



ACCC inquiry into water markets in the Murray Darling Basin

Victorian Farmers Federation Submission

November 2019

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The Victorian Farmers Federation

The Victorian Farmers Federation (VFF) is the only recognised consistent voice on issues affecting rural Victoria and we welcome the opportunity to comment on the Waste to Energy Discussion Paper.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our state's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

The VFF consists of a nine person Board of Directors, with seven elected members and two appointed directors, a member representative General Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based and regionally located staff.

Each VFF member is represented locally by one of the 200 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.



David Jochinke
President

Summary of Recommendations:

Recommendation 1: The ACCC should review the total amount of water in the Southern Basin disassociated from land and separate out active irrigator and non active irrigation and those just simply holding water

Recommendation 2 : The ACCC acknowledge its free market positions of 2010 are not without consequence and it must clearly evaluate whether the Water Act's (2007) water market objective "to provide protection of third party interests" is being adhered to.

Recommendation 3: The ACCC investigate the depth of the water allocation market and potential excessive market power.

Recommendation 4: The ACCC dispel the confusion associated with carryover by providing a breakdown of carryover volumes in the Southern Basin by active irrigators, non-active irrigators, other water not tied to land, environment and urban authorities since 2012.

Recommendation 5: The ACCC review Clause 12.23 of the Basin Plan Act as it risks third party impacts and environmental damage

Recommendation 6: The ACCC ensure all States in the Basin provide improved information on the Water Market, similar to that proposed by DELWP

Recommendation 7: The ACCC ensure greater information is made available on large water market participant's in the Southern Basin by Zone. This includes their carryover behaviour and participation in the allocation market.

Non Active irrigators as a large group should also be examined across the Southern Basin to explore how many retired farmers are selling on the allocation market to fund their superannuation.

Recommendation 8: The ACCC ensure the Australia Tax Office's information on foreign ownership of water is merged with water market information more broadly

Recommendation 9: The ACCC review Section 46 of the Competition and Consumer Act (2010) misuse of market power provision and apply to the water market.

Recommendation 10: The ACCC ensures water brokers and associates do not have Allocation Bank Accounts (ABA's)

Recommendation 11: The ACCC recommend a frequency threshold on the number of water trades.

Recommendation 12: The ACCC take steps to ensure water brokers are regulated.

Recommendation 13: The ACCC ensure that those purchasing allocation must also have a water use license or water use registration.

Recommendation 14: The ACCC recommend the establishment of a Southern Basin Exchange.

Recommendation 15: The ACCC must consider third party impacts of continuing expansion in the Mallee risking existing irrigator's ability to receive water when they need it.

Recommendation 16: The ACCC must acknowledge environmental impacts caused by water trade and ensure sufficient protections are established.

Introduction

The VFF welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission's (ACCC) inquiry into water markets in the Murray Darling Basin.

The water market has rapidly developed since 1989 (see Figure below¹).

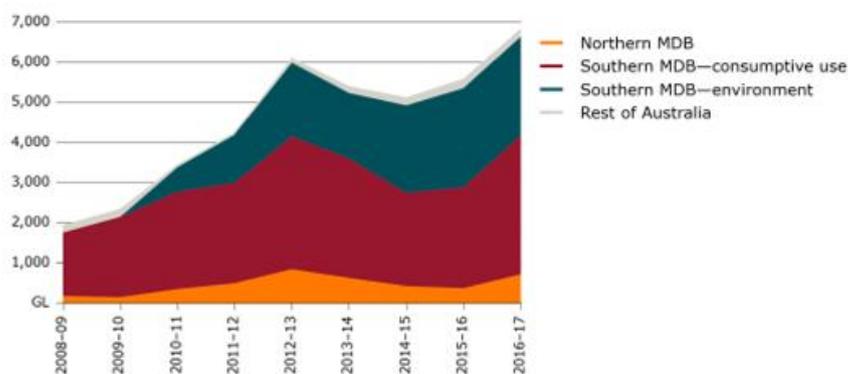
The original focus on water trading rules was to remove trading barriers, the water market matured over this time and it is now critical the ACCC give due consideration to delivery constraints, environmental and third party impacts as these were less of a focus during the market's development.

The ACCC must acknowledge that the water market is constrained by the natural physicality of moving water through a natural river system.

It is essential the ACCC and Commonwealth Government ensure the water market is working in the best interests of irrigated agriculture, to maximise returns on the water used to grow food and fibre and to promote water efficiency.

The VFF notes the Terms of Reference adopted by the Commonwealth limit the review of water markets to 2012 and beyond. The VFF believe this is too narrow in scope and should have been widened to 2005 and beyond.

Figure 13 Volume of surface water allocation trade, by region, 2007–08 to 2016–17



¹ ABARES, Australian Water Markets Report 2016-2017

Past ACCC Positions:

The VFF notes a number of ACCC positions in its Water Trading Rules review in 2010. The VFF did not support a number of recommendations proposed by the ACCC at this time as we argued agriculture needed time to adjust to a changing water market and some protections were still required.

ACCC 2010 Position on Trade Restrictions:

3.1.4. ACCC advice

Rule advice (3-A)

The Basin Plan water trading rules should provide that there are no specific restrictions on the trade of water access rights based on whether any party to the trade is a member of a particular class of entities, including entities such as:

- non-landholders (unless use has not been unbundled from water access rights)
- environmental water-holders
- urban water authorities
- foreign entities (except to the extent of the operation of the *Foreign Acquisitions and Takeovers Act 1975*).

The VFF never supported the removal of the 10% non landholder limit. The VFF believe it provided sufficient protection from water barons manipulating the water market. As a result of this recommendation the Victorian Government was forced to remove its 10% non-landholder limit. The amount of water disassociated from land has continue to increase over time.

In 2015 when the Victorian Government first prepared its 'Water Market Trends'² report, the amount of water not tied to land was 7 percent of total water shares of 175GL. By 2017/18 this had increased to 12 percent of 298 GL.

While further work is required to determine how much of this group is made of retired farmers or water speculators, this issue remains a key concern among Victorian farmers today. The VFF welcome efforts by the Victorian Government in its recent Water Market transparency review to separate out an active irrigator from a non-active irrigator. Other states should also adopt a similar approach.

Recommendation 1 : The ACCC should review the total amount of water in the Southern Basin disassociated from land and separate out active irrigator and non active irrigation and those just simply holding water.

² <https://waterregister.vic.gov.au/about/news/261-fact-sheets-on-water-market-trends>

4% Trade Out Rule:

In 2010 the ACCC stated the following regarding the four percent trade out rule:

Recommendation (4-B)

The ACCC recommends that Basin states give their full and urgent consideration to the immediate and complete removal of the 4 per cent limit (and other, similar limits) prior to the commencement of the Basin Plan water trading rules.

The VFF in 2010 did not support the removal of the 4% trade out limit. The VFF argued this limit ensured rural adjustment resulting from movements of water occurred at a manageable pace, and also guaranteed that farmers not selling their water and wanting to continue farming are not faced with stranded assets and increased costs.

With the Commonwealth and Victorian Government collectively investing \$2 billion to modernise irrigation infrastructure in the Goulburn and Murray Irrigation District, the lack of this limit has heightened stranded asset risks.

Recommendation 2: The ACCC acknowledge its free market positions of 2010 are not without consequence and it must clearly evaluate whether the Water Act's (2007) water market objective "to provide protection of third party interests" is being adhered to.

1) Market Trends and Drivers:

Water Prices:

The VFF acknowledge that water prices are a function of supply and demand, however the removal of 25 percent of water available to agriculture through the Basin Plan has reduced the supply and increased prices. A large proportion of the water now being used by the environment was available on the water market. The number of irrigators with water to sell has fallen reducing the depth of the market

There is a smaller volume of water on the allocation market and fewer market participant'. Market power has been concentrated and a few large traders can influence the amount of water on the allocation market and therefore price.

Recommendation 3: The ACCC investigate the depth of the water allocation market and potential excessive market power.

Carryover:

The VFF understand from the Victorian Department of Environment Land Water and Planning (DELWP) that over 80% of farmers carried over water in 2018.

The VFF believe carryover allows irrigators to manage their risk by holding, using or trading water when it is of greatest value to their business. It allows irrigators to secure water for the start of the season, allowing them to optimise growth in the Springs as well as reducing their reliance on the market early in the season when prices can be high.

There remains a great deal of confusion among farmers and the VFF believe more work is required to improve farmer's understanding of carryover. Some farmers believe the removal of carryover in Victoria would result in higher allocations at the start of the season. The VFF do not support this view. The VFF believe the removal of carryover would encourage people to use water at the end of the season even if they didn't need to. It is unlikely farmers would return water to the communal pool for the following year given they would still be charged by their Water Authority.

With today's carryover arrangements, irrigators with water left over at the end of a get to retain the water that they did not use or trade. The VFF believes this a more efficient and fairer than a socialised system as it allows irrigators to make choices about the use of assets they own.

Concerns about speculators in the market and their carryover behaviour should be directly addressed rather than by diminishing the value provided by carryover. More information needs to be made available on the carryover behaviour of all water users, this includes, the environment, active irrigators, non active irrigators, those with water not tied to land and urban authorities. This information must be made available across all states in a consistent format.

Recommendation 4: The ACCC dispel the confusion associated with carryover by providing a breakdown of carryover volumes in the Southern Basin by active irrigators, non-active irrigators, other water not tied to land, environment and urban authorities since 2012.

Inter Valley Trades and Tagged Water Accounts:

Numerous systems in the Southern Basin allow for inter valley trades which creates a limit on how much water can be traded out of the original system to the Murray.

However, the Basin Plan Act (2012), under Clause 12.23 creates an exemption from the IVT for tagged water accounts that were established prior to 22nd October 2010. This means irrigators who had dual accounts prior to 2010 are able to push IVT accounts beyond their upper limits which can cause third party impacts and environmental damage.

The Victorian Government has recently taken steps to ensure tagged accounts on the Goulburn will be subject to the Inter valley trades rules, yet entitlements owned prior to 2010 will still be exempt due to Clause 12.23.

The VFF believe the ACCC need to review Clause 12.23 as we need to ensure all irrigators are treated fairly. The grandfathering of these entitlements does not allow for a level playing field among irrigators and risks further damage to the environment.

Recommendation 5: The ACCC review Clause 12.23 of the Basin Plan Act as it risks third party impacts and environmental damage.

2) Market Transparency and Information:

The VFF has welcomed steps taken by DELWP to improve water market transparency and also believe similar steps should be taken by other states to ensure farmers have an accurate picture of the water market in the Southern Basin. The areas being explored in Victoria that should also be adopted by other states includes:

- **Who owns water?**
 - volume of water entitlements reported by type of owner, such as active irrigator, non-active irrigator, not tied to land, water corporations and environment, with no names given
 - size of allocation holding by type of owner (as above)
- **Where is water trading?**
 - volumes of water trading within and between zones
 - interactive trade tool to show how trading limits work, the current trading limits, and what trade limits were applied in real allocation trades
- **What is the price of water?**
 - every commercial allocation trade, the volume, price and what type of owner bought and sold it
 - every allocation trade with \$0 reported, the volume, and the type of owner who bought and sold, including whether it was between the same owner
 - more accurate reporting on Murray allocation prices, by splitting out above and below the Barmah Choke, and separately reporting available water in these areas.

Recommendation 6: The ACCC ensure all States in the Basin provide improved information on the Water Market, similar to that proposed by DELWP.

Market Transparency:

The VFF do not support full market transparency where entitlements, allocation water use and allocation account balances by name be made publically available. The VFF believe this information could expose farmer's commercially sensitive business positions and those farmers with limited time to analyse this information will be at a disadvantage. Also farmers wish to retain some level of privacy regarding their personal information as there is a risk this information could be misused by water brokers and other parties.

Rather, the VFF supports more information being made available on large water market participants, similar to that adopted on the Stock Exchange when share ownership gets beyond a certain limit.

Understanding actual ownership of water shares by large participants would be welcome. Farmers need confidence that there is not excessive market power operating in the market.

Farmers are also interested in how much carryover these large water holdings are making, information on their carryover practices should also be included, not in real time but over time, in order to show some trends over the last five years.

DELWP is proposing to also examine the most active buyers and sellers in the allocation market.

The VFF believes this will expose some large players on the allocation market, however 'non-active irrigators' with water not tied to land also need to be explored so farmers can understand just how many retired farmers are using water allocation trades for their superannuation.

Recommendation 7: The ACCC ensure greater information is made available on large water market participants in the Southern Basin by irrigation zone. This includes their carryover behaviour and participation in the allocation market.

Non Active irrigators as a large group should also be examined across the Southern Basin to explore how many retired farmers are selling on the allocation market to fund their superannuation.

Non-Australian Ownership:

The VFF believe greater steps need to be taken to make information on non-Australian water ownership available. While the Australia Tax Office prepares a register of foreign ownership of water entitlements, we believe this information should be merged with water market information to improve transparency.

Recommendation 8: The ACCC ensure the Australia Tax Office's information on foreign ownership of water is merged with water market information more broadly.

3) Regulation and institutional settings

The VFF believe a number of regulation and institutional changes would improve the operations of the water market and drive confidence among farmers that water is being used for agriculture not for those seeking to simply profit from water ownership. Outlined below are a number of regulatory and institutional changes suggested by the VFF.

- **Excessive Market Power:**

Excessive Market Power remains a key concern for farmers. The ACCC must take steps to ensure this does not occur. Section 46 of the Competition and Consumer Act 2010 (Cwth) includes provisions dealing with the misuse of market power. The clause specifies that a person who has a substantial degree of power in a market must not engage in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in the market. Section 50 of the Act enables acquisitions that would substantially reduce competition to be prohibited.

Recommendation 9: The ACCC review Section 46 of the Competition and Consumer Act (2010) misuse of market power provision and apply to the water market.

- **Water Brokers and associated persons should not be allowed to have Allocation Bank Accounts (ABA's)**

- There are multiple stories of water brokers owning ABA's and trading between themselves to drive up water prices. This behaviour cannot be allowed.

Recommendation 10: The ACCC ensures water brokers and associates do not have ABA's

- **Threshold on the Frequency of Water Trades:**

- For those selling allocation more than 20 times in an irrigation season they will be forced to disclose the value and volume of their holdings and trade, listed separately on the Water Register.
- Farmers need confidence that parties are not trading water between themselves to simply drive up the water price.

Recommendation 11: The ACCC recommend a frequency threshold on the number of water trades

- **Increased regulation of Water Brokers.**

The VFF note the ACCC in 2010 in its “Water Market intermediaries – industry developments and practices” paper advised that regulation of water brokers was not possible under the Basin Plan and given the market was small direct regulation was not required.

The VFF believe the ACCC need to review this position as Victorian farmers believe regulation of water brokers is essential to have confidence the water market is operating fairly and in the best interests for irrigated agriculture.

The ACCC’s final advice to the MDBA on the Basin Plan water trading rules made the following 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.

The ACCC will also examine broader industry developments and practices, and continue to distribute educational material to intermediaries and their customers.

Recommendation 12: The ACCC take steps to ensure water brokers are regulated

- **Allocation Water Purchases linked to Water Use Licenses:**

Farmers remain concerned the allocation water market is being manipulated by those not directly involved in agriculture. This problem could be overcome by limiting the purchase of water allocations to those people who hold a water use licence or a water use registration. People who do not hold a water use licence or registration would not be permitted to purchase water allocations.

This is not rebundling water shares as water can continue to be traded. This change ensures water is purchased by those directly wanting to use it for agricultural use given they have a water use license.

The VFF believes this option is possible through the Commonwealth Basin Plan Act 2012. Chapter 12 of the Basin Plan identifies Water Trading Rules, Subdivision B identifies a number of rules relating to surface water including water delivery right and volumetric limits but not on water use licences.

Recommendation 13: The ACCC ensure that those purchasing allocation must also have a water use license or water use registration.

- **Southern Basin Exchange:**

The VFF supports the creation of a Southern Basin Exchange. A central platform would provide the benefit of being able to have a single price of the various water products in the Basin. The exchange would also ensure price data close to real time give more confidence in water prices and provide an indication of market depth.

However, the creation of a monopoly exchange needs to be carefully managed. It should be established as a not for profit organisation with a governance structure focussed on the efficient operation of the exchange. Exchange prices should be regulated.

Recommendation 14: The ACCC recommend the establishment of a Southern Basin Exchange

4) Competition and market outcomes:

The VFF believe water trade has changed traditional irrigation patterns across the Southern Basin that is creating third party and environmental impacts. Outlined below is an overview of perennial horticulture's water use below the Choke.

- **Perennial Horticulture below the Choke:**

The River Murray Operations Group (RMO) works closely with the states to calculate how much water must be supplied by the Murray system each day. It supplies the demands firstly from unregulated flows coming out of tributaries to the Murray (i.e. the Ovens, Goulburn, Campaspe, Murrumbidgee, Darling rivers, etc.) releases from Dartmouth, Hume, Menindee Lakes and Lake Victoria storages and water that may be owed to the Murray in the Intervalley Transfer Accounts (IVT) in the Goulburn and Murrumbidgee rivers.

Decisions about where to release water from are made to conserve as much water as possible in the dams and to meet all demands. This is a balancing act which is made difficult by the Barmah choke which can only take flows up to about 10,500 ML per day and by the long time it takes for water released from Hume dam to reach irrigators in the Mallee. It takes about 25 days for water to travel from Hume Dam to Lake Victoria.

This means that RMO must forecast water demand about 25 days ahead, but the reliability of weather forecasts declines rapidly after about 1 week.

Two types of delivery shortfalls may occur. The first occurs during dry seasons such as in 2018/19 and the second may occur when peak demands during prolonged heatwaves cannot be met. Delivery shortfalls occur in dry conditions when there are no unregulated flows, no water available from the Menindee Lakes and little water available in the Goulburn and Murrumbidgee IVT accounts. Under these circumstances water must be passed through the Barmah choke, which is limited to an in bank flow of about 10,500 ML per day.

This was the case in the 2018/19 season when RMO struggled to supply South Australia, transfer water to Lake Victoria, meet irrigation demands and supply environmental flows. In the end, irrigation demands were met without restriction, but this was only possible by restricting environmental water deliveries in late 2018.

The last time a shortfall occurred was in March 2002. Water was temporarily rationed to share the available water fairly between all users. During a 16-day heatwave in January 2018 river operators scrambled to meet demands in the Victorian and NSW Mallee; substantial draw down occurred in weir pools, even though rationing was avoided.

The challenge of supplying demand is becoming more difficult because, of an increased reliance on releases from Hume dam because of less water in the Darling and Murrumbidgee, the expansion of horticulture in the Mallee made possible by water trading further upstream and the increased requirement to deliver environmental flows to South Australia.

The expansion of horticulture has concentrated the demand of water in the summer months meaning that the peak daily demand for water has increased.

Continued expansion of perennial horticultural plantings below the Choke, in the Mallee regions of NSW, South Australia and Victoria is changing irrigation demand patterns. Previously, when most water use below the Choke occurred in the Torrumbarry Irrigation area, there were three peaks during the season. One was for annual pastures in the spring, one for perennial pastures in summer and another for annual pastures in the autumn.

Increasingly, there is now one larger peak for perennial horticulture in the summer.

The total volume available for irrigation use below the Choke at 100 per cent allocation is 1439 GL across Victoria, New South Wales and South Australia.

Based on the existing plantings in Victoria alone, at maturity they will require 779,000 GL, that is over half of the total water available below the Barmah Choke assuming a 100% allocation to high reliability water shares.

Catastrophic water shortfalls can be expected to occur when we next get the drought conditions similar to 2006/07 to 2008/09 and the 35% allocation to high reliability water shares that occurred in 2008/09.

The Victorian Government acknowledged the problem of horticultural growth in the Mallee and delivery risks and took steps to call in all new license applications. Unfortunately, South Australia and New South Wales have not taken similar steps and developments continue which risks greater rationing of water during the next drought.

The VFF believe the ACCC must look to establish trading rules to ensure existing irrigators and the environment are protected.

Recommendation 15: The ACCC must consider third party impacts of continuing expansion in the Mallee risking existing irrigators ability to receive water when they need it.

- **Environmental Damage on Goulburn River:**

Increased erosion has also been observed along the lower Goulburn River caused by the high summer flows needed to transfer water from the Goulburn to the Murray to supply downstream environmental and irrigation demands. The Goulburn Broken CMA³ has found that:

³ https://www.gbcma.vic.gov.au/news_events/pulse-check-request-for-the-goulburn-river-during-water-transfers.html

- The volume of summer transfers down the Goulburn River has tripled;
- Steady high flows are drowning vegetation established to stabilise the banks
- Steady high flows are causing bank slumping, erosion and tree collapse
- Irrigation demand downstream is displacing optimal winter/spring environmental watering;
- Releases can't be timed in pulses to best support fish and bird breeding;
- Unseasonal cold weather transfers during summer are affecting fish breeding.

The trade of water is clearly having environmental impacts. This was acknowledged by the Victorian Water Minister in August 2019 when she announced a new operational regime on the Goulburn river.

Recommendation 16: The ACCC must acknowledge environmental impacts caused by water trade and ensure sufficient protections are established.