



# Summary of consultation discussions

This document is not a verbatim record of the discussions but a combined summary prepared by ACCC staff of the issues raised by stakeholders during the various meetings.

The views and opinions expressed are those of the stakeholders who attended the discussions and do not reflect the ACCC's views or positions on the issues summarised.

## Background

On 18 September 2020 the ACCC sent an email to all stakeholders in the Water Inquiry's contact list (including attendees from the public forums held in 2019) calling for expressions of interest to join a virtual session to provide feedback on the ACCC's Interim Report. This email also included a feedback form, which summarised the interim report's preliminary conclusions and options for reform. The virtual feedback session information and the feedback form were also published on the Inquiry webpage.

These discussions were offered in lieu of public forums, due to the Covid-19 outbreak and related restrictions.

The ACCC received expressions of interest primarily from stakeholders located within irrigation networks in New South Wales and Victoria.

During October 2020, ACCC staff held virtual consultation sessions with these individuals and small groups to discuss the issues raised in the interim report and any stakeholder concerns around water markets.

Stakeholders that attended the meetings expressed the following views, which relate mostly to irrigation infrastructure operators (**IIOs**).

## Transparency

Stakeholders expressed a view that there needed to be more transparency over regulatory decisions, institutional settings, market operators and market information. In particular:

- Stakeholders advised that there needed to be greater transparency about:
  - when water is available, how much water is available, where water is available, and where the water can be transferred
  - government and MDBA announcements
  - constraints in the river system or in irrigation networks
  - the behaviour of participants in the market (including certain IIOs).
- Stakeholders indicated that they need more reliable information about water allocation policies and projections. Some stakeholders expressed concerns that seasonal

allocations were so uncertain that it was difficult to know whether to buy or sell on the temporary market. The uncertainty also made seasonal planning difficult.

- Some stakeholders expressed some support for a centralised trading platform, but were not familiar with any examples in the agricultural context.
- Some stakeholders suggested an IIO register of water delivery entitlements was needed so stakeholders could see both delivery entitlements that were for sale, and the existing delivery commitments on channels.
- Some stakeholders considered water delivery within IIOs lacks certainty, and that more transparency was needed about the timing of water deliveries and how much water would be delivered after any deductions.
- Stakeholders were concerned about the level of trading being undertaken by IIOs. Because trades are undertaken on a single water access licence (WAL) stakeholders were concerned that it is near impossible to distinguish an IIOs own trading from trades they conducted for irrigators. Some stakeholders suggested the introduction of a register for IIOs, while others suggested that the IIOs should be prevented from trading.
- Stakeholders suggested more transparency was needed in relation to the decision making processes within certain IIOs, including in relation to operation and expansion of irrigation networks. They considered IIO decision making to be a 'black box'. There was also concern that some IIOs are expanding their network despite general security entitlement holders receiving low water allocations.

## **Governance and Regulation**

In relation to governance and regulation, stakeholders raised concerns about:

- Not knowing which entity is responsible for decision making or dispute resolution because there are so many organisations and government departments involved with water market operation. Stakeholders often felt they were bounced around between different regulators or institutions, claiming they lacked jurisdiction to consider the issue.
- There being too many role changes within the various water organisations, so progress and change is slow, and issues often go unresolved.
- The rules for water trading and water delivery are too complex, which has been compounded by rule changes. Stakeholders expressed a view that it was too difficult to understand how things worked.
- Concerns that when the market was introduced irrigators were told it would increase their access to water, so some stakeholders said they feel misled. Many concerns were raised around the affordability of and access to water.

Many stakeholders expressed concerns about the lack of regulation of IIOs, including:

- Current government departments and water organisations (including the MDBA, ACCC and NRAR) all expressed they had no jurisdiction to deal with stakeholders' issues relating to various kinds of IIO conduct. Therefore, there is no regulator or rules to keep IIOs accountable for decisions.
- IIOs not adequately consulting with stakeholders when making decisions or seeking to resolve issues. An example was given that one IIO published consultation opportunities in a local newspaper which meant it was easy to miss, but sent water information by text message.
- IIOs giving preference to certain entities within the network, to the detriment of others.

- IIOs were not required to be part of an independent and binding dispute resolution service, so stakeholder issues relating to water use or delivery were not being fairly mediated.
- Concerns that IIOs were not conducting annual general meetings appropriately, and were limiting the issues stakeholders could raise at those meetings.
- IIOs not being required to comply with water metering standards, which raised concerns about meters not operating properly.

With respect to the introduction of a new independent market regulator:

- Some stakeholders did not want to bear the cost of an additional regulator as they were dissatisfied with all the current regulators and market operators. In terms of the knowledge, skills and resources required, stakeholders also lacked faith in the capacity of a new regulator to oversee the whole market. Stakeholders' prior experience has also showed that regulators have been powerless to investigate certain issues, or the regulator would deny jurisdiction.
- Other stakeholders suggested that a new regulator would need to combine and replace some existing regulators, and have the power to regulate all market participants (including IIOs and government entities).
- Some stakeholders believed that more transparency would be better than a new regulator, so that market participants can see for themselves what is going on.

### **Behaviour of market participants**

Stakeholders shared a range of views and concerns about water market participant behaviour, including:

- Investors having capital and time to buy the water when it becomes available so they can on sell it to farmers at a high and unsustainable price. One stakeholder likened this behaviour to ticket scalping.
- Brokers not acting in the best interest of their clients, and failing to disclose when they are acting for multiple parties.
- Issues with brokers not preparing contracts for transactions when requested, or asking clients to sign a blank transfer form and completing the details later.
- Brokers may have power over irrigators where they provide brokerage services for multiple commodities. One stakeholder described being punished by their broker via stock and grain sales, following issues with a water trade.
- Issues with market participants pumping water out of drainage systems rather than purchasing water because either nobody is enforcing the rules, or the penalty is less than the cost of water.

Stakeholders raised concerns about conduct of IIOs or persons associated with IIOs, resulting from a lack of regulation, including:

- Concerns about insider trading within IIOs, particularly around water allocation or enhancement announcements, and rule or policy changes. There was also a general feeling that some members of IIO networks had inside information, or knew more than others.
- Concerns about board members of IIOs having conflicts of interest, particularly when board members are also irrigators or traders.
- Concerns that the IIOs have a conflict of interest because they can trade in their own right, and on behalf of members. Many stakeholders expressed a view that IIOs should

be prevented from trading water, and should be focused on water delivery and irrigation infrastructure.

- Concerns that the IIO controls trade approval processes which creates the opportunity for the IIO to preference its own trades over irrigator trades (particularly around inter-valley trades).
- Concerns that directors of IIO companies are not complying with their director's duties.
- IIOs unilaterally amending contracts with irrigators. Irrigators expressed that some changes to contracts were unfair or predatory so they had refused to sign, but had acquiesced when they used water.
- Some stakeholders feared their IIO would not deliver their water if they were to complain or raise issues.
- Suggestions that IIOs had given misleading information to stakeholders and governments about the use of Private Irrigation Infrastructure Operators Program (PIIOP) funding and water efficiency.

### **Market Architecture**

- Stakeholders expressed a view that water affordability was more important than protecting the value of water entitlements, and that it was better for a farm to be operating profitably than carrying a balance sheet asset.
- Some stakeholders proposed a new rule whereby temporary water could only be traded once before it is used for agriculture, environment or critical human needs. These stakeholders advised that this would prevent market participants increasing the price of water by buying and selling water.
- There was some concern that agricultural activity in zone 7 had expanded so much that the trading zone needed to be split into two, with a limit on the water able to be traded out of the Torrumbarry valley, similar to the restriction on trade out of the Goulburn valley.
- Concern that irrigators pay expensive fees for delivery of water, but non-water users only pay nominal fees to move water. The cost of maintaining the system was not being shared by all market participants that move water, which was putting irrigators at further disadvantage.
- Stakeholders further expressed that the growth of trade and movement of water has allowed corporate agriculture to acquire cheap land and source water from across the southern Murray–Darling basin, which has resulted in increased conveyance losses that are socialised between all water users. This led some stakeholders to feel that they were supporting water needs of large agribusinesses.

Stakeholders held differing views about carryover:

- Some stakeholders were in support of the current carryover arrangements.
- Other stakeholders considered that carryover needs reform, because it is causing an artificial shortage of water. Dams were close to full, but general security entitlement holders were still receiving low seasonal allocations.
- Many stakeholders were of the view that investors should not be able to carry over water as they do not contribute to the costs of the system. Carryover should be available exclusively to water users so they can plan for the following season.

## **Other feedback**

- For many stakeholders the greatest concern was price transparency, followed by allocation information and timely delivery of water. They advised that current uncertainty around these aspects makes it difficult for irrigators to plan and budget.
- Stakeholders advised that the price of water on the temporary markets is prohibitive. Farmers also expressed concerns that the fluctuations from week to week, and year to year, make it difficult to budget and plan for their season.
- There was a view expressed by many stakeholders that the fees and charges incurred by irrigators within IIOs (in both Victoria and NSW) creates an inequality in the market. There was a general view from stakeholders within IIOs that maintenance costs, delivery fees and conveyance losses should be shared between all market participants that move water in the irrigation district, not just the users.
- Some stakeholders expressed concerns that IIOs were socialising the cost of expanding irrigation networks between members, which advantaged new greenfield sites at the expense of existing members.
- Stakeholders within IIOs were also strongly of the view that fixed annual fees charged by IIOs, regardless of whether the stakeholder used water or not, were unfair.
- Some stakeholders believed that irrigators who were forced to sell delivery entitlements and pay significant termination fees historically, should be given the option to take back those delivery entitlement given the relevant rules have been amended.
- In terms of water moving to its highest value use, some stakeholders expressed that it was sad to see the rice and dairy industries struggling to afford water, when those industries provide long term social and community value. These stakeholders questioned why highest value use need to be thought of in terms of a 12 month balance sheet rather than long term.