



Submission to the Australian Competition and Consumer
Commission on the Water Trading Rules

By

Victorian Farmers Federation

14 May 2009

Foreword

The Victorian Farmers Federation is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF consists of an elected Board of Directors, a member representative Policy 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 staff.

Each VFF member is represented locally by one of the 230 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.

I. Introduction

The Victorian Farmers Federation (VFF) welcomes the opportunity to comment on the Australian Competition and Consumer Commission's Water Trading Rules Issues Paper.

The VFF understands water trade rules being developed from this issue paper will be inclusive in the Basin Plan formulated by the newly established Murray Darling Basin Authority. The VFF recognises the importance of a wide discussion on current and potential trade practices as to develop comprehensive regulation that reflects the significance of this precious resource, and the industries and communities of which it supports.

It is important to note that while water trading and water markets enhance water use efficiency and provide a mechanism for water users to manage their businesses and survive extreme conditions, trading rules must also take into account social and economic impacts of water transfers. Water is vital to the ongoing viability of agriculture and regional communities. The VFF strongly supports mechanisms like the 4% limit on permanent trade out of an irrigation district and termination fees, not only to ensure that rural adjustment resulting from movements of water occurs at a manageable pace, but to also guarantee that farmers not selling their water and wanting to continue farming are not faced with stranded assets and increased costs.

Governments' objective of a water market is to see it move to the higher value uses. However, the movement of water is a movement of economic activity. Dealing with movements in the water market due to inflow and demand variability is a difficult issue for farmers to plan for. Trading rules must not allow distortion in the market, including those that may arise from Governments entering the market to secure additional water for the environment and/or funding an over-allocation buy-back.

It is integral that water market rules provide sensible mechanisms and tools, on a level playing field, to allow individuals to be responsible for decisions about their water supplies, manage climate variation and change and provide farmers with the essential level of certainty. It is also that the development of these water trade rules, in situations where there is likely to be a change in current state arrangements/ trade practices, are mindful of adverse impacts on existing users and water holders.

II. Water Markets and Trading Objectives

The paper lists five objectives to be achieved through water market rules, these include:

- (a) To facilitate the operation of efficient water markets and the opportunities for trading, within and between Basin States, where water resources are physically shared or hydrological connections and water supply considerations will permit water trading;
- (b) To minimise transaction cost on water trades, including through good information flows in the market and compatible entitlement, registry, regulatory and other arrangements across jurisdictions;
- (c) To enable the appropriate mix of water products to develop based on water access entitlements which can be traded either in whole or part, and either temporarily or permanently, or through lease arrangements or other trading options that may evolve over time;
- (d) To recognise and protect the needs of the environment;
- (e) To provide appropriate protection of third-party interests.

The VFF believes these objectives do not adequately address the concerns of rural water users. The socio-economic impact of water in production should be recognized and addressed through market rules to achieve the Basin objectives. While the listed objectives mention the need to recognize the needs of the environment, it does not seem to adequately reflect the importance of social and economic impacts on the transfer of water.

The VFF believe water trading will lead to structural adjustments such as contraction in the demand for complementary agricultural services and output from districts. This may result in significant and rapid changes to the demographics population and sustainability of communities.

The VFF believes that the impact on 'third parties' in terms of regional effects must be accorded sufficient consideration when determining water market trading rules.

The VFF has highlighted that as water is removed from rural communities, jobs and wealth creation will also disappear and will result in further urban migration. Population growth in Melbourne in recent years has occurred at a much higher annual rate than areas in regional Victoria. Growth in Melbourne occurred at an average rate of 1.5% between June 2001 and June 2006, and now accounts for 84% of Victoria's total population growth and 73% of Victoria's population. In the same period, regional Victoria had an annual population growth rate of 0.8%.¹ The Victorian Department of Sustainability and Environment (DSE) projects that while regional Victoria's population will still grow; it will continue to grow at lower rates than Melbourne.² The VFF proposes that the constraint water imposes on the larger cities should be maintained, and development in the less-developed regional areas encouraged. In

the long term this would result in a more even distribution of population and economic activity. It would also give clear direction to communities on the water that will be available and a higher level of motivation for these communities to achieve gains in water efficiency in order to enable population and economic growth.

5. Water Access Rights – ownership

5-A: Are there situations where a requirement for co-holder approval for a subdivision of a water access right should not apply?

Although not particularly common, there are situations where a group of irrigators have a connected licence and joint control of a delivery system. Subdivision of a jointly owned water share should require approval from all co-holders.

5-B: Should ownership of water access rights be restricted for any particular individuals? If so, on what basis?

The VFF do not explicitly support any notion of water access right ownership restriction. The transfer and transmission must be executed in a manner that acknowledges the change that will occur in rural communities as a result of transferral of ownership, and adheres to the two trade restrictions in Victoria (4 and 10%).

The VFF does not support a lifting of the 10% limit on non-landholder water ownership. However, environmental water should be exempt from this cap. The VFF is concerned that any change to this rule threatens the long-term viability of rural communities.

6. Water Access Rights – location

6-A: What improvements (if any) could be made to the way in which:

- (a) Physical constraints**
- (b) Environmental limits**

...are incorporated into water trading rules?

Water trade within Victoria (or interstate trade from Victoria) must occur between physically connected systems. This is screened by Rural Water Authorities with a trade approval process. The only means by which unconnected water systems can trade is through a 'substitution processes'.

There should be no inferable damage incurred on the environment from the process of water trade. This is arguably addressed through eliminations of trade where there are physical constrains.

Water trade needs to aware of the capacity restraint at the Barmah Choke, as the maximum flow capacity is 10,000 ML per day. There could be some exploratory work into engineering solutions to this problem.

6-B: On what basis are water trading zones defined? Are they examples of where trading zones have been set too narrowly? Too broadly?

Within Victoria, water trading zones have been defined by hydrological system history.

There is scope for the potential amalgamation or incorporation of smaller systems that are, for the purposes of trade, considered unregulated and therefore have various trade restrictions. Some of the

smaller river systems have been developed over time and do hold the ability to trade within the wider system. The Northern Region Sustainable Water Strategy (NR SWS) refers to some of these systems as 'part-regulated' as some hold the capacity to divert water downstream, upstream and to connected regulated systems. There could be a process of review of water trade zones to periodically reassess the effectiveness of water trading zones and if these can be redefined to accommodate change.

For example, some of the unregulated areas that are prohibited to trade water, experienced a 'spill', which would have been avoided if there was ability to trade.

6-C: What scope is there to introduce trading zones where there are none already in place?

There is scope for redefining boundaries of trading zones (see above comment), to incorporate unregulated systems that have the infrastructure to deliver water to regulated systems. There needs to be provisions for review the water trading zones to incorporate such areas.

6-D: What restrictions (if any) relating to carryover should apply to the trade/ transfer of water access rights?

The principles of carryover should be that no water share holder is affected in a negative way with use of the carryover tool.

Victorian water trade rules specify that Carryover is not applicable to water trade to non-landholders and tagged water trades.

6-E: What are the advantages and disadvantages of imposing an adjustment for conveyance losses on the trade/transfer of a water access right? How should the adjustment be calculated?

If conveyance losses were applied, they should be applied with marginal increase in losses, not on a proportional bases. Conveyance losses would have to be accurately and transparently measurable.

There is an equity issue with calculating conveyance losses when trading water. When water trade occurs between designated water trading zones there is a chance that losses are not accounted for accurately, or designated to the wrong water entitlement holder.

6-F: Are there any concerns with the arrangements for the trade/transfer of water allocations ('temporary' trade) between Basin states?

The VFF does not any substantive concerns in regards to water trade between basin states.

6-G: How could tagging arrangements work for 'permanent' trade be improved?

The characteristics of water entitlements should be tagged into the trade process. The overall aim of the water tagging process needs to be to protect existing water users within systems of which water is being trade both from and to.

VFF members have reported that the procedural arrangements for tagging permanent trade are impractical.

Once a water access holder logs a application to trade water out of the irrigation district permanently (permanent trade), if the district has reached its 4% cap the application is put into a ballot for the next available opportunity for water to be traded out of that district. A water access holder wanting to permanently trade water from the district has no real time estimate of when application for water trade will be 'randomly selected'.

The VFF support an alternative measure used by the commercial sector when, for example, buying shares. This is a systematic process where applications logged either by the buyer/seller, shares are placed in a queue, to allow for orderly progression and to derive a rough time frames for customers. The VFF supports a systematic application process, as opposed to the 'ballot' system for permanent water trade.

6-H: Are there areas where the opportunity to trade/transfer water access rights between Basin states could be expanded? What measures would be necessary for this to occur?

The overall rule of interstate trade must be the principle of physical deliverability. Expansion of trade between basin states must adhere to hydrological connectivity principles. Where it is physically possible, trade should not be restricted beyond the rules that apply for other purposes.

6-I: Are there any concerns with the arrangements for the trade/transfer of water allocations ('temporary trade') between regulated water systems within Basin states?

The VFF has always maintained that any inter-state water trading must be done so on a level playing field between the states involved, which appears to be the current practice.

6-J: Should trades/transfer between unregulated systems be permitted? If so, what measures could be taken to ensure that water reaches its intended recipients?

Generally in Victoria, trade within unregulated systems is restricted to downstream trade, must be 'back trade' and all trades require a 20% reduction in Volume for environmental purposes. However, trading rules can vary depending on local circumstances and risks to specific unregulated systems.

The VFF supports a further clarified model of trade within unregulated systems.

The VFF believe that rules for trade within unregulated systems should not be so rigid and not to be applied in such a blanket manner. The trade rules for unregulated systems should demonstrate some flexibility in application, as characteristics of each system vary quite greatly. For example, some unregulated systems have a much greater capacity to deliver water upstream, and other do not. There should be trade upstream where possible.

6-K: What are the advantages and disadvantages of permitting the trade/transfer of water allocation?

a. From a regulated system to a (connected) unregulated system?

Under The Water Act 1989, in Victoria, trade is not permitted from an unregulated system to a regulated system. Trade from a regulated system to an unregulated system is only permitted if the location of the unregulated system can physically receive a supply from that trading zone.

The advantages in allowing trade from a regulated to a connected unregulated system is that the availability of water allows for greater agricultural development in the face of climate change.

b. From an unregulated system to a (connected) regulated system?

The disadvantages from trading water from an unregulated system to a regulated system are delivery losses.

Do these factors differ depending on which system is upstream?

Deliverability is definitely a factor when looking at trade between unregulated and regulated systems. Unregulated systems have no capacity to transfer water other than on-farm pumps and natural downstream flow. If the regulated system is upstream of unregulated system, the deliverability capacity is seriously limited.

What arrangements would be necessary to facilitate these trades?

As trade between regulated and unregulated systems, permitting they can physically receive a supply from that trading zone, is allowed. Therefore the key hindrance of trade between unregulated and regulated systems is deliverability. There is potential for unregulated system upgrades to enable storage and ability to deliver to regulated systems.

The overall rule supported by VFF is that no trade should occur between unregulated and regulated that has the potential to have adverse impacts on current users and the environment.

6-L: Under what circumstances should a trade/transfer between a groundwater system and a surface water system be permitted?

The complexities of managing groundwater require more directed resources to the task to ensure that the interactions between groundwater and surface water on any particular system are well understood before joint management is possible.

There is still numerous complexities surrounding trade between ground and surface waters that have yet to be resolved, there can be no circumstance where this trade should be permitted.

The VFF does not support trade between groundwater and surface water systems.

6-M: Are there any issues of concern about changes in the location of water access right within a regulated system?

Providing the delivery capacity can be achieved by an IIO and there are no third party impacts, there should be no restrictions to the change of location of a water rights within an IIO's (for example, Goulburn-Murray Water) area.

6-N: Are current arrangements sufficient to limit potential third party impacts from trades/transfers that change the location of a water access right within an unregulated system?

The current arrangements surrounding change in location of a water share are adequate.

6-O: Are third party impacts adequately addressed in relation to changes in location within ground water systems? How could this be more efficient?

Groundwater is traded within Victoria. Groundwater in Victoria is managed by Groundwater Management Areas, and if deemed stressed, *Permissible Consumptive Volumes* (PCV) are applied which determine to total allocation for an aquifer.

In relation to 'third party impacts' this is addressed at the 'works' level as Rural Water Authorities are required to determine if bore locations are appropriate and if the position will have effects on neighbouring bores.

6-Q: Should there be restriction to trade outside of the MDB?

There should be no water being traded out of the Murray-Darling Basin, permanent or temporary. However, trade outside the Murray-Darling Basin is already occurring and likely to continue. For example water is being pumped over the divide (via pipeline to Ballarat) and water is pumped from within the Murray-Darling Basin to Adelaide.

If trade outside of the Murray-Darling Basin is to occur, Carryover should not be available for use and the 10% Non-Landholder limit should apply.

7. Water Access Rights – other matters

7-A: What are the advantages and disadvantages of allowing a change in the priority class of water access right?

The advantages and disadvantages of changing the priority class of water for irrigators lies with increasing the reliability of seasonal water allocations. The VFF does not support the ability to change class of water shares. Increasing reliability of water can be addressed through the water trade rules and the ability for irrigators to purchase more water. The VFF supports the market mechanism approach for irrigators to address issues of water reliability.

7-B: Does defining a specific purpose for a water access right create a barrier to trade?

The VFF is of the opinion of attaching a 'purpose condition' to trade will create unnecessary barriers to trade. The VFF is also of the opinion that a well performing water market will allocate water to its most valuable and productive use without needed to define an acceptable use attached to trade.

7-C: Should there be any restrictions on the trade/transfer of water to urban areas within the MDB

water movement from the MDB to urban areas already occurring, and likely to continue, the VFF have consistently opposed the removal of water from rural communities. Projects such as the North/South pipeline have always been a questionable water management approach.

Shifting water from rural to urban communities places constraints to agricultural and regional growth, and is essentially a population de-centralisation policy, rather than regional development. The Government, at both Federal and State level, should be encouraging development in areas where

viable water resources are available rather than developing areas that have difficulty providing sustainable water source.

The VFF believes that allowing water to be traded or moved from rural to urban areas should be done so only for contingency measures on a temporary basis and only for the purposes of managing rural community-use assets.

7-D: Should it be possible to trade/transfer stock and domestic right? If so, what conditions should apply?

Stock and Domestic water is not a water share in Victoria, and therefore cannot be traded.

7-E: To what extent, and how, should water trading rules provide for the needs of environmental water-holders?

The VFF supports an integrated and coordinated approach towards the use of environmental water among all holders of environmental water entitlements to achieve defined environmental objectives that are achievable socially, environmentally and in consultation with irrigators.

The environmental water holders should be subject to the same trade rules as every other water share holder.

7-F: What are the advantages and disadvantages of requiring the possession of a relevant water use approval as a condition of approving a trade/transfer?

In Victoria, there are limits to how much water can be used on a particular piece of land. Irrigators must apply for an Annual Use Licence which determines how much water can put on a property during a year. This is to prevent increasing such issues as salinity.

7-H: Are there other examples (beside The 4% rule) of volumetric limits on the amount of water that can be traded/transferred out of particular areas?

Beside the 4% rule in Victoria, there is also a 10% limit (from within an irrigation district) of the total amount of water shares that can be held by non-landholders.

7-I: What are the arguments for and against volumetric limits on the permanent trade of water access rights out of an area?

Allowing unfettered transfer of irrigation water, particularly in a market that is impacted by water shortages due to low inflows, allows major players not driven by commercial considerations and will cause significant hardships in rural communities. Volumetric limits, such as the 4% rule, is essential in ensuring rural adjustment resulting from movement of irrigation water occurs at a manageable pace.

7-J: What water access rights are not currently tradeable, what are the advantages and disadvantages or requiring them to be made tradeable?

As stated above, there is no upstream trade in unregulated systems (as a general rule).

Unregulated systems should be reviewed periodically to account for any developments that may allow incorporation into regulated systems.

8. Water Delivery Rights

8-A: To what extent does the bundling of water delivery rights with either an irrigation right (use/licence) or water access right present a barrier to, or restriction on, the trade/transfer of these rights?

The Victorian market has unbundled the various elements of water entitlements.

8-B: What are the advantages/disadvantages of requiring more explicit separation of a water delivery right from an irrigation right or water access right where these are currently bundled?

See above comment.

8-C: What conditions and restrictions on the trade/transfer of water delivery rights are reasonable?

There are sometimes capacity restrictions and deliverability restrictions to water trade.

8-D: What factors should govern specification of areas within which water delivery right may be traded/ transferred?

8-E: What are the advantages and disadvantages of requiring the development of arrangements to allow for the trade/transfer of water?

9. Irrigation Rights

9-D: To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the 'permanent' trade of an irrigators right to another person located within the IIO's area? What are the specific forms of any current restrictions, and their implications?

Providing that permanent trade can be delivered, without effecting existing users, there should be no restrictions on permanent trade.

9-E: To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the 'temporary' trade of water allocated under an irrigation right to another person located within the IIO's area? What are the specific forms of any current restrictions, and their implications?

Providing that temporary trade can be delivered, without effecting existing users, there should be no restrictions on temporary trade.

9-F: What are the arguments for and against linking the ability to trade/transfer irrigation rights with the possession, transfer or termination of water delivery rights against the IIO?

Termination fees are required to give a clear pricing path to remaining irrigators within the system, preventing standard assets.

9-G: To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on the trade/transfer of water allocated to an irrigation right to another person outside of the IIO's area? What are the specific forms of any current restrictions, and their implications?

It is appropriate for IIO's to enforce the 4% rule. This rule is required in to manage structural adjustment within rural communities.

Refer to 7.C and 7.I.

9-H: To what extent and in what circumstances, is it appropriate for an IIO to impose restrictions on the trade/transfer of a specific volume of water from outside the IIO's area, to a location in the IIO's area?

IIO's are under an obligation to ensure trade into the systems has no impact on existing users.

10. Approval Process

10.A: What are the practical implications of multiple approval authorities involved in the approval of trade/transfer?

Refer to 10.B

10.B: What are the advantages/ disadvantages of enabling Basin state approval authorities to have direct access to each other's registers and /or accounts for the purpose of determining or giving effects to particular kinds of trade/ transfers?

A National register, not unlike how information is presented on the Stock Exchange, may be an effective approach that could address all transparency issues surrounding water trading. A national register may consist of information regarding current price of High and Low Reliability water, permanent and temporary trade in respect to different systems around Australia, and could also incorporate information regarding individual irrigation system's seasonal allocations. This would allow all willing buyers and sellers to have access to comprehensive information regarding all water trade within Australia, Murray-Darling Basin.

All water brokers would then be brokers to the exchange, with similar regulation as a stock exchange broker.

This also ties in well with the key principles underpinning an efficient free market which, as mentioned of Pg 26 of this document, is *'well informed decision making in the part of the market participants'*.

10.C: What considerations are relevant when considering the form and manner of applications to trade/transfer water rights?

Refer to 10.B

Note: Any individual can buy water at any location; but there is always going to be delivery and connectivity restraints and annual use restraints where the water can be used.

10.D: Are there other legislative requirements limiting the ability of approval authorities to accept applications electronically?

Refer to 10.B

10.E: Is there scope to develop applications forms relating to the trade/transfer of tradable water rights that are consistent between states? Would there be merit doing so?

The VFF would support a feasibility study.

10.F: What are the advantages and disadvantages of allowing applications to be lodged through a single portal (to be forwarded to the appropriate approval authority or authorities)?

A simple, more streamline process of lodging applications and application approval.

Refer to 10.B

10.G: What factors can negatively influence approval times? What measures should be taken to address these factors?

System capacity restraints can impact negatively on trade approval times.

10.H: What are the advantages and disadvantages of incorporating maximum approval times into water trading rules? What factors would need to be taken into account in setting these times?

To give buyers and sellers some reliability in regards to processing time as there would be some time-frame attached to approval.

11. Reporting and the availability of information

11–A What issues do market participants encounter in relation to obtaining information to enable the trade/transfer of tradeable water rights?

Refer to 10.B. A national register will address this issue.

11–B How relevant are the particular characteristics of a tradeable water right to a decision to trade/transfer?

Irrigators and water holders must understand the nature of the property right in which they own. Knowing property right principles, water holders may make a more informed decision.

11–C Are there particular characteristics of water access rights where greater consistency throughout the MDB would lead to more efficient markets?

This is a decision for the IIO. However, the VFF are hesitant about any move that may lead to a single water product throughout the Murray-Darling Basin.

11–D What are the advantages and disadvantages of developing consistent terminology for use throughout the MDB in relation to the trade/transfer of tradeable water rights?

Refer to 10.B

Uniformity of forms could be facilitated through a national register.

11–E What are the advantages and disadvantages of providing information about the characteristics associated with tradeable water rights:

(a) at a single point (e.g. a website)?

(b) in a particular format and/or template?

Refer to 10.B.

11–F: What measures could be taken to make trading rules more easily accessible and transparent for stakeholders?

Refer to 10.B.

11–I: What are the advantages and disadvantages of requiring water market participants to report the price of their water trades/transfers as a condition of approval and/or registration?

Advantages would be the increase in information regarding the current price of water. This is a key factor of a free market to have transparency of information. This would be useful on all trades – within systems, out of systems, interstate trade etc.

Refer to 10.B.

11–J: What practical measures could be taken to ensure the accuracy of pricing data that is reported?

Private purchase of water should not need to report price they pay, however public purchases of water should be transparent regarding how they relate in market place

See above answer (ensure all information regarding water prices is recorded)

Refer to 10.B.

11–L: What measures could assist in making trading volume and price data more readily available to interested parties?

Refer to 10.B.

11–N: What are the advantages and disadvantages of water authorities providing forecasts for future water allocation announcements?

VFF would be concerned with expectations that may be established. Distorting the market.

11–O: Is sufficient information available on how water allocations are calculated?

There is sufficient information regarding the calculations of seasonal allocations.

11–P: How can the way in which a trading rule policy change is communicated affect the water market?

It is essential that the changes made to water trade rules is known the water holders. Expansion or contraction of trade areas may influence a water holders' decision in selling. Changes such as trade from unregulated to regulated (or vice versa) may have enormous consequences for an irrigator, as he/she may want to sell off some extra water, or requiring some extra.

These rules and any changes must be known to the irrigator.

11–Q: What principles and procedures should be implemented in relation to the communication of policy changes that affect the water trading rules (e.g. should all stakeholders be notified of a change at the same time)?

Trade must be suspended until there is proper notification to all stakeholders, in regards to any water trade procedural changes, much like the stock exchange rules.

There should be an equitable approach to communications and information.

11–R: How should the water trading rules provide for the use of registers to provide information about the trading or transfer of tradeable water rights?

Water trading rules ought to have a provision to provide information about water trade. Again, transparency is the key to a well functioning market.

Refer to 10.B.

11–S: To what extent are inter-operable registers between Basin states necessary to facilitate the operation of efficient water markets?

Refer to 10.B.