

ACCC Water Trading Rules Issues Paper March 2009– NSW Comments

Chapter	ACCC Questions	NSW Comments
5	Water access rights – rules relating to ownership	
Q. 5–A	Are there situations where a requirement for co-holder approval for a subdivision of a water access right should not apply?	<p>The <i>Water Management Act 2000</i> (NSW) requires all holders of a water access licence to consent to a permanent change to the title. There are two relevant exceptions:</p> <ul style="list-style-type: none"> • the transfer of a holding; and • the exit of a holding. <p>In both of these cases, the substantive interests of the other holders in the water access licence are unaffected.</p>
Q 5–B	Should the ownership of water access rights be restricted for any particular individuals? If so, on what basis?	<p>In general, the ownership of water access rights in should not be restricted to particular individuals. However, it is important to maintain competitive neutrality in the water market.</p> <p>There are particular specific purpose licence categories that certain types of individuals should not be able to hold, such as an irrigator being able to hold a local water utility licence for the purposes of irrigation.</p>
6.	Water access rights – rules relating to location	
Q 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?	<p>There is a need to clearly define whether the constraints on trading are physical or environmental.</p> <p><u>Physical constraints</u></p> <ul style="list-style-type: none"> • In situations where the potential daily demand exceeds the channel capacity it may be appropriate to develop a capability for market mechanisms to trade shares in that channel capacity in order to allow individuals to manage their shorter term access rights. This could free up both permanent and temporary trade of water around physical constraints. • If the shares in the channel capacity have not been clearly defined, then there is scope for possible temporary relaxation of the rules to manage the constraint, for example temporary or allocation trades are currently being permitted through the Barmah choke while the low drought allocations/deliveries do not create a potential for channel capacity problems. Any rules regarding relaxation would need to be indicative and subject to agreement should either climatic or infrastructure changes occur.

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		<ul style="list-style-type: none"> • A process to monitor geomorphologic changes, water entitlements and demand should be implemented to enable a regular assessment of the changing opportunities. <p><u>Environmental Constraints</u></p> <ul style="list-style-type: none"> • In regulated systems, there may be some situations where trading of consumptive use to locations further upstream will assist with returning downstream locations to a more natural flow regime. In this situation, a trade rule may limit downstream trade but allow upstream trade. • In unregulated systems, the converse may apply as the in-stream impacts of extraction are minimised if extraction occurs at the bottom of the system. • Given that there are now environmental licence holders, and trade rules that were developed specifically with the impacts of consumptive use on the environment in mind could be reconsidered. For example they could be relaxed for environmental trade, but consideration would need to be given to third party impacts/equity.
Q 6–B	<p>On what basis are water trading zones defined?</p> <p>Are there examples of where trading zones have been set too narrowly? Too broadly?</p>	<p>Water trading zones may be defined based on:</p> <ul style="list-style-type: none"> • hydrology (specific catchment area eg headwaters of stream); • hydrogeology (GW Areas); • extraction (eg large number of extractors in specific area); • environmental asset (eg high priority GDEs or surface water features to be protected); • river reach (regulated rivers generally often use river sections); • trading between regulated and unregulated zones needs to consider the inherent differences in the products (see Q6-C, -E, -J, -K, -N); • operational efficiency, for example to minimise transmission losses in regulated rivers; • physical constraints; and • third party impacts. <p>The Water Sharing Plan (WSP) for the Lachlan Regulated River establishes a number of trading rules that restrict the amount of entitlements and</p>

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		<p>water allocations that can be traded into certain zones. The Plan also allow these rules/zones to be reviewed based on the factors specified in the Plan.</p> <p>The water trading zones should be based on an assessment of the acceptable impacts to the environment, community or other users and should be subject to ongoing review.</p>
Q 6-C	What scope is there to introduce trading zones where there are none already in place?	<p>The trading rules/zones specified in WSPs can be amended:</p> <ul style="list-style-type: none"> - in circumstances, in relation to such matters and to such extent as the plan provides; or - at any time provided the Minister is satisfied it is in the public interest to do so.
Q 6-D	What restrictions (if any) relating to carryover should apply to the trade/ transfer of water access rights?	Where new record low inflows have occurred, individual water accounts, including water carried over from previous seasons, may be required to be suspended so as to protect stored available water to ensure supply and delivery of water for critical human needs. Such suspensions may be seen to discourage water conservation or present an impediment to trade, but in certain extreme circumstances this is considered appropriate.
Q 6-E	<p>What are the advantages and disadvantages of imposing an adjustment for conveyance losses on the trade / transfer of a water access right?</p> <p>How should the adjustment be calculated?</p>	<p>The ACCC's water market rules allow for conveyance losses for transformation/trade of irrigation rights within infrastructure operators areas. This is considered advantageous as it prevents stranded assets and allows for the delivery of water throughout a system but requires careful and equitable calculation of the conveyance loss allowance.</p> <p>Any allowance for conveyance losses would need to consider the distance over which water moves, and the types of water systems it moves within and between.</p> <p>In relation to regulated river systems, the changes in conveyance (transmission) losses due to modified delivery locations are currently managed through a socialised transmission loss allowance within each regulated water system. This is due to the technical difficulties in identifying changes in transmission loss associated with changing the point of delivery for small parcels of water from one point relative to another and the uncertainty around the significance of any resulting impact. These transmission losses could theoretically</p>

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		<p>reduce in a gaining system and increase in a losing system. Systems can change on a daily basis between gaining and losing, depending on the antecedent conditions and the timing of inflows.</p> <p>Where the conveyance loss difference is significant between locations, trading can be limited by establishing trading zones.</p> <p>Moving between systems is currently permitted between connected regulated systems as there are socialised loss allowances in place that cover any incremental changes (up or down) to transmission losses.</p> <p>If large scale movement of water were to occur, and transmission losses were to significantly change, then this could impact on the reliability of supply to third parties. Further consideration of this issue is required in the development of any transmission loss adjustments due to trading.</p> <p>In relation to unregulated systems, the location of the extraction point influences the availability and reliability of supply. For example, in a gaining system the downstream users have a higher reliability compared to upstream users.</p> <p>Where there is no ordering/delivery system there is no conveyance loss allowance to actually adjust. Therefore, any movement of water upstream will affect the water access and reliability of third parties that were between the seller and upstream purchaser.</p> <p>Under the current arrangements in NSW, small volumes are generally being traded in unregulated systems, and this impact is considered to be negligible. However, in regard to larger scale trading, this impact may need to be considered more closely. For example, the traded water could be adjusted for conveyance loss, with the adjustment depending on whether the trade is up or downstream and the impact on other users/environment in the system.</p>
Q 6–F	Are there any concerns with the arrangements for the trade/transfer of water allocations ('temporary'	Temporary trading can only occur if physical water can be effectively supplied from the State of origin, otherwise third party impacts will arise.

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	trade) between Basin states?	<p>Issues with inter-state trade within a river valley (for example in the Murray River across the NSW/Vic border or in the Border Rivers across the NSW/QLD border) include:</p> <ul style="list-style-type: none"> • the arbitrage or exploiting management rule differences between jurisdictions; • redistribution of jurisdictional shares in delivery capacity where there are channel capacity issues; • redistribution of jurisdictional loss accounts where they are accounted for separately between the jurisdictions (for example the Border Rivers); and • delivery issues where regulated supplies are suspended for certain periods in one jurisdiction but not the other to reduce conveyance losses (for example the Border Rivers). <p>Issues with inter-state trade between catchments are similar to the above issues, but also include the ability to deliver the volume of traded water in a water year from one valley to the other, and the associated accounting issues if a portion of the traded water is not delivered until the following year. A further issue is the increases in conveyance losses in the supplying valley.</p> <p>For example water that is traded from the Murrumbidgee to the Murray but the water is physically undelivered in the year it was purchased, there would be a question as to whether or not this water should remain the subject of access rules relating to the Murrumbidgee.</p> <p>The State of origin still incurs the costs relating to operating and maintaining the infrastructure associated with delivering the traded water and the ongoing water management costs. The entitlements remain with the State of origin and these are managed through planning processes. Therefore, when this water moves into a destination State with relatively low cost recovery, there is no mechanism to recover these costs either directly from the user or from the State of destination. While typically this issue has been of lesser importance, in the 2008/09 water year the loss of revenue to NSW associated with</p>

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		<p>significant net temporary trading out of state will be in excess of \$1 million.</p> <p>There are also some administrative issues that need to be addressed, including;</p> <ul style="list-style-type: none"> • establishing a destination licence for the traded water to move to; • the administrative processes to enable this trade; and • the responsibility for metering the usage and transferring the usage information to enable account adjustments. <p>These issues could be addressed using the tagging approach for inter-state temporary trades. This is currently being explored through inter-state negotiations.</p>
Q 6-G	How could tagging arrangements for 'permanent' trade be improved?	<p>The Murray Darling Basin Authority's Trade Working Group is coordinating actions by member jurisdictions to improve administrative procedures for tagging. Member jurisdictions are also taking steps to improve the inter-operation of respective database systems.</p> <p>If the volume of net permanent trade becomes significant then arrangements need to be made to address the issues referred to in Q 6-F.</p> <p>There is scope for improving communication to stakeholders on the advantages of tagged trading and the administrative processes in place.</p>
Q 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?	<p>There is potential for expansion in inter-state trading from unregulated to unregulated systems (for example intersecting streams), from unregulated to regulated systems and from regulated to unregulated systems. However, there are a number of significant policy, regulatory and operational issues that need to be considered in relation to these types of trades. Issues include transmission loss adjustments, change in reliability of access, third party impacts, ability to protect flows and physical channel and infrastructure constraints.</p>
Q 6-I	Are there any concerns with the arrangements for the trade/transfer of water allocations ('temporary' trade) between regulated water systems within	Please refer to Q 6-F

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	Basin states?	
Q 6-J	<p>Should trades/transfers between unregulated systems be permitted? If so, what measures could be taken to ensure that water reaches its intended recipient?</p>	<p>Transfers between unregulated systems are considered in areas where the impacts on existing extractions or identified environmental assets are minimal. Transfers between unregulated systems allows for flexibility in operation where new or increased entitlement is limited by the WSP.</p> <p>In some cases, adjacent unregulated catchments may have minimal hydrologic connection, if so, both the environmental impacts and impacts on existing users may need to be considered when setting rules.</p> <p>There is currently limited ability to protect purchased water in one unregulated system and ensure it passes into another unregulated system without creating third party impacts. Any increase to end of system flow requirements (such as to cease to pump levels) will have third party impacts as it changes the access rights in the originating river. Furthermore, it does not specifically protect events, but simply raises the ceiling on when pumping can begin.</p> <p>Current protection rules in unregulated systems generally limit overall diversions through reductions in the consumptive pool limit. Higher levels of management require real-time sharing of flows above the pumping thresholds, time-event metering and real-time compliance activities. All of these solutions are expensive, resource intensive and difficult to implement.</p>
Q 6-K	<p>What are the advantages and disadvantages of permitting the trade/transfer of a water allocation:</p> <p>(a) from a regulated system to a (connected) unregulated system?</p> <p>(b) from an unregulated system to a (connected) regulated system?</p>	<p>Currently, the trading of water allocations between unregulated and regulated systems is not permitted because the trade may cause unacceptable third party impacts.</p> <p>The advantages and disadvantages will depend on whether the unregulated system is upstream or downstream of the major storages in the regulated system.</p> <p>If allocations are traded from an unregulated tributary system that is downstream of a headwater storage into a regulated system, then the traded water allocation would be able to be ordered from the headwater storage at all times even though the unregulated tributary system may</p>

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	<p>Do these factors differ depending on which system is upstream? What arrangements would be necessary to facilitate these trades/transfers?</p>	<p>not be providing inflows at all times. This places increased pressure on the infrastructure and increases the risk of being unable to maintain reliability of supply for existing licences in the regulated system.</p> <p>If the unregulated system is upstream of the storages, then the potential impacts on regulated system licences will depend on the level of contribution that the unregulated system makes to the total available storage.</p> <p>A conversion factor between categories of access licences in itself cannot eliminate the third party impacts because during dry periods there will be impacts that cannot be offset.</p> <p>In effect the problems occur as a result of changing the inherent characteristics of the traded water when it changes between these systems. Therefore trading similar products between regulated and unregulated systems could be a strategy to open up this form of trading and manage this risk. One example would be trading event-based access to unregulated water in regulated systems, which is known as supplementary water in NSW, with licences in unregulated systems. These are similar products but would not be without the potential for third party impacts.</p> <p>Any opening up of trading between these systems will require a more comprehensive technical understanding and assessment of the third party impacts each trade, as well as adjustments to minimise these impacts. Necessary tools might include comprehensive hydrological modelling and adaptive real-time event management in unregulated systems. These tools are not currently available or practical and will require significant investment to develop.</p>
Q 6-L	<p>Under what circumstances should a trade/transfer between a ground water system and a surface water system be permitted?</p>	<p>Currently, trading between surface water and groundwater sources is prohibited. However, the NSW Government is currently reviewing this restriction.</p> <p>Trading between groundwater and surface water sources could be permitted where:</p> <ul style="list-style-type: none"> • there is a high level of connectivity, and the

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		<p>water may be effectively be considered a single resource;</p> <ul style="list-style-type: none"> • a good understanding of the extent of connectivity; and • the ability to manage users with regard to ordering, metering and compliance. <p>In systems where there is a high level of connectivity planning processes may consider the alluvial groundwater and surface water sources a single water source, thereby allowing trade to occur between the two categories of licence.</p>
Q 6–M	Are there any issues of concern about changes in the location of water access rights within a regulated system?	<p>Where NSW water sharing plans establish trading zones, these have been put in place for environmental and/or system operational reasons. For example, to protect key environmental assets and/or to prevent conveyance losses from increasing to unacceptable levels.</p> <p>In addition, please refer to Q6-C, Q6-D and Q6-E.</p>
Q 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?	<p>Typically the impacts from trades/transfers that change the location of a water access right within an unregulated system are considered to be small within each unregulated system. However, in some instances these impacts are more significant and require management through the establishment of trading zones.</p> <p>It may be possible to mitigate such third party impacts by establishing individual daily extraction rights and allowing these rights to be traded. However, managing such a scheme would be very resource intensive and is not currently justified in all but the most hydrologically stressed unregulated systems.</p> <p>In addition, please refer to Q6-J, Q6-C, Q6-D and Q6-E.</p>
Q 6–O	Are third party impacts adequately addressed in relation to changes in location within ground water systems?	<p>Third party impacts are considered through both the WSP provisions and the application assessment process which considers the impacts of the proposed work. For example, the WSP provisions may include buffer distances for new works from existing users or environmental assets.</p> <p>WSPs also allow for the declaration and management of certain localised zones where the impacts on adjacent landholders are considered to be an issue, through local impact management</p>

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		provisions.
Q 6-P	How could the trade/transfer of ground water access rights be made more efficient?	Trading of groundwater should be no different from trading of surface water. However, due to the potential for harm caused by sinking a bore and potential for impacts on adjacent users, an additional set of considerations need to be taken into account when determining appropriate bore location and drilling requirements.
Q 6-Q	Should there be any specific rules imposed relating to the trade/transfer of water access rights to locations outside of the MDB? On what basis should these be imposed?	<p>There may be opportunities for trading between groundwater systems that are connected within the Basin, as well as systems that are not connected to the Basin, to address over-allocation (eg Lower Macq with GAB). However, this would require the identification of non-connected groundwater systems that are not fully allocated and could potentially allow trade into/out of the fully or over-allocated systems.</p> <p>In addition, given that there is a hydraulic connection between the Snowy and the Murray/Murrumbidgee, there are opportunities to facilitate the delivery of basin traded regulated water to locations via Snowy Hydro infrastructure to extraction points upstream of regulated sources, such as the delivery of Murrumbidgee water to Canberra. However, this could be regarded as a use of infrastructure rather than an inter-basin trade. If the trade were a movement of environmental water into/out of the Basin for the Snowy, then this could be considered a trade.</p> <p>There are other examples in NSW where trade out of the Basin occurs predominantly for power generation purposes, such as the Fish River Scheme in the upper reaches of the Macquarie across to the Greater Metropolitan Region.</p> <p>Such trades should consider the impacts on the origins water source environment and third parties, since this water is effectively moving from one water source to another. These issues would be similar to those associated with inter-valley and inter-state trades.</p> <p>Consideration should also be given to the characteristics of the water traded to determine whether the system of origin rules continue to apply to the allocations after the trade has occurred, which would effectively create a tagged</p>

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		trade, or whether the entitlement is considered to have moved from one system to another, and as such the destination rules of allocation apply.
7	Water access rights—rules relating to other matters	
Q 7–A	What are the advantages and disadvantages of allowing a change in the priority class of a water access right?	<p>It is important to identify the importance of product diversity in the overall water market.</p> <p>High security water provides a highly reliable product at the cost of reduced volume and the opportunity to expand production during wetter periods. By default, reserves held in headwater storages need to be higher and there is a higher risk of dam spilling. A disadvantage of this process is that it may be a less efficient use of headwater storages in terms of irrigation production, and may increase the downstream safety risk associated with reduced flood mitigation capabilities.</p> <p>Having a high proportion of high security products promotes industries and crop mixes that are more dependent on highly reliable or permanent allocations, which are therefore also more vulnerable in the event of shortage or catastrophic supply failure and less able to adapt and recover from these circumstances. For example, permanent plantings can take five to ten years to recover from periods of severe drought due to their long growth cycles.</p> <p>General security water is a product aimed at supporting annual cropping regimes. Historically, larger individual general security entitlements have been granted compared to high security entitlements, so that irrigators could opportunistically grow large areas in times of plenty and during drier times a water shortage or failure industry could adapt without disastrous consequences. This utilises headwater storages more efficiently and with a lower risk for irrigation production as it requires smaller reserves and thus reduces the risk of dam spilling/flooding impacts. These industries are more robust and sustainable through extreme dry periods and are able to manage this risk on an individual basis through business planning and financial reserves. This will become especially important in the face of climatic uncertainty into the future.</p>

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		<p>Enabling the conversion of water access rights provides market flexibility and allows the market to determine the desired diversity of water products, rather than this diversity being purely a function of the historical establishment of entitlement products.</p> <p>However, disadvantages of allowing such conversions include unavoidable third party impacts arising from the conversion, irrespective of what conversion factor is derived. These third party impacts are difficult to define and quantify in terms of the economic and financial impacts on the affected industries and individuals.</p> <p>The third party impacts become especially important in dry years where, for example, creating more high security products, (which are allocated water prior to general security products,) will undermine the reliability of the general security products that have not yet converted. This effect can cause a self-propagating situation of individuals seeking to convert to avoid this impact, rather than a desire to have a high security product.</p> <p>An end result of all users having high security entitlements would be a situation during dry periods where all of the users' requirements cannot be met and their crop mix cannot adapt to climatic variability. This situation has been recently evident in Victoria during the record drought, where their permanent plantings have depended on purchasing NSW general security water allocations (inter-state temporary trading) for their survival. The NSW licensees have been able to sell this water because they were able to reduce their annual cropping in response to climatic conditions.</p> <p>The conversion factor is also a function of how much volume is converted, with theoretically lower reductions required for smaller volumes of water converted from general to high security. For example, a factor to minimise third party impacts for the first 1ML of water converted could be near 1.0 as there is negligible impact on the remaining users of such a small volume converted.</p>

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		<p>Conversely, if the entire general security pool except for 1ML were to convert to high security, the factor required would be closer to 0.0 to ensure no third party impact on that remaining 1ML of general security water. Getting the balance right between a non-volume dependent factor and having a factor that is overly conservative is particularly difficult.</p> <p>Furthermore, the conversion factor is also a function of climatic knowledge. For example, if a new dry sequence occurs, such as has recently occurred in the Murray/Murrumbidgee Valleys, then the factors may not provide sufficient protection for third party impacts. The precautionary principle would indicate that a conservative approach should be applied in these circumstances.</p> <p>In recognition of all of these issues, the NSW Government has recently suspended conversions in these Valleys to review the factors based on more recent climatic knowledge and the methodology for minimising third party impacts.</p> <p>In summary, the advantages of allowing conversions from one security product to another, typically from general security to high security are:</p> <ul style="list-style-type: none"> • supporting the establishment of industries dependent on a very reliable water product; • reducing the overall usage by increasing spills with consequent environmental benefits; • providing the opportunity for more of the water use industry to diversify their product mix to suit individual businesses; and • providing a cheaper way of acquiring high security water than purchasing existing high security entitlements, because if the latter volume were fixed and the demand for it increased, then its price would increase dramatically. In a system where conversion is available, the difference in product price inherently reflects the conversion factor. <p>Having a larger volume of high security water also has a number of disadvantages, especially in extreme dry periods, including:</p> <ul style="list-style-type: none"> • a reduced ability for the broader water market

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		<p>to utilise product diversity to navigate its way through extreme circumstances, resulting in a higher risk of widespread industry damage in these circumstances;</p> <ul style="list-style-type: none"> • a reduced ability for industry to adapt rapidly to extreme water shortages; • the inability to eliminate third party impacts on the remaining general security holders, especially if large volumes of water are converted to high security, thus devaluing the remaining general security product; • the reliance on a collective of individual decisions to derive the overall optimal balance in products for the Valley, which may have perverse outcomes, given the inability to avoid third party impacts of conversion; • a reduced ability for headwater storages to perform flood mitigation function due to higher reserves held in storage; • increased system evaporation inefficiencies associated with water held in storage for longer periods; and • in a drier climate change scenario, either the impact of excessive high security products will be to devalue the general security or in any extreme drought increase the potential for industry failure. <p>Given the inability to eliminate third party impacts and resulting difficulties in avoiding perverse conversion incentives, it will be particularly challenging to achieve the appropriate balance of products for overall industry security, viability and productivity, and effective and safe utilisation of existing infrastructure, to establish a free and open market that enables maximum individual business flexibility.</p> <p>However, it is understood that there is currently sufficient high security product in the market to satisfy the existing industry demand for this product. This is evidenced by the fact that there are generally significant volumes of high security entitlement water allocations sold, indicating a significant proportion of unused or under-utilised high security entitlements. The creation of more high security product could therefore purely become a mechanism for individuals to avoid the third party impacts of others individuals</p>

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Q 7-B	Does defining a specific purpose for a water access right create a barrier to trade?	<p>converting.</p> <p>In effect defining a specific purpose for a water access right does create a barrier to trade, as this means that trading is restricted to between like purposes.</p> <p>There are several types of specific purpose licences in NSW, including major utilities, local water utilities, and licensed domestic and stock water supply and conveyance purposes. In most instances, these specific purpose licences are issued because as it is important to reflect that the water is either for higher priority purposes or the usage is inherently tied to a particular location.</p> <p>Under the <i>Water Management Act 2000</i>, specific purpose licences are required to be cancelled if the purpose for which they have been issued ceases to exist. A permanent trade/transfer could be seen as evidence that the purpose has ceased. In effect, trading from a specific purpose licence to another category of licence is therefore currently prevented.</p> <p>Facilitating the permanent trade of water out of these purposes could undermine the reliability of water supply to that purpose and therefore place a future risk on providing that service. The decision to permanently trade out would be up to the licensee, but typically the resulting risk would be borne by the Government, due to the socio-economic implications of this risk. The magnitude of this risk could be significant, especially for major utilities and local water utilities for rural townships.</p> <p>For example, allowing a major utility, such as a power generator or major urban water supply, to permanently trade water out to another purpose could undermine its future ability to navigate through an extreme drought. Conversely, not allowing this ability to trade out or constraining the potential breadth of trades could constrain the ability of that particular industry to raise funds to investigate and utilise less water intensive methods of generating power or alternate sources of potable water supply, such as recycling or desalination, that may have a reduced impact on the riverine environment or groundwater</p>

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		<p>dependent ecosystems.</p> <p>Allowing a local water utility or a smaller town water supply to permanently trade its water out could also jeopardise its water supply reliability and ability to navigate through an extreme drought. Therefore, allowing this trade out could create third party impacts as a result of a future management response to address the resulting water supply risk. Conversely, as with major utilities, this removes some of the incentives and potential funding sources for local water utilities to find efficiency gains and sell-off any found savings to other parties such as the environment or other types of consumptive users.</p> <p>Licensed domestic and stock supplies are also inherently tied to their location, but some of these may utilise inefficient delivery systems to distribute the water that incurs high conveyance losses. Therefore, as indicated above, disabling permanent trading out of this water to other licence categories can remove some of the incentives and potential funding sources to explore and invest in efficiency savings.</p> <p>In all of these examples, such activities can only be funded by temporary trading and permanent savings can only be utilised to service internal growth in water consumption, population or stock production.</p> <p>In order to undertake allocation trades (temporary trades), local water utilities require an approved drought management plan, demand management plan and must not put their water supply at risk. Urban water use in rural areas is typically small compared to irrigated agriculture, therefore savings from efficiency gains are typically of marginal environmental or third party benefit. However, this is not always the case. For example, in the Peel Valley the urban water supply for Tamworth is approximately double the size of the water used by irrigated agriculture. In cases such as this, efficiency gains could be significant in terms of both improving water supply reliability and minimising any potential future impacts on irrigated agriculture as a result of population growth. In these instances, the incentives to find</p>

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		<p>efficiency savings are higher.</p> <p>Interception activities, such as farm dams, plantation forestry and groundwater interception due to mining are also inherently tied to the location at which they occur. If the extraction of water associated with a particular business, that would otherwise fit into these unlicensed interception categories, becomes significant or exceeds a certain threshold then that specific activity could require a transition into the licensed entitlement framework. If the impacts of that activity are ongoing or unpreventable then it would be typically inappropriate to enable this licence to trade its water to another type of user, as this could result in growth in use of water. These issues are currently being explored under the COAG Work Program.</p> <p>As such, there is merit in reconsidering allowing trading of specific purpose licences to other categories of licences, but further consideration would be required regarding the risk of future water supply for that purpose.</p>
Q 7–C	Should there be any restrictions on the trade/transfer of water to urban areas within the MDB?	<p>Trading of entitlements (permanent trading) into urban areas is permitted under NSW legislation, although this trading is still subject to the trading rules under the relevant water sharing plan. Currently, there are no restrictions on permanent trading into either major or local water utilities in NSW. These utilities can buy entitlements from any other category of licence. Trading of water allocations (temporary trading) into urban utilities is also permitted under the legislation.</p> <p>The <i>NSW Water Management Act 2000</i> allows local water utilities to have their entitlements varied to reflect both gradual population changes and rapid population growth. Therefore, a local water utility will typically purchase water from other categories of licence to protect their existing reliability or encourage future population growth and associated commercial activities to their town. For example, Macquarie Generation (a major power utility) and Tamworth Regional Council (a local water utility) both own a number of entitlements which are not major utility or local water utility access licences respectively.</p>

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		<p>The conversion from one category of access licence to what is currently a specific purpose category would in effect change the product and the subsequent characteristics of that water. This, in effect, implies that a conversion factor would be required to minimise the third party impacts. Please refer to Q7-A for issues relating to conversion factors.</p> <p>Direct conversion between other categories and specific purpose categories of licences are currently not permitted in NSW. In many cases, the gains in priority/security that such a conversion offers may not actually be desired by the licensee. This would depend on their assessment of the reductions that would be associated with any conversion factor and the legislative provisions relating to tradeability and the relevant entitlement review processes that apply to major utility and local water utility access licences.</p>
Q 7–D	Should it be possible to trade/transfer stock and domestic rights? If so, what conditions should apply?	<p>Under the <i>Water Management Act 2000</i>, domestic and stock rights can either be accessed as a basic landholder right or licensed.</p> <p>Basic landholder rights, as they relate to domestic and stock purposes, are afforded to either those landholders who front a river or lake, or who overlay an aquifer. These landholders are able to take water for domestic and stock watering purposes without the need for a licence. Domestic and stock rights are therefore tied to land and do not have an entitlement that can be traded.</p> <p>Domestic and stock licences are typically issued to landholders who wish to use water for that purpose, but do not have access to, or wish to exercise their basic landholder right (non-riparian users that do not overlay an accessible aquifer), or who wish to use more than their basic right. These licences are therefore issued as a specific purpose category.</p> <p>Please refer to Q7-B for further information.</p>
Q 7–E	To what extent, and how, should water trading rules provide for the needs of environmental water-holders?	The environmental water holders are part of the broader water trading market and therefore, for equity purposes, should be treated like other licensees in the market. The purchase of environmental water should consider the desired

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		<p>objectives and outcomes, and target water of a category and location that is best suited to meet that objective/outcome.</p> <p>Purchased environmental water should retain its original characteristics otherwise there is the potential for third party impacts. However, there are trading constraints in NSW that were developed to manage the potential impacts of consumptive trade on the environment. With increasing participation of environmental water holders in the market, some of these constraints could be re-examined.</p> <p>Opening up trade in purchased environmental water may raise questions about also opening up trade for consumptive users where it has traditionally been limited.</p> <p>Please refer to Q6-A, Q6-B, Q6-J to N.</p>
Q 7-F	<p>What are the advantages and disadvantages of requiring the possession of a relevant water use approval as a condition of approving a trade/transfer?</p>	<p>Under the <i>Water Management Act 2000</i>, the permanent trade of entitlement is undertaken without direct reference to water use approvals. What is more important is the amount of water that is actually applied to the land, where it is applied and for what purpose.</p> <p>The volume of the entitlement, the location at which it is applied and the purpose it is used for are considered as three separate issues. The <i>Water Management Act 2000</i> has three separate approvals which enables land and water to be effectively separated. Importantly, under this framework, there is no limit on the volume of entitlement a person may hold. Water is separated from land in such a way that it can move freely from one parcel of land to another or be held for investment purposes by an entity that does not actually hold land,</p> <p>The terms under which the water may be used on land is regulated separately by the water use approval. This arrangement recognises that an entity may hold entitlement for purposes other than extraction and use on a particular parcel of land. These other purposes can include assurance of supply in periods of reduced availability, the possibility of future trading of surplus entitlement and allocations and purely for investment</p>

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		<p>purposes.</p> <p>A requirement to hold a use approval as a condition of approving a trade would affect investors in the market who have no intention to apply the water to land but wish to trade the allocations associated with their purchased entitlement on the market on an ongoing basis. As such, the use approval is a more important precondition of actually applying any water allocations to a particular parcel of land.</p>
Q 7–G	<p>To what extent, and in what way, should water trading rules attempt to address:</p> <p>(a) salinity</p> <p>(b) other environmental issues arising from changes in the timing and level of river flows (in contrast to the impacts of water use on land)?</p>	<p>Salinity is predominantly an issue where a particular water use could over time result in water table rise and mobilisation of salt where the groundwater is saline. A water use approval is the mechanism for regulating appropriate activity for a particular landscape unit. Water use approvals are either not granted or are given with conditions attached, relating to on-site mitigation of potential salinity impacts, where potential salinity impacts are possible.</p> <p>Given the separation of entitlement, works and use approvals in NSW, a water trade does not constitute an approval to use water. The NSW Government does not consider it appropriate to have entitlement trade rules to manage salinity issues. The water market is driven by a range of motives and analysis has demonstrated that many water trades do not result in changed water use.</p> <p>The NSW Government considers it inappropriate to use water trade rules to influence patterns and timing of water use to mitigate river salinity. Water trade rules are an inefficient and imprecise mechanism to influence patterns of water use, particularly at the scale where it would matter. Given that there are many water management issues influencing salinity, as well as patterns and timing of water use, it is considered more effective for the current investment in offsets (for example salt interception schemes) and integrated river operations strategy with strategic dilution and other operational levers to be applied.</p> <p>Even though certain levels of trade are inherent in the current management arrangements and flow regimes, further increases in water trading should consider any potential impacts on the</p>

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		<p>environment. For example, trades rules should be designed to consider improved management of over-use in certain areas.</p> <p>Environmental assessments that are part of the trade approval process may consider these more broad environmental impacts. These processes are typically designed with the potential impacts of consumptive trading on the environment in mind. Therefore, the current processes could either be expedited or reviewed when it comes to approving trades in environmental water.</p> <p>Please refer to Q6-1, Q6-B, Q6-L and Q6-Q</p>
Q 7-H	Are there other examples (besides the 4 per cent rule) of volumetric limits on the amount of water that can be traded/transferred out of particular areas?	<p>NSW does not have any volumetric limits other than the four per cent rule. In theory, volumetric limits could be utilised as part of a short term tool to manage water trading issues in relation to physical and environmental trading constraints.</p> <p>Please refer to Q6-A, 6-B.</p>
Q 7-I	What are the arguments for and against volumetric limits on the permanent trade of water access rights out of an area?	<p>The four per cent volumetric limit for permanent trade in entitlements out of irrigation areas was agreed to by the National Water Initiative (NWI) parties to protect the surrounding regional economies from the potential impacts of rapid movement of water out of their supporting irrigated agriculture. This agreement recognised that the rate of change should be managed in a sustainable manner and that a maximum limit of four per cent of reduced entitlement per annum would provide this outcome.</p> <p>There are a number of difficulties in applying this four per cent limit in the manner in which it was intended under the NWI.</p> <p>Firstly, it is difficult in some jurisdictions to ascertain where the water that is separated from land is actually applied and therefore whether it has effectively left the regional area. With the separation of entitlements and works approvals, the NSW Government believes it has a tool to deal with this issue. That is, the works approval can be used to identify which land the water is applied to and therefore changing the work approval location to one outside the infrastructure operator's area is the step required to trigger accounting against the limit.</p>

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		<p>Secondly, permanent trades out of an area can only be accounted against the limit and therefore temporary trades back into an area are not accounted. As a result there is an opportunity for individuals who wish to free up their future trading decisions and get “outside” the four per cent limit now. This opportunity is exercised by the individual permanently trading their water out to another entitlement that they own outside the area, and then temporarily trade this water back to themselves on an ongoing basis. This activity in itself makes the four per cent limit more likely to be reached in each year and therefore becomes a circular incentive to exercise this opportunity. To-date this practice has not been evident in NSW.</p> <p>Despite this, there could be perverse outcomes to the broader industry if temporary trading were accounted against the four per cent limit and therefore constrained. This would especially be the case during dry periods where this component of the market becomes significant and is important for business security and flexibility for both the buyers and sellers.</p> <p>Finally, the scale at which the limit is applied also needs to be consistent to ensure competitive neutrality in the market. The NWI does not currently give clear enough guidance on what this scale should be, which has resulted in different application in different jurisdictions.</p> <p>Retail tagging is an ongoing complex area when it comes to the four per cent limit. Whilst this provides the infrastructure operator protection from the risk of stranded assets, it essentially results in the water no longer being applied to the land within the infrastructure operators’ area of operation and therefore could affect the regional economy. However, given that retail tagging still injects finance into the area, this becomes a complex socio-economic analysis.</p> <p>With the implementation of the market rules, there will also be added complexity in determining whether transformations should be accounted against the limit and if so, how this will affect the intent of the four per cent limit.</p>

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		<p>With the entry of the Commonwealth Government into the water market, purchasing water for the environment, there is a much higher potential for the four per cent limit to be reached in each year. The socio-economic analysis relating to the movement of consumptive water out of an area relative to the injection of funds into the area needs to be considered carefully. Conversely, the existence of the four per cent limit may result in a driver for inappropriate distribution or targeting of water acquisitions that may not line up with the best environmental outcomes or appropriate jurisdictional equity in terms of adjustments.</p> <p>Consideration of these issues and the complexities relating to resolving them would suggest that there is merit in raising and eventually removing the limit. However, the NSW Government recommends this not occur before the development of implementable mechanisms to manage a sustainable rate of change in regional economies, such as a well structured environmental purchase programs that carefully considers the socio-economic impacts of water purchase for non-consumptive purposes on such a large scale.</p> <p>For other trading constraints please refer Q6-A, -B.</p>
Q 7 -J	Where water access rights are not currently tradeable, what are the advantages and disadvantages of requiring them to be made tradeable?	<p>Major utilities, local water utilities, town water supplies, licensed domestic and stock water and conveyance water have trading limitations.</p> <p>Basic landholder rights are non-tradeable.</p> <p>Please refer to Q7-B.</p>
10	Approval processes	
Q 10-A	What are the practical implications of multiple approval authorities involved in the approval of a trade/transfer?	Managing a largely linear set of recommendations, approvals, and registrations between authorities with different legislative frameworks and largely incompatible database systems may create an overly complex system and increase trade approval times.
Q 10-B	What are the advantages and disadvantages of enabling Basin state approval authorities to have direct access to each	Opportunities to improve inter-operability between jurisdiction databases are currently being investigated. In the longer term, the objective of the proposed National Water Market System is to largely eliminate these system related

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	other's registers and/or accounts for the purposes of determining or giving effect to particular kinds of trade/transfer?	inefficiencies.
Q 10-C	What considerations are relevant when considering the form and manner of applications to trade/transfer tradeable water rights?	The primary considerations include: <ul style="list-style-type: none"> • obtaining the information necessary for the Minister to exercise the requirements of the relevant legislation, such as compliance with trading rules; • obtaining client information to ensure ongoing smooth and seamless administration of the transferred water access entitlement; and • confirming that the application is duly authorised by the relevant parties.
Q10-D	Are there other legislative requirements limiting the ability of approval authorities to accept applications electronically?	There is no legislative restriction under the <i>Water Management Act 2000</i> to accepting applications electronically. The NSW Government has developed a system for completing and lodging 'on-line' applications relating to trade in water access licences. The first version of this system is scheduled to go into operation by the mid-2009. The intent of the new system is to add electronic validation of applications in a later version of the system, through the inclusion of a Personal Identification Number capability.
Q 10-E	Is there scope to develop application forms relating to the trade/transfer of tradeable water rights that are consistent between states? Would there be merit doing so?	There may be scope for consensus on the broad principles for forms, especially in areas where inter-state trade using tagging occurs. For example, the layout of forms may be important to facilitate customer familiarity. The scope for more detailed consistency will be limited by significant differences in the legislation in place in each jurisdiction, procedures and database systems which are reflected through the information required in the application, and the "check-boxes" in the form itself.
Q 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)?	There are both advantages and disadvantages to allowing applications to be lodged through a single portal. These issues are being addressed as part of the development of a National Water Market System under the COAG process.
Q 10-G	What factors can negatively influence approval times? What measures should be taken to address these factors?	Factors that can negatively influence approval times include the availability of resources, development of adequate administrative procedures, staff training, investment in database systems and stakeholder education in terms of

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		ensuring adequate information is provided in the first instance.
Q 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?	<p>The first factor that would need to be taken into account is the ability to report on trade processing times. This is being addressed under the COAG process. Performance standards have already been agreed for both temporary and permanent trade. Reporting of temporary trade processing times on a monthly basis commenced in January 2009. Permanent trade reporting is scheduled to commence for July 2009.</p> <p>Temporary trade performance for both inter- and intra-state trade in NSW has exceeded than the COAG performance standard in each month to date.</p>
Q 10-I	What requirements are placed on intermediaries when dealing directly with approval authorities regarding an application to trade/transfer?	The NSW Government does not recommend or endorse any intermediaries and does not place any standards or requirements on them.
Q 10-J	Do approval authorities recommend specific brokers or exchanges to water market participants? On what basis are such recommendations made?	Please refer to Q10-I.
Q 10-K	<p>Is there evidence that particular applications to trade/transfer are expedited or processed differently by approval authorities because those applications take place through a particular exchange or broker?</p> <p>If so, what is the justification for this?</p>	<p>Applications made under 71Q and processed by the NSW Government are treated equally, regardless of the applicant or involvement of a particular third party.</p> <p>Please refer to Q10-I.</p>
Q10-L	What influence, if any, does an approval authority's other activities have on its consideration of applications to trade and transfer tradeable water rights?	Applications made under the <i>Water Management Act 2000</i> are determined in accordance with the legislation, its regulations and associated water sharing plans.
Q 10-M	Are there examples of approval authorities with	NSW has separated a regulator, the Department of Water and Energy (DWE), and operator, State

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	<p>conflicts of interest?</p> <p>If so, are measures taken to address this possible conflict? Are these measures adequate?</p>	<p>Water. State Water does not own any water access licences nor is it involved in the approval process other than to inform DWE's assessment process, specifically relating to physical trading constraints.</p> <p>Furthermore, the Water Administration Ministerial Corporation (WAMC) under the <i>Water Management Act 2000</i> holds a number of licences on behalf of the NSW Government. The licences are managed by the Department of Environment and Climate Change (DECC) and consist of water that has been allocated to the environment and the purchased environmental water.</p>
11	Reporting and the availability of information	
Q 11-A	What issues do market participants encounter in relation to obtaining information to enable the trade/transfer of tradeable water rights?	The DWE website provides a comprehensive range of market information without charge, through the Water Trading Register and a range of other useful registers and important information.
Q 11-B	How relevant are the particular characteristics of a tradeable water right to a decision to trade/transfer?	<p>The attributes of a water right are critical to the market's proper evaluation of its worth. The characteristics required include, reliability and definitive periods of restriction.</p> <p>A comprehensive report on "Water Availability in NSW Murray-Darling Basin Regulated Rivers" has made publicly available on the DWE website. This report provides relevant information relating to the reliability of various entitlement products in the Basin to transparently inform the water market and assist with their valuation of these products.</p> <p>The Report can be found at; http://www.dwe.nsw.gov.au/water/pdf/model_river_water_availability_mdb_reg_rivers.pdf</p>
Q 11-C	Are there particular characteristics of water access rights where greater consistency throughout the MDB would lead to more efficient markets?	<p>The availability of similar data relating to reliability and the time series of availability (restrictions) would lead to better informed market.</p> <p>However, homogenising the characteristics of products across the Basin can lead to perverse outcomes and actually undermine the effectiveness and adaptability of the market.</p> <p>Please refer to Q11-B, Q6-K and Q7-A.</p>

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Q11-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?	<p>Action on this issue has been considered by the National Water Commission's Compatible Registers Working Group.</p> <p>The NSW Government agrees that more consistent terminology may reduce the complexity of water trading and allow new players to more quickly understand the market.</p> <p>The disadvantage associated with developing consistent terminology is the cost in terms of amending legislation and the associated consultation, database system and document modifications and market awareness campaigns necessary for its successful implementation.</p>
Q 11-E	<p>What are the advantages and disadvantages of providing information about the characteristics associated with tradeable water rights:</p> <p>(a) at a single point (e.g. a website)?</p> <p>(b) in a particular format and/or template?</p>	<p>The DWE website provides information on water access licence characteristics, trading rules and processes. The provision of this data through a single portal is being considered as part of the National Water Market System project.</p> <p>Please refer to Q11-A, Q11-B.</p>
Q11-F	What measures could be taken to make trading rules more easily accessible and transparent for stakeholders?	<p>Trading rules relating to a particular water source are articulated in Water Sharing Plans, which are the subject of a comprehensive communication strategy. WSPs are publicly available on the DWE website, as well as the general NSW legislation website.</p> <p>Broader trading rules, such as inter-state trading consideration and intra-valley and intra-water source trading, could be better communicated through publicly available information provided on the DWE website. The NSW Government is currently investigating this option as a tool to improve stakeholder education.</p>
Q11-G	<p>What are the advantages and disadvantages of providing information about water trading rules and requirements:</p> <p>(a) at a single point (for example, a website)?</p>	<p>The DWE website provides information on water access licence trading rules and processes. Many of these rules are relatively static and are well suited to be communicated utilising web-based processes.</p> <p>However, there are also trade rules that are quite dynamic in their evolution, especially during</p>

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	(b) in particular format(s) and/or template(s)?	<p>extremely dry periods. Therefore, appropriate communication tools are essential.</p> <p>The provision of this data through a single portal is being considered as part of the National Water Market System project. The NSW Government recognises that if a web-based tool in a stand-alone manner, there is potential that delays due to administrative processes may result in the market believing a certain trading rule is up-to-date in real-time, but it may actually be out-of-date or superseded by a new rule. This could be construed as misinforming the market.</p> <p>Please refer to Q11-E, Q11-F.</p>
Q 11– H	Are there any concerns about the role of intermediaries in providing information about trading rules and other related matters to water market participants?	<p>The NSW Government is concerned to ensure that any information provided by intermediaries should not be false or misleading.</p> <p>Please refer to Q10-I and Q11-G.</p>
Q11–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? See sec 11.5 of the paper	<p>The <i>Water Management (General) Regulation 2004</i> requires that applicants must complete all relevant information in the application form. Forms for dealings under 71Q and temporary trade forms require the applicant to disclose the trade price.</p> <p>Therefore, reporting trade prices is already a requirement in NSW and this information is made publicly available on the Water Trading Register. This helps with market transparency and product valuation.</p>
Q 11–J	What practical measures could be taken to ensure the accuracy of pricing data that is reported?	The MDBA Trade Working Group is reviewing measures to deal with the accuracy of reported pricing data.
Q 11–K	To what extent do differences in how data (in relation to the trade/transfer of tradeable water rights) is collected, classified and reported affect the usefulness of trading volume and pricing information?	<p>Volume data is reported directly from the actual volumes moved in the Water Access Licence register or water accounting database.</p> <p>Market education on how to interpret this information is as important as ensuring uniformity in the data that is reported. Consistency in reported information and formats can assist with market education.</p>

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Q 11–L	What measures could assist in making trading volume and price data more readily available to interested parties?	Trading volume and price data in NSW is readily available to interested parties through the relevant registers on the DWE website.
Q 11–M	What concerns, if any, are there with the current approaches informing water market participants about allocation announcements?	<p>The NSW Government’s concerns related to the areas of understanding and interpretation of allocation announcements. In NSW, information on Allocation/Available Water Determination is an accumulation of information across two statutes, two accounting methodologies and a significant number of WSP rules. As such, it is important to ensure announcement information provide accurate answers to a variety of questions.</p> <p>The NSW Government considers it imperative that these announcements are communicated to the entire market in a timely, transparent and consistent manner and that industry understands these processes. This would ensure that there is equity of knowledge and understanding in the market place.</p> <p>One such strategy to address this issue in NSW is that announcements are made on a fixed date each month and industry is now accustomed to watching the appropriate website and listening to media broadcasts on that date. Whilst the dates may vary between valleys, the announcement is intended to be consistent within each valley.</p>
Q11–N	What are the advantages and disadvantages of water authorities providing forecasts for future water allocation announcements?	<p>Forecasting information provided as supplementary information to the formal announced allocations provides valuable information to licence holders and interested parties as to the likelihood of future resource increases. This enables stakeholders to make informed decisions about their own individual business risk profile with a clear understanding of the possible implications. It also provides valuable information to inform the market of the potential for future trading of allocations (temporary trading). It must be recognised that the water user or trader must accept the risk associated with the forecast information.</p> <p>However, it is difficult to determine how much forecasting should be formally included in the allocation announcements, with the market impression being that once the water is allocated it</p>

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		<p>is guaranteed to be supplied. This may not necessarily be the case and the risk of this occurring is a function of how conservative the forecast is.</p> <p>There are two main issues resulting from this. Firstly, these forecast inflows do not all arrive in the first month of the water year and therefore the water announced is not immediately available. Secondly, these forecast inflows may never eventuate, due to extreme or unprecedented conditions, and water may not actually materialise into the accounts. Such considerations can be factored into the account access and management rules, but these can be controversial and need comprehensive communication strategies.</p> <p>The level of acceptable risk to factor into the formal allocation announcements involves a complex balance between the effective utilisation of the available infrastructure and the risk of failure to deliver on the announced water.</p> <p>Please refer to Q7-A regarding the issues relating to storage reserves.</p>
Q 11-O	Is sufficient information available on how water allocations are calculated?	Prior to the current drought, the NSW Government published annual water allocation plans detailing how allocations are calculated and managed. Due to changes in priorities as a result of the drought, allocation announcements are now discussed directly with stakeholder groups prior to decisions being made.
Q11-P	How can the way in which a trading rule policy change is communicated affect the water market?	Please refer to Q11-F, Q11-G, Q11-K and Q11-M
Q 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)?	<p>Policy changes should undertake appropriate and timely consultation during their development and communication at their commencement.</p> <p>Please refer to Q11-F, -G, -K, -M.</p>
Q11-R	How should the water trading rules provide for	Please refer to Q11-A, -B, -C, -E, -F, -G, -I.

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	the use of registers to provide information about the trading or transfer of tradeable water rights?	
Q 11-S	To what extent are inter-operable registers between Basin states necessary to facilitate the operation of efficient water markets?	Please refer to the National Water Market System project.