meeting the above criteria will be more difficult—and therefore trade less likely to be permitted—in relation to moderately connected surface water and ground water systems.

Response:

The AWBA agrees with this recommendation.

Recommendation (6–V)

The ACCC recommends that the MDBA considers requiring water resource plans to provide that—where a water resource plan permits trade of farm dam water access rights—applications must be assessed on an individual basis and the following conditions met before such a trade is approved:

- the farm dam water access right is licensed
- the new location is in the same catchment as the original farm dam (to ensure similar characteristics)
- the size of the (current or proposed) dams is comparable
- the catchment areas (or inflow volume) of the two dam locations are similar in size
- third party interests are appropriately protected at the new location, and potentially impacted parties are consulted.

Response:

The AWBA is yet to consider this issue in detail.

Recommendation (6–W)

The ACCC recommends that the MDBA considers requiring water resource plans to only enable trade between farm dams and surface water systems if it can be demonstrated that:

- the hydrological connectivity between the two specific locations and water sources is well understood
- the nominal volume, timing and reliability of supply in the destination mimics that in the origin
- water access rights in the two systems have substantially similar extraction conditions, or a tagging approach is in place
- third party interests are appropriately protected at the new location, and potentially impacted parties are consulted
- an assessment has been made to determine the maximum volume that can move between farm dams and surface water systems while providing appropriate protection for third party interests
- such trade will not jeopardise the provision of planned (or 'rules-based') environmental water.

Response:

The AWBA is yet to consider this issue in detail.

7) Water Delivery Rights

Rule advice (7–A)

The Basin Plan water trading rules should provide that IIOs are required to specify in writing the following for each member or customer who holds a water delivery right against them:

- the volume or unit share of the member's/customer's access to the irrigation network under the water delivery right
- where they have been determined, other characteristics that could restrict trade of that water delivery right to another person (including whether the water delivery right can be transferred to all or only part of the IIO's network).

Response:

The AWBA agree with this rule being included in the Basin Plan. It is practice of most IIO's to record such water entitlements rules in their trading rules displayed on their respective websites.

Rule advice (7–B)

The Basin Plan water trading rules should provide that IIOs are prevented from requiring a person to obtain, terminate or vary the volume of a water delivery right as

a result of, or condition for approval of, a trade of a water access right or an irrigation right.

Response:

AWBA agree with this rule being included in the Basin Plan and note to some extent it has been covered in the Water market Rules.

Rule advice (7–C)

The Basin Plan water trading rules should provide that an IIO cannot unreasonably prevent, deter or delay the trade of water delivery rights (in part or in full) between persons who own or occupy land that is serviced by the IIO's irrigation network. Factors that may inform whether a trade has been unreasonably prevented, deterred or delayed include, but are not limited to:

- overall capacity in the network
- capacity in the parts of the network where the water delivery rights would potentially be traded to
- reconfiguration or decommissioning work in the parts of the network where the water delivery rights would potentially be traded to
- connectivity of the network (i.e. whether there is one large network or several component networks that are not physically connected)
- payment of previous water access fees or security for future water access fees and other relevant charges
- the amount of water delivery rights reasonably required to irrigate a person's property for both current and expected future water use
- whether the necessary administrative arrangements are in place to assess and give effect to a trade in water delivery rights.

Response:

AWBA supports this rule being included in the Water Basin Plan.

However members believe that it would be in the best interest of the IIO's and their customers to encourage growth in their irrigated areas provided it is sustainable long term to supply water to customer's properties and there is no impact on third parties.

8) Irrigation Rights

Rule advice (8–A)

The Basin Plan water trading rules should provide that, for each person who holds an irrigation right against an IIO, the IIO must make a determination of that person's entitlement to water under their irrigation right, expressed as either a volume of water (denominated in megalitres) or a unit share of the IIO's water access entitlement(s), and provide a written notice of this determination to that person.

Response:

We understand that IIOs would currently have made this determination to their customers as part of the new water market rules.

Rule advice (8–B)

The Basin Plan water trading rules should provide that, to facilitate negotiations in the event of a dispute between the IIO and irrigation right holders, the IIO must provide each irrigation right holder with written details to support the determination of the volume of water or unit share of their entitlement to water under an irrigation right.

Response:

The AWBA supports this rule.

Rule advice (8–C)

The Basin Plan water trading rules should provide that both (8–A) and (8–B) should not apply to an IIO that has given a written notice to each person who holds an irrigation right against that IIO, specifying that person's entitlement to water under their irrigation, expressed as either a volume of water (denominated in megalitres) or a unit share of the IIO's water access entitlement(s).

Response:

The AWBA supports this rule.

Recommendation (8–D)

IIOs have significant incentives not to restrict the trade of entitlements to water under irrigation rights that do not involve transformation. In addition, there is a strong countervailing threat of IIO customers/members seeking to transform their entitlement to water under an irrigation right and employing the protections offered to them under the water market rules.

In light of these considerations, the ACCC recommends against making Basin Plan water trading rules relating specifically to either the trade of water allocated under an irrigation right, or the trade of entitlements to water under irrigation rights.

Response:

The AWBA supports this recommendation subject to the full and complete implementation of the requirements of the water market rules by IIO's.

9) Reporting and the availability of information**Rule advice (9–A)**

The Basin Plan water trading rules should provide that state government agencies must provide information about the different licensed water access rights (but not water allocations) available under the water management regime in their state.

The information should be provided according to a standard template and available at a central location (such as the NWMS National Portal).

The information to be provided should include (if applicable):

1. location (water source name)
2. water source type (regulated, unregulated, groundwater)
3. priority class

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4. total entitlement on issue of that kind
 5. reliability profile (both long-term and more recent)
 6. fees and charges payable by the holder of the entitlement
 7. applicable carryover policy, if any
 8. dates of allocation announcements, method for announcing allocations and any other applicable regular policy announcements (e.g. link to appropriate allocation determination website)
 9. information on how allocation levels are determined (for water access rights in regulated systems)
 10. links to applicable trading rules, especially applicable trading zone rules
 11. areas where the water access right, and where any water allocation made against that water access right if it is a water access entitlement, can be traded (tagged) to
 12. areas from which water can be traded to the water source location.

For some of these categories of information, it may be sufficient for a link to be provided. The link should be to a readily accessible source of information and not simply to master documents such as water resource plans. The ACCC considers that links may be appropriate for item 6 and onwards.

Response:

AWBA would strongly support recording of such information as noted above provided the information is updated on a regular basis.

We feel item one to four could be recorded on a register available via website from a Central Bureau and items 5 onwards should be links via websites as the later could vary from year to year.

Rule advice (9–B)

The Basin Plan water trading rules should provide that state governments must provide all applicable rules regulating the trade of water access rights to a central information point (which could be provided by the MDBA or the National Water Market System’s National Portal).

The rules should be provided in a compiled form but may use cross-references to other documents. Where cross-references are used, the document must explain the context in which the linked document relates to rules contained in the compilation.

Response:

The AWBA agree with this requirement.

Rule advice (9–C)

The Basin Plan water trading rules should provide that IIOs must provide their trading rules for:

- trade internal to the IIO’s irrigation network
- trade to and from water market participants external to the IIO’s irrigation network

to:

-
- for IIOs with a total water access entitlement of 10 GL or more for irrigation purposes, the same central information point as for government water trading rules in rule advice (9–B)
 - for all IIOs, on their website and/or upon request.

The rules should be provided in a compiled form but may use cross-references to other documents. Where cross-references are used, the document must explain the context in which the linked document relates to rules contained in the compilation.

Response:

The AWBA agree with this requirement. The AWBA would also like to see some consistency between IIO's in the reporting of such information.

Rule advice (9–D)

The Basin Plan water trading rules should provide that:

- water access right holders participating in a trade must ensure that the agreed price, for all trades of water access entitlements and water allocations, is accurately reported to approval authorities or registers at the time of seeking trade approval or registration
- approval authorities and registers must require pricing information to be provided as a condition of seeking approval and registration.

Response:

The AWBA agree with this requirement. However the AWBA has significant concerns in respect of providing such information to approval authorities who also own or operate an intermediary business for reasons outlined in 5-J.

Recommendation (9–E)

The ACCC recommends that the Bureau of Meteorology considers increasing the frequency with which it collects and reports water access entitlement price information.

Response:

The AWBA have always supported such proposed reporting of sales of water access entitlements to a Central Information Bureau.

We as Brokers are constantly requested by Agricultural Consultants, Rural Property Valuers, Financial Institutions and Investment Advisors to provide history of recent current sales of water access entitlements. Now that water entitlements have been separated from land it is vital that such a centralised information source be established.

We would suggest that the sales records be updated at least monthly. This should also include sales of water entitlements within Irrigation Corporations which may not be reported to the market at this time.

Most major water brokers transacting annual water allocations have records of sales on their websites. Again a Bureau could be established to record sales of all water allocations sales. To achieve such records it maybe a condition of approval to disclosed sale prices. Sales of annual allocations within Irrigation Corporations may not necessarily be reported to State Water Bodies at this time.

Rule advice (9–F)

The Basin Plan water trading rules should provide that governments (or their delegates) making:

- allocation announcements
- announcements of market-sensitive policy changes or information, including but not limited to:
 - changes to carryover conditions
 - changes in the ability to trade between trading zones
 - amendments to previous announcements

should make those announcements to the entire market at the same time by methods such as, for example, email mailing lists, media releases and press advertisements.

Response:

The AWBA strongly supports this rule. The AWBA also has some concerns regarding the potential conflict of interest in some delegates making these market sensitive announcements also operate intermediary businesses.

Rule advice (9–G)

The Basin Plan water trading rules should provide that parties privy to allocation announcements and announcements of market-sensitive policy changes should be prohibited from trading relevant water access rights until the announcement is made to the entire market.

Response:

The AWBA strongly supports this rule.

Recommendation (9–H)

The ACCC recommends that water authorities should provide information on how allocation levels are calculated, including:

- disclosing the framework for making allocation announcements
- providing information on the major inputs (such as dam storage levels) for calculating allocation levels whenever an announcement is made.

Response:

This very issue has long been debated by AWBA members, irrigators and water authorities. For a water allocation market to be transparent it is vital that all the factors that are considered before making an announcement of water allocation increases are made known.

NSW State Water have in the past made it known some of the factors that are used to determine if there was sufficient water in storage dams to make water allocation announcements.

AWBA would welcome disclosure of such framework for making allocation announcements.

Conclusion:

We trust the views presented in this submission are of assistance to the ACCC and the MDBA in considering the issue of water trading rules.

We would also like to take this opportunity to invite the ACCC and MDBA authority's to become active members of the AWBA, and assist the current executive and membership in the further growth of our professional, independent and nationally recognised organisation.

Should any reader wish to discuss any issue or require any further information in respect to this submission please contact the undersigned.

Yours faithfully

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