



ACCC inquiry into water markets in the Murray-Darling Basin

Issues Paper

17 October 2019

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The Murray-Darling Basin water markets inquiry

On 8 August 2019 the Treasurer, the Hon Josh Frydenberg MP, directed the Australian Competition and Consumer Commission (**ACCC**) to hold an inquiry into markets for tradeable water rights relating to water in the Murray-Darling Basin (**the Inquiry**).

The Inquiry has been established at a time of significant change in water policy, water markets and irrigated agriculture in the Murray-Darling Basin. The Inquiry is also being undertaken against a backdrop of increasingly severe drought and reduced water availability. Water access entitlement and allocation prices have risen in recent years, with sharp rises in some products and trading zones in recent months.

At the same time, a number of other inquiries, reviews and processes are underway, including the independent assessment of social and economic conditions in the Murray-Darling Basin, water resource planning accreditation processes, and the Victorian Government's investigation into water market transparency options.

The Inquiry will seek views from the broad range of people with interests in the use and trade of water in the Murray-Darling Basin. The ACCC will call for submissions, hold public forums, and collect specific information on issues affecting water markets.

This Issues Paper is the first step in the ACCC's public process. It sets out questions on five key areas of focus, to provide a framework for addressing the wide range of matters falling within the Inquiry terms of reference, and invites submissions on these and any other relevant matters.

The ACCC will submit an interim report to the Treasurer by 31 May 2020 and a final report to the Treasurer by 30 November 2020. The interim and final reports will be publicly released. The final report will contain recommendations by the ACCC on measures that can be taken to improve the operation of markets for tradeable water rights within the Murray-Darling Basin.

Terms of Reference and scope

The Terms of Reference for the Inquiry, as set by the Treasurer, state that matters to be taken into consideration in the Inquiry must include, but are not restricted to:

- (a) market trends since 2012, including demand for water, changes in the location where water is used, the quantity of water traded, water availability, changes in water users and their communities, development of new trading products, and the number of participants and sectors participating in the water markets
- (b) the role of carryover arrangements, and the trading of water allocations which have been carried over, on water markets
- (c) the role and practices of market participants, including water brokers, water exchanges, investment funds and significant traders of water allocations and entitlements
- (d) the availability to the public of information on water market activities and tradeable water right holdings
- (e) the timeliness, accuracy, and completeness of public information released on water market activities and tradeable water right holdings, including true trade price reporting and the types of trade (for example, immediate purchases, forward contracts, leases)
- (f) barriers to entry, expansion and exit, including transaction costs
- (g) the management of constraints on the storage or delivery of water, including adjustments made to give effect to trades and intervalley transfers.

Matters that are out of scope

There are a number of topics that are important to people interested in the Murray-Darling Basin but are out of scope of this Inquiry. The Terms of Reference state that the Inquiry does not extend to any of the following:

- (a) the social and economic impact of water trading on communities in the Murray-Darling Basin
- (b) the effectiveness of water buy-backs for environmental purposes
- (c) supply of a good or service that is an exempt supply.¹

The social and economic impact of water trading on communities in the Murray-Darling Basin falls within the scope of the [Independent assessment of social and economic conditions in the Basin](#) requested by the Australian Government.

Water resource planning processes, water resource plans and the sustainability of any caps imposed under these are also not within the scope of the Inquiry.

Timetable

The dates below are indicative. The ACCC will publish further information with confirmed dates on its website as the Inquiry progresses.

9 August 2019	Commencement date
17 October 2019	Release of Issues Paper
November 2019	Public forums – timing and locations listed at the end of this document and published on ACCC website
29 November 2019	Due date for submissions in response to the Issues Paper
31 May 2020	Preliminary report to be provided to the Treasurer
30 November 2020	Final report to be provided to the Treasurer

Process

The ACCC will use information, data and other evidence obtained from a broad range of sources to inform its reports and recommendations. As well as submissions, the Inquiry will obtain information through public forums, targeted consultation and formal information requests. The ACCC has the legal power during the Inquiry to compel certain information from water market participants where required. The ACCC may also hold formal hearings where invited parties provide sworn evidence to the ACCC.

Providing information to the Inquiry

There will be a number of ways and opportunities for people to provide information to the ACCC as part of the Inquiry. You can ask a question about the inquiry or make a submission in response to this Issues Paper:

- either in writing, to waterinquiry@acc.gov.au, on the [ACCC consultation hub](#) or over the phone (contacts provided below)

¹ The reference to 'exempt supply' in the water inquiry Terms of Reference reflects the requirements of section 95B of the *Competition and Consumer Act 2010* (Cth). The ACCC is not aware of any exemption declarations for goods and services relevant to this Inquiry.

- at [public forums](#) to be held by the ACCC in a number of locations across the Murray-Darling Basin. The timing and locations of these forums are listed at the end of this document and will also be made available on the ACCC's website
- following release of the ACCC's interim report, which must be provided to the Treasurer by 31 May 2020.

Submissions to this Issues Paper are requested by **29 November 2019**.

ACCC contacts

If you would like to provide information over the phone, please contact:

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Treatment of information

The Inquiry is a public process and written submissions will generally be made available on the ACCC website.

The *Competition and Consumer Act 2010* allows parties that provide written submissions to the Inquiry to make claims for confidentiality in certain circumstances.

The ACCC can accept a claim of confidentiality from a party if the disclosure of information would damage their competitive position. If the ACCC is satisfied that the confidentiality claim is justified, it must keep that information confidential unless it considers that disclosure of the information is necessary in the public interest.

If the ACCC considers that the confidentiality claim cannot be upheld, the ACCC will provide the party with an opportunity to withdraw part or all of their submission. If this information is withdrawn then the ACCC will not take it into account. If a party elects not to withdraw the information then the ACCC may disclose the information publicly. If the ACCC subsequently considers that disclosure of the information that has initially been treated as confidential may be necessary in the public interest, the ACCC will consult with the party providing the information before any such disclosure is made.

The ACCC invites you, where appropriate, to discuss confidentiality issues further with the ACCC in advance of providing a written submission or other information.

Any information that you would like to claim confidentiality over should be provided in a separate document and should be clearly marked as "confidential" on every page. Reasons must be provided in support of the claim for confidentiality, so that the ACCC can properly consider whether the claim is justified.

Potential outcomes

The Inquiry may lead to a range of outcomes, such as:

- findings regarding the practices of water market participants
- findings regarding structural, institutional, or competition issues in water markets

- recommendations and/or collaborative work with governments and industries on solutions to any structural, institutional, competition or other issues affecting the efficient operation of water markets
- ACCC compliance and enforcement action to address behaviour of market participants that raises concerns under the *Competition and Consumer Act 2010*
- Referral of issues regarding conduct outside the *Competition and Consumer Act 2010* to relevant authorities or agencies.

Water markets in the Murray-Darling Basin

Glossary^{2 3}

Water market terminology can be technical and can vary depending on context or relevant laws. The Issues Paper uses the terms below with the following meanings. See the Bureau of Meteorology's [Australian Water Information Dictionary](#) for further information on terminology.

Carryover: The option to hold in storage a portion of unused seasonal allocations for use in a subsequent year. Through water markets, carryover allocation may be able to be traded to other participants or 'parked' in the carryover capacity of an eligible entitlement.

Constraint: Anything that reduces the ability to deliver water. Constraints can include physical restrictions, such as low lying bridges, crossings or private land, and can also refer to operational aspects such as river rules or operating practices (rules based constraints).

Irrigation infrastructure operator: An entity that owns or operates water service infrastructure to deliver water for the primary purpose of irrigation.

Irrigation right: A right that a person has to receive water from an irrigation infrastructure operator. Trades of irrigation rights can only be made within an irrigation infrastructure operator's network, and are subject to the operator's approval.⁴

Sustainable Diversion Limits are set under the Basin Plan 2012 (**Basin Plan**) and reflect how much water can be used, on average, from Murray-Darling Basin water resources by towns, communities, industry and farmers.

Trade includes a transfer (that is, a trade that does not involve the payment of consideration; a trade between places under which ownership of the right being traded does not change; the establishment of a leasing arrangement; and the establishment of a tagged water access entitlement). Trade can include transfers of water within an irrigation network, into or out of a network, entirely outside of an irrigation network, within and between trading zones and between states.

Tradeable water rights means (a) water access rights (including water access entitlements, and water allocations), (b) water delivery rights or (c) irrigation rights.

² National Water Commission. (2011). Water markets in Australia: A short history. <https://apo.org.au/sites/default/files/resource-files/2011/12/apo-nid27438-1224671.pdf>

³ Bureau of Meteorology. (2019). Australian water information dictionary. <http://www.bom.gov.au/water/awid/> (see glossary for 'water markets report'). Relevant terms may be defined in legislation: see, in particular, definitions in the Water Act 2007 (Cth) and the Basin Plan 2012 (Cth).

⁴ Irrigation rights can only be traded between right holders in the same irrigation infrastructure operator's network. However, irrigation right holders can transform their share of the operator's entitlement onto a separate water access entitlement held by the irrigator or another person (this has the effect of reducing the share component of the operator's water access entitlement and is a particular form of trade). These arrangements are governed by the Water Market Rules 2009 (Cth).

Water allocation: The volume of water allocated to a water access entitlement in a given season, defined according to rules established in the relevant water plan. The size of the allocation depends on how much water is available in the water resource in that season. Also referred to as a seasonal water assignment in Queensland.

Water access entitlement: A perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area or other water management area. Also referred to as a water share (Victoria), water access licence (NSW) and water allocation (Queensland).

Water delivery right: a right that a person has to have water delivered by an infrastructure operator. A water delivery right typically represents the holder's right of access to an irrigation network.

Water market participants include those persons involved in water markets through the holding, use, leasing, trade, or regulation of tradeable water rights, and include irrigation farmers, investors, water brokers, water exchanges, water registries and other service providers that facilitate the trade of water, environmental water holders, urban water authorities, other infrastructure operators, indigenous users and communities, and market advisors and analysts.

Water market products includes tradeable water rights, and other statutory or contractual arrangements associated with tradeable water rights, such as leases, forwards and options.

Background

The Murray-Darling Basin covers areas of Queensland, New South Wales (**NSW**), Victoria, South Australia, and the Australian Capital Territory. Water markets in the Murray-Darling Basin include various separate state-based markets, as well as the southern connected Murray-Darling Basin market where trade occurs across water systems in NSW, Victoria and South Australia, and interstate trade between Queensland and NSW.

People use water markets to trade a variety of rights including:

- actual volumes of water (water allocations) – commonly described as ‘temporary trade’
- ongoing legal rights to water (generally, water access entitlements and irrigation rights but also other water access rights that can sometimes be traded) – commonly described as ‘permanent trade’
- other tradeable water rights (such as water delivery rights) or the holding of a water access entitlement (such as access to carryover arrangements).

The most widely used markets are for water allocations and water access entitlements in regulated surface water systems (that is, for access to surface water resources supported by dams). Less used markets exist for groundwater, unregulated surface water, water delivery rights and other tradeable water access rights and water market products.

A range of participants trade water in the Murray-Darling Basin. The main group is farmers engaged in irrigated agriculture. They use water markets to source water to meet their short-term needs (e.g. expanding production, finishing a crop or selling excess water allocation) or to address long-term needs or risks (e.g. changing production or crop types, managing long term water availability risks). Other groups who trade in water markets include irrigation infrastructure operators, urban water authorities, environmental water holders, indigenous users and communities, water brokers and exchanges, investors, and others, with some being significant users and traders of water at different times and for a range of reasons.

The Bureau of Meteorology’s [Australian Water Markets Report 2017-18](#) contains further information on water markets in the Murray-Darling Basin.

The volumes, frequency and range of trade on water markets has increased over recent years. This has been driven by a range of factors, including the implementation of wide-ranging reforms agreed to by the Council of Australian Governments in the National Water Initiative in 2004. The increasing reliance on markets by traditional irrigators and the entry into the market of new classes of participants has led to changes in agricultural production in the Murray-Darling Basin, with some industries (such as horticulture) expanding, and others declining.

Principles and objectives of water markets

Water markets rely upon property rights to enable the adoption of a ‘cap and trade’ approach to manage available resources. The National Water Initiative reforms provided that a water planning process would determine how much water was available and how it should be allocated at an aggregate level (e.g. for the environment and for consumptive users), with a cap set to establish the ‘consumptive pool’. Water trade enables the reallocation of water amongst different uses or users within this consumptive pool.

The concept behind this system is to use markets as an efficient tool to allocate scarce resources, including over time. The key principles that underpin water markets include:

- the need for clearly defined property rights

- having a clearly defined resource cap or limit
- strong compliance and enforcement regimes, including effective and comprehensive monitoring of extractions
- no unreasonable barriers to trade
- no discrimination regarding who can trade
- appropriately addressing externalities and third party interests
- having appropriate transaction costs and charges
- sufficient availability of information.

Water markets that are established on these principles can then be designed to meet the objectives of:

- allocating and using water in a way which optimises economic, social and environmental outcomes
- allocating water efficiently, including by promoting or providing allocative, dynamic and productive efficiency
- allocating scarce water resources to their most valuable and productive uses at any point in time, subject to appropriate rules and controls
- facilitating reallocation of water within and between regions, including interstate
- supporting the environment and appropriately protecting third party interests.

Not all of these objectives are matters that are within the scope of the Inquiry. In particular, the Inquiry will not be looking at the social and economic impact of water trading on communities and the effectiveness of water buy-backs for environmental purposes. However, in considering the operation of water markets within the Murray-Darling Basin, the Inquiry will look at whether the broad principles listed above are being given effect as intended.

Operation of water markets

State laws establish the legal entitlements (that is, the property rights) to water, and largely determine whether those entitlements can be traded, and subject to what rules. Interstate agreements have enabled trading between states in the southern Murray-Darling Basin markets, and these arrangements are now subject to the water trading rules under the Basin Plan.

However, the ability to move water between different trading zones and states is subject to constraints, primarily because the level of hydrological connectivity varies across the Murray-Darling Basin. The northern Murray-Darling Basin is characterised by lower hydrological connectivity between catchments and a lower proportion of regulated flows than in the southern Murray-Darling Basin, and as a result has more fragmented water markets.

Water markets rely on regulatory and governance arrangements that operate at Commonwealth, state and sometimes local (water resource plan or irrigation area) levels. The main roles and responsibilities can be summarised as follows:

- State governments generally make water market policy, and are the resource managers and regulators in their own jurisdiction with responsibility for monitoring water use. States split these responsibilities amongst or within government departments, state owned water corporations, or other independent entities (e.g. state-based compliance regulators such as Natural Resources Access Regulator in NSW).

- State owned regional or rural water corporations provide a range of water management and delivery functions. Depending on the state, water corporations may monitor water use and undertake enforcement.
- Irrigation infrastructure operators enable and manage trade within private irrigation networks subject to certain rules, but also enable trade into and out of their area by trading onto their bulk licence on behalf of their customers, processing transformation applications⁵ and trading in their own right.
- The Murray-Darling Basin Authority (**MDBA**) is the Commonwealth authority responsible for drafting and ensuring implementation of the Basin Plan. This includes administering and enforcing Sustainable Diversion Limits and ensuring state trade rules comply with Basin Plan water trading rules. The MDBA regulates trade restrictions across the Basin, including irrigation infrastructure operator trading rules for water delivery rights. It also works with states to manage interstate water accounts and other arrangements that facilitate interstate trade. The MDBA is also involved in managing inter-state water allocation processes and River Murray operations.
- The ACCC monitors and enforces compliance with rules regarding regulated water charges and some water market activities. The ACCC advises the Commonwealth Minister on those rules, also advises the MDBA on the Basin Plan water trading rules, and enforces the *Competition and Consumer Act 2010*.
- The Bureau of Meteorology has a range of water data collection and publication roles or responsibilities under the *Water Act 2007*, and it publishes water market information (including reports) and provides online water market information tools.
- Several other agencies, including the Australian Government Department of Agriculture, the Productivity Commission, the Australian Bureau of Agricultural and Resources Economics and Sciences, also play roles relevant to water markets.

⁵ See note 4 above for an explanation of transformation arrangements.

Issues for comment

The ACCC is seeking comment on a range of issues relevant to water markets and their operation. These have been grouped into five high level themes or focus areas:

1. Market trends and drivers
2. Market transparency and information
3. Regulation and institutional settings
4. Market participant practices and behaviours
5. Competition and market outcomes.

For each issue, there are broad feedback points to guide your comments. In addition to these points, under each focus area there is a list of specific questions that you may wish to consider when preparing your response. You are not required to cover every issue or question. You can provide information in response to this Issues Paper as you see fit and may also comment on issues that are not identified in this paper but which are relevant to the Inquiry.

In providing responses, please include supporting information, data, reasons and specific examples where possible.

Making a submission: tell us about yourself

When making a submission, it would assist the ACCC if you could provide some background information relevant to your views on water markets, including:

- the reasons for your interest in water markets
- where you are located and where you hold or trade water
- the nature and frequency of your dealings with water markets
- the types of water rights you hold, if any
- any other information that provides context to your observations.

This will help us target our recommendations appropriately.

Issue 1 – Market trends and drivers

Water markets in the Murray-Darling Basin cover a variety of tradeable water rights and water market products, and operate within and across a geographically diverse area, with varying degrees of activity and sophistication. These markets are continually evolving in response to climatic, economic, policy, legal and social factors.

Drivers of supply and demand

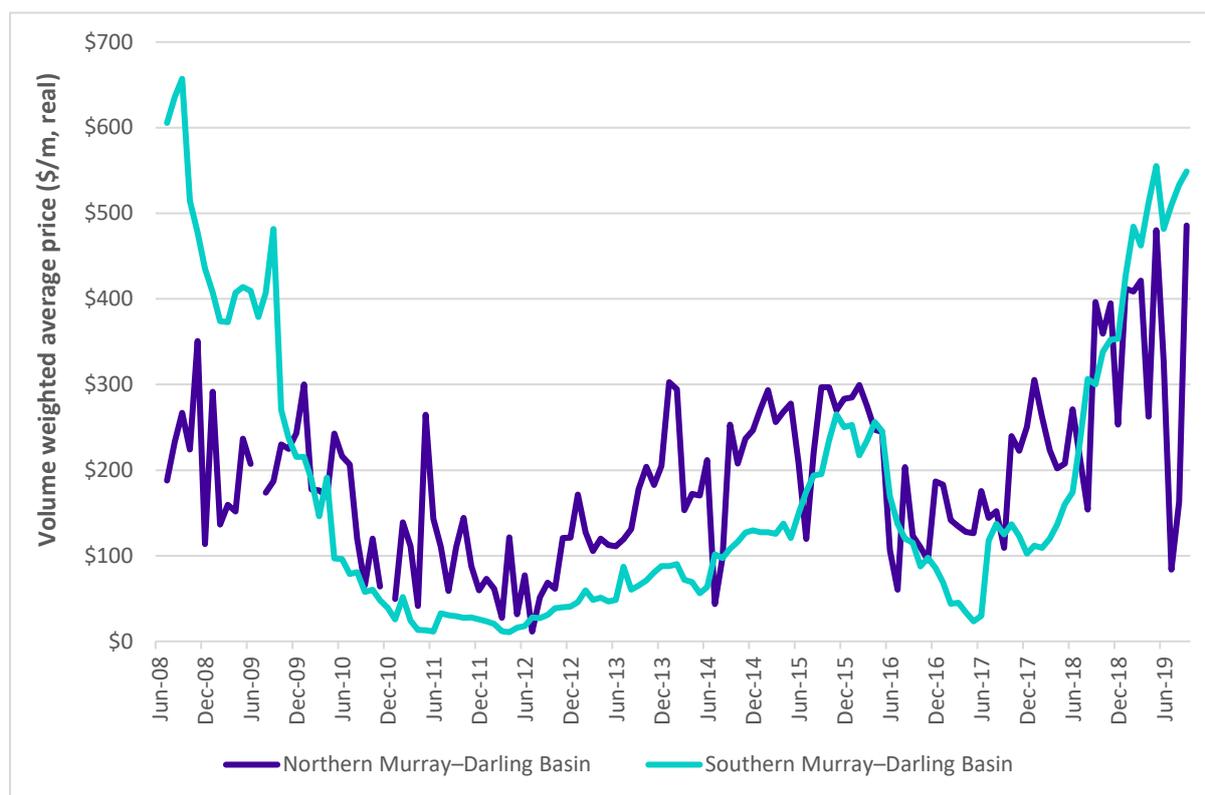
Markets respond to supply issues. Water supply, or availability, is closely linked to climatic conditions, with rainfall, evaporation and conveyance losses all influencing the volume of water held in storages. With allocation announcements largely based on water availability, water supply remains a key driver of water allocation prices, with low allocations associated with high prices and vice versa. Since 2017, much of the Murray-Darling Basin has experienced reduced or declining water availability as a result of hot, dry weather conditions and the associated reduction in water held in storages. Water supply can also be affected by infrastructure programs (such as construction of new dams) and changes to government policy (including water buybacks).

Over time, there has been an increase in demand for water for critical human water needs, as well as from irrigated agriculture, and from the environment (through the allocation of legal rights to water for the environment). The levels, timing and location of demand for water can be influenced by climatic conditions as well as by variable cropping patterns (often associated with changing commodity prices) and changing market dynamics (such as new market entrants). The ability of market participants to substitute between water sources (for instance from surface water to groundwater) can also impact water demand and corresponding prices.

Changes in water prices over time

Water prices in the Murray-Darling Basin fluctuate with shifts in supply, demand and market expectations. Over the last decade, prices in the southern Murray-Darling Basin, where the majority of consumptive surface water use and market activity occurs, have varied significantly. Water allocation prices in 2019–20 are the highest they have been since 2008–09 (figure 1). Entitlement prices in the southern Murray-Darling Basin have also reached record highs. Entitlement prices have increased significantly over the past five years, with higher reliability entitlement prices increasing more rapidly in recent times.

Figure 1: Monthly volume weighted average prices for water allocation trade in the Murray–Darling Basin, July 2008 to September 2019, in real terms



Source: Bureau of Meteorology, *Water markets dashboard*, <http://www.bom.gov.au/water/dashboards/#/water-markets/mdb/at>, viewed 1 October 2019.

Note: Chart in real terms, adjusted to consumer price index figures for June quarter 2019.

Prices in other water markets (including for groundwater, in unregulated systems, in the northern Murray-Darling Basin and for water delivery rights) depend on local conditions, though prices for some products have also increased in a similar manner as prices for southern Murray-Darling water access entitlements and allocations in recent years.

The ACCC is interested in exploring trends in water supply and demand, in particular since 2012, and their potential impact on water prices, trading and other market activity. The Inquiry will also investigate other factors impacting market operation, such as changes to the mix of market participants, changing behaviours and any other relevant trends.

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- How water availability and demand are changing over time, the reasons for these changes and the impact they are having on water markets.
- The factors that have been driving movements in prices for water access entitlements and allocations over time.
- Changes to the number, diversity and behaviour of water market participants over time, and how this is affecting water markets.
- Changes to the number, diversity and amount of trading activity of water market products on offer over time, and how this is affecting water markets.

In providing your comments in response to Issue 1, you may want to consider the following (where possible, please provide specific examples to support your comment):

- How your activity in water markets has changed over time.
- How changes to industries, regions and technologies are affecting water markets and water use.
- Changes to the number and diversity of water market products on offer over time.
- The availability and impact of new and emerging water market products such as leases, forward contracts, options and carryover parking.
- How and why you and other market participants use carryover arrangements, including trading and parking of carryover allocations.
- Whether and how the rules around carryover are having an impact on trading patterns and drivers in water markets or related industries.
- How you forecast price movements for tradeable water rights over the short and long term.
- Changes to the availability of tradeable water rights and other water market products, and the levels of trading activity, in different water markets.

Issue 2 – Market transparency and information

Current, accurate and readily available water market information supports functioning and competitive water markets by giving market participants the ability to make informed trading decisions.

The ACCC considers that ‘water market information’ extends beyond price data to include a broad range of information and data that can assist market participants in using water markets. This includes information about the characteristics (such as reliability and carryover arrangements) of water access entitlements and of other tradeable water rights, market rules and regulations (including those applying within irrigation infrastructure operators’ networks), water availability and allocation announcements, river operations, trade constraints and their operation, weather and climate, water use, environmental water ownership and use, and agricultural production and prices.

For participants to be able to make informed trading decisions (including whether to enter or exit the markets), they must be able to understand offers, opportunities, costs and any relevant market settings and trading rules. Poor quality, inconsistent or difficult to interpret information can increase transaction costs and undermine participants’ confidence in the operation of the markets.

The ACCC is aware of recent reports noting issues with available water market information, such as, the Murray-Darling Basin Authority’s audit of [Water Trade Price Reporting Under the Basin Plan](#). The ACCC is also aware of work currently being done by the Victorian Government to consult on [water market transparency](#) in that state.

The ACCC wishes to identify where significant information gaps exist and seeks to understand where participants encounter practical difficulties in using currently available data to participate in water markets with confidence. The ACCC is also interested in identifying any flaws in information collection and reporting processes and rules that are undermining the accuracy or accessibility of water market information.

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- Your use of market information, including the types and sources of information you currently access, the information you would like to access and the methods and tools you use to access it (including whether you get information through public sources, such as state water registers, or private sources, such as through water brokers, and the reasons for using your preferred sources).
- Whether and, if so, how the availability, accessibility, accuracy, consistency and timeliness of water market information affects your trading decisions or markets more generally.
- Your views on the types of water market information that should and should not be publicly available.
- How much you rely on the information and knowledge possessed by water market intermediaries, such as brokers, exchanges and advisors.
- What avenues you are aware of to increase or improve your knowledge of water markets, and any suggestions on additional information and information delivery methods you would like to see made available.

In providing your comments in response to Issue 2, you may want to consider the following (where possible, please provide specific examples to support your comment):

- The types of water market information you access, how you access it, whether you access it from public (such as state water registers) or private (such as information supplied by water brokers) sources, how often you access it, and what it costs to access.
- How you use this information and why it matters for your business/decisions.
- The frequency and timeliness with which information is made available. How does this help or hinder you to make decisions?
- Whether you are able to access all of the water market information you require, and if so, can you get it from one source, or do you use multiple sources.
- Any difficulties you encounter when accessing, interpreting and applying market information. Who do you contact when you encounter these difficulties?
- Whether any difficulties accessing, interpreting and applying market information reduce your, or other market participants', ability to enter or exit water markets.
- What other types of water market information you would like to access and why that information would be helpful or important.
- The extent to which you can confidently make water trading decisions based on the information you have available.
- The extent to which you rely on the information and knowledge held by water exchanges and water brokers to make decisions.
- Your views on the types of water markets information that should and should not be publicly available.
- Whether differences in information reporting across states or agencies is impacting your participation in the market and market competition.
- Whether information on the following is easy to access and understand:
 - trade prices and volumes
 - trading rules and operation of constraints
 - the characteristics of water access entitlements and other products
 - carryover provisions / arrangements (including those relating to trading and parking carryover)
 - water ownership structures

- water availability
- river operations
- weather and climate
- water use
- environmental water ownership and use, including trade.
- Whether some market participants may have access to more timely and better quality information than others and, if so, how this advantages them.
- Whether some market participants have a better understanding of the operation of water markets than others and, if so, the reasons for this and the impact this is having.

Issue 3 – Regulation and institutional settings

An appropriate level of regulation, effective market settings and clear institutional roles are all essential to instilling confidence in market operation, ensuring equitable access to water markets and managing third party impacts. Regular and accurate monitoring of water extraction is a key element of these arrangements, and is crucial to effective compliance and enforcement.

The regulation of water markets in the Murray-Darling Basin has changed over time. Key changes include moves to develop interoperability and to harmonise regulatory approaches across Basin states, primarily driven by the National Water Initiative, and to expand the role of the Australian Government in the Murray-Darling Basin through the provisions of the *Water Act 2007* and the Basin Plan.

As set out in the Background section above, the planning, management and regulation of water has been split between a number of responsible agencies, with responsibility stemming from a variety of legislative and other instruments. Over time, responsibilities for the development and regulation of water markets and trade activity have shifted between and been shared across different government bodies and different levels of government. As well as government agencies, irrigation infrastructure operators have their own rules for trade within their irrigation networks. This has produced differences in the regulatory settings across states, and within irrigation infrastructure operators' networks, for issues such as carryover provisions, management of physical constraints, and processes and procedures for managing trades and allocating water.

There are also natural differences between the northern and southern Murray-Darling Basin catchments. In particular, there are different climatic patterns, physical characteristics and more limited hydrological connectivity in the northern Murray-Darling Basin, which result in different water access rules (including carryover arrangements) and more fragmented markets than in the southern Murray-Darling Basin.

The Inquiry will examine how the current regulatory and policy settings influence the operation of water markets across the Murray-Darling Basin. In particular, the Inquiry will explore how the roles and operation of regulatory and policy making institutions support or hinder the efficiency of, and access to, water markets. It will also consider whether the current split of roles and responsibilities between governments and agencies is the most effective form of governance for the future operation and development of water markets.

Further, the Inquiry will explore the extent to which the variations in water market products and management arrangements between the northern and southern Murray-Darling Basin reflect the natural differences between the catchments, and whether regulatory settings can be harmonised across these systems or different approaches are required.

Water resource planning processes, water resource plans and the sustainability of any extraction caps imposed under these are outside the scope of the Inquiry.

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- Whether regulation and institutional settings for Murray-Darling Basin water markets are effective and appropriate.
- Whether and how regulatory and policy differences between states, Basin catchments and trading zones impact competition, efficiency and access to water markets.
- The extent to which market settings, such as trading rules and management of constraints, are positively or negatively impacting efficient and equitable water market activity.
- The extent to which regulatory functions, settings and actions are clear and understood.

In providing your comments in response to Issue 3, you may want to consider the following (where possible, please provide specific examples to support your comment):

- How well do you understand each government agency's roles and responsibilities? Are they clear and well communicated?
- Whether and why the roles and responsibilities of the different water market regulators, as well as irrigation infrastructure operators, work well, or do not work well, in managing water markets.
- Whether current approaches and frameworks for metering and monitoring of water use are effective and appropriate.
- How water trading interacts with your requirements for delivery of water.
- Whether and how differences between states and trading zones (such as access to carryover) impact market outcomes.
- Whether the trading rules are appropriate to facilitate an efficient and competitive market.
- Whether regulations create inappropriate barriers to you or other market participants entering or exiting water markets.
- Whether and how carryover mechanisms are impacting allocation and entitlement markets.
- The processes for water supply and allocation announcements and how effectively they are managed and communicated.
- The effectiveness of trading rules and other means of managing physical system constraints.
- Whether physical constraints, such as the Goulburn and Murrumbidgee Inter-Valley Trade Limits and the Barmah Choke, affect or limit participation in water markets and how this impacts commercial operations.
- Whether current approaches to managing constraints and river channel and delivery network congestion allows equitable access to water trade opportunities.
- Whether the level of regulation of water exchanges, water brokers or other market intermediaries is appropriate.
- Whether different administration practices, systems, and rules between Basin states affect the effective and equitable access to trade or the transaction costs of undertaking trades.

Issue 4 – Market participant practices and behaviours

The ACCC is interested in how the ways that different market participants operate in, or interact with, water markets may support or undermine market operations, competition, confidence and beneficial outcomes for participants.

The number and diversity of water market participants has increased over time. When water markets were first established, they largely involved irrigators, irrigation corporations, water brokers and water exchanges. Successive policy reforms to 'unbundle' water rights from land have allowed the emergence of investors who own and trade water rights (sometimes without owning any irrigable land) for profit maximising purposes.

Over time, market participants have expanded to include investment funds, retired irrigators, large water users that do not own much or any water access entitlement (and rely on water allocation markets to purchase water), indigenous users and communities, urban/town water authorities and environmental water holders. Water brokers and exchanges offer services, in exchange for a fee or commission, to facilitate the trade of water market products on behalf of those looking to buy or sell, including often negotiating the price and terms of the deal and handling trade approval processes.

These different types of water market participants all have different ways of using and trading water and their decisions will affect water markets in different ways. The ACCC is looking to better understand the differing practices and behaviours of the various participants in water markets in the Murray-Darling Basin, and the role of brokers and exchanges as providers of related services. The Inquiry will investigate the impacts, both positive and negative, of having a diverse range of market participants accessing water markets.

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- How you use water markets, and your understanding and experience of how other market participants use water markets.
- How the practices and behaviours of different water market participants are positively or negatively impacting water market access, transparency, efficiency, and competition.
- Whether and, if so, how large market participants have influenced water markets (for example, by changing water availability or prices) through their trading strategies.
- How you use different water market products (including carryover, leases, options and forward contracts) and services provided by water market intermediaries.

In providing your comments in response to Issue 4, you may want to consider the following (where possible, please provide specific examples to support your comment):

- How you participate in water markets.
- Whether you use brokers, exchanges or advisors in your water trading.
- Any barriers you have experienced when trading or otherwise interacting with water markets.
- The behaviours and practices you have witnessed by others in water markets, including:
 - irrigation farmers
 - investors
 - water brokers
 - water exchanges
 - water registries
 - other service providers facilitating the trading of water
 - environmental water holders
 - urban water authorities
 - irrigation infrastructure operators

- market advisors and analysts
- market regulators.
- Whether you are aware of possible conflicts of interest involving water market participants, how conflicts of interest may impact market participant behaviour and how conflicts are dealt with.
- Whether and how the operation of environmental water holders in buying, selling or moving water is impacting water markets and your, or other market participants' trading behaviour.
- Are you aware of instances where large market participants have used trading strategies which have influenced water availability or prices? Please provide details, including whether this changes depending on the season and overall water availability.
- Use of different water market products, including carryover, leases, options and forward contracts, and how they affect your business.
- Whether and how the use of carryover arrangements (including trading and parking) is impacting water markets.
- Whether and how trade processing fees or timeframes, broker fees and other water charges impact your decisions to trade.
- Whether you consider fees for trade processing, broker fees, or other water charges to be sufficiently transparent.

Issue 5 – Competition and market outcomes

Water markets are a 'cap-and-trade' system, which rely on:

- clearly defined cap(s) on the available resources
- clearly defined, legally secure and tradeable water rights
- robust and functioning registers of water ownership and trade
- sound governance and regulatory arrangements, including clearly defined water trading rules
- comprehensive compliance and enforcement regimes, supported by regular and reliable water use metering and water accounting frameworks, together with adequate resourcing.

Water markets in the Murray-Darling Basin are intended to drive an adaptive and productive irrigated agriculture sector, while supporting a sustainable level of water diversion. By allowing water to move to its most productive or "highest value" use water markets are intended to facilitate the efficient allocation of water over time and across hydrologically connected regions. Water market policy seeks to:

- facilitate the efficient trading of shared water resources, including by minimising transaction costs, enabling good information flows and compatible arrangements across jurisdictions and removing barriers to trade
- contribute to the economically efficient allocation and use of water, including through enabling the appropriate mix of water products to develop and enhancing the productivity and growth of water-dependent industries
- appropriately manage the third-party hydrological and environmental impacts of changes in the timing and location of water use that arise from water trading activities
- enable open and non-discriminatory access to water markets

- provide participants with confidence in the market rules, regulations and institutions, and enable them to make informed decisions.

The development of water markets in the Murray-Darling Basin in recent decades has resulted in significant changes, including in the way the irrigated agricultural sector operates and the mix of industries reliant on irrigation. Such a significant shift to the way a sector operates will have a range of both positive and negative impacts, which may not be experienced evenly by all affected industries and individuals.

Water markets may be relatively 'thin' in the volume of trade conducted compared to other trading markets, especially in times of low water availability. This may be associated with the natural limit on the volume of the tradeable commodity. The Inquiry will explore whether the design of water markets is working in circumstances where there may not be a large volume of trade occurring, and whether limited volumes of water availability and trading activity increase the ability of some water market participants to influence particular markets.

The ACCC welcomes your feedback on any of the following issues. Where possible, please include supporting information and specific examples in your responses.

- The extent to which the objectives of water markets have been achieved and any unintended consequences that may have resulted.
- Whether and how competition and efficiency in water markets have changed over time.
- The extent to which water markets are currently operating efficiently.
- How the outcomes of water markets vary between different industries, locations and individuals.

In providing your comments in response to Issue 5, you may want to consider the following (where possible, please provide specific examples to support your comment):

- Your view on how competition works in water markets, and how competition and efficiency in water markets have changed over time.
- Whether water markets are operating efficiently, and where changes to improve efficiency can be made.
- Whether current approaches and frameworks for metering and monitoring of water use are impacting water market outcomes, including efficiency, equitability and confidence in the market.
- Whether water markets are affecting the entry and exit trends of different water market participants, including indigenous communities / traditional owners, and industry segments.
- Whether and, if so, why some market participants and industries are better able to enter, access or exit water markets than others.
- Whether and, if so, why some market participants and industries have been better able to adjust to changes in water markets than others.
- Whether the volumes of tradeable water rights and other water market products available within and between seasons means water trading is a 'thin' market, and if so, whether this impacts the ability of some traders to influence the market.
- The extent to which the objectives of water markets have been achieved.
- Whether unintended outcomes, beyond the intended objectives of water markets have occurred.

Potential solutions

The ACCC has been asked to recommend options to enhance markets for tradeable water rights, including options to enhance these markets' operations, transparency, regulation, competitiveness and efficiency.

The ACCC invites your views and ideas regarding potential solutions to any problems you may have raised in your submission. Please briefly summarise the problem, describe your proposed solution and give your reasons for proposing it.

Public Forums

The ACCC is hosting a series of [public forums](#) in November to hear the views of those engaged in, or affected by, water markets in the Murray-Darling Basin.

Locations	Venue	Times / dates	Register
Mildura	Benetook Room, Alfred Deakin Centre, 190 Deakin Avenue, Mildura, VIC	11.30 am, Thursday 7 November	Register here
Renmark	Renmark Club, 160 Murray Avenue, Renmark, SA	10 am, Friday 8 November	Register here
Griffith	Griffith Exies Club, 6/12 Jondaryan Avenue, Griffith, NSW	2 pm, Monday 11 November	Register here
Deniliquin	Mountbatten Room, Return Services League Club, 72 End Street, Deniliquin, NSW	10 am, Tuesday 12 November	Register here
Kerang	Kerang Senior Citizens Community Meeting Room, 169 Boundary Street, Kerang, VIC	6 pm, Tuesday 12 November	Register here
Shepparton	Shepparton Golf Club, 15 Golf Drive, Shepparton, VIC	12 pm, Wednesday 13 November	Register here
Dubbo	Return Services League Club, Cnr Brisbane Street & Wingewarra Street, Dubbo, NSW	10 am, Monday 18 November	Register here
St George	St George Cultural Centre, 112 Victoria Street, St George, QLD	11 am, Wednesday 20 November	Register here
Narrabri	The Crossing Theatre, 117 Tibbereena Street, Narrabri, NSW	11 am, Thursday 21 November	Register here
Murray Bridge	Murray Bridge Golf Club, 40 Ritter Street, Murray Bridge, SA	12 pm, Friday 29 November	Register here