

## Response to ACCC Water Trading Rules Issues Paper

Draft prepared by Charles Thompson 28/4/09

The Water Steering Committee (WSC) of the Horticulture Water Initiative (HWI) has prepared this response. The HWI is an across industry program of Horticulture Australia Limited (HAL) and was established to provide a coordinated approach to water issues in horticulture and promote responsible water use. The objective of the Initiative is "*Ensuring access to water for responsible and profitable horticulture*".

One of the key strategies of the initiative is to provide analysis and support to policy makers regarding horticulture's water requirements.

This submission: -

- outlines background on horticulture;
- provides the Water Steering Committee's policy positions;
- provides responses to ACCC water trading rules Issues Paper March 2009 key questions.

### Background on horticultural industries

The Australian horticultural industry makes a significant contribution to the national economy and the MDB economy. It is extremely diverse, comprising of nuts, nursery, fruit, vegetable, extractive crops, turf and cut flowers (consisting of more than 40 individual industries or commodities). The national gross value of horticulture production is around \$7 to 9 billion in farm gate value of production.

In the last five years the gross value of production increased by 31%. With over 25,000 horticultural enterprises nationally, estimates suggest the industry employs around 100,000 people - including 8,500 in the nursery industry. Employment in horticulture accounts for almost 25% of overall agriculture sector employment. Increasing employment and economic growth from horticulture are providing great opportunity for rural communities.

Horticulture is the third largest agricultural industry in Australia (only the grain and meat industries are worth more), with a 14% share of total agricultural production. The industry generates exports worth between \$700 million to \$900 million a year and underpins the future of many regional Australian communities. Horticulture recognises the need to foster economic, environmental and social development and is a key contributor in each of these areas. The industry also recognises increasing market demand to certify good agricultural practice. It is leading the way in quality assurance, new technology and adoption of environmentally responsible practices.

The major growing regions in the MDB include the Goulburn Valley of Victoria, the Murrumbidgee Irrigation Area of New South Wales; the Sunraysia district of Victoria/NSW; and the Riverland of South Australia. These areas are estimated to have around \$2 B annual farm gate horticultural value of production. Crops include stone fruit, citrus, grapes, fresh pears, canning fruit, nuts, processing tomatoes, apples, pears and fresh vegetables. There are substantial multipliers to farm gate value eg. pack houses, canning and food processing which make horticulture a foundation for many regional economies and jobs in regional MDB communities.

Horticultural crops use about 17% of total irrigation use (ABS 2002/03) and produce over 40% of Australia's irrigated production. Figures suggest that for every 100ML of water used in horticulture \$250,000 and four jobs are generated at the farm gate and approximately \$0.5 billion to the economy.

The horticultural industry has continued to increase the efficiency of water use, through the adoption of technology and better on-farm water management. The industry is at the forefront of developing and using new technology for soil moisture sensing and irrigation scheduling to ensure high efficiency of water use. There remains considerable scope for improved water use efficiency (and water management) and the industry is committed to, and will continue to address the issue.

### **Overall HWI Summary Policy Position - 11 Key Points**

#### **Water Rights and Reliability**

- 1) Horticultural producers require water suppliers and regulators to ensure that the reliability of water supplies are made explicit and are regularly reported (ie. the probability of annual allocations being available for supply in the short term and long term).
- 2) Recognition that permanent horticultural crops require high reliability water, and the huge cost of replanting if permanent crops suffer from water restrictions (several years income as well as replanting cost). High water reliability is also required for producers of annual horticultural crops, particularly those who have supply chain contracts to meet.
- 3) Changes in water reliability should be done in full consultation with water users so as to inform users and the water market. Water users should be involved with any decisions affecting risk assignment of water property rights.
- 4) The principles of the National Water Initiative should be followed in compensating water users when water reliability and access is reduced through policy decisions such as increased environmental flows. Where this has not occurred in the past it has diminished water property rights and confidence.

#### **Water Supply**

- 5) Access to water for horticulture should be improved by enabling irrigators access to water trading systems and through researching and implementing safe wastewater and stormwater recycling schemes.
- 6) Town water restrictions must be developed in consultation with horticultural representatives, to avoid unfairly limiting access to water to horticulture (compared to other urban industry/business users).
- 7) Ageing irrigation or drainage infrastructure and new irrigation schemes should be operated/ designed with levels of service that do not limit horticulture's ability to adopt modern practise.

#### **Water Use Efficiency**

- 8) Ongoing investment in the development of new technology and practices for improved water management and practices are required to continue to enhance environmental and commercial performance, both on-farm and off-farm. This includes research and development into crop water requirement, irrigation methods, nutrient management, sediment runoff and salinity management.

### Environmental Performance

- 9) Support and encouragement must be provided for training and adoption of other industry programs that provide public and environmental benefits (eg. *Horticulture for Tomorrow Program*).
- 10) Water use/site use licences and other regulatory requirements for the demonstration of sustainable land and water use by irrigators should be developed in consultation with industry and be compatible with existing industry environmental programs.

### Industry Performance against Triple Bottom Line

- 11) The horticulture industry has demonstrated commitment and enormous progress towards efficient water use, improved environmental performance, production and employment. This should be recognised by communities, governments and other stakeholders.

### The WSC view on water trading is cautious support for water trading and unbundling of land and water titles.

- 1) Governments have been keen to promote water trade to shift water from low value to high value uses. Horticulture has been able to grow as a result of water trade and also to better survive droughts by buying water on water markets. However, it is important to realise that high value use is only preferable when it is profitable and can be sustained.
- 2) All new developments must be market driven with a sound business and marketing case. Higher value use is not sustainable if it is not profitable or over supplies existing markets.
- 3) Sustainable profitability depends on a number of elements that are not well reflected in the gross return on water. Other aspects are market trend, capital and operating costs, and the need for supporting infrastructure. Governments should be discouraged from using simple gross value and gross margins in comparing the potential profitability of enterprises.
- 4) Shares of delivery capacity are supported, provided they can be traded to enable properties to upgrade their service levels. They should not be used to maintain inadequate infrastructure or services when upgrades are necessary, cost effective and supported by water users.
- 5) Water charges (and exit fees) should only be applicable to those properties that receive service or wish to retain future access to the service. Water charges should not restrict trade from properties that choose to permanently cease irrigation.
- 6) Open trade is supported provided that the impacts on irrigators who are left on "stranded assets" are dealt with in a fair and reasonable manner and community impacts are considered. Open and fair trade in irrigation schemes must be underpinned by sound arrangements that meets the needs and addresses economic impacts of both irrigators and schemes managers. This means that such irrigators are given a range of options rather than expected to solely meet the entire cost of maintaining unviable infrastructure.
- 7) A uniform environmental levy on trade is not supported. Trade is not responsible for all environmental costs and may provide benefits.
- 8) Greater consistency in trading rules across regions is sought.

The Water Steering Committee's position also believes that water trading rules need further work for:-

- groundwater trading rules
- recycled water entitlements and trading
- urban water arrangements need to be investigated, often the nursery industry is penalized by outdoor water restrictions while other high water use industries are not.
- We also believe that regional communities and industries should be consulted in the preparation of water resource management plans.

## Response to ACCC Issues Paper Key Questions

### Question 5–A:

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

No

### Question 5–B:

Should the ownership of water access rights be restricted for any particular individuals? If so, on what basis?

*Yes, a proportion of water access rights for domestic, stock, irrigation, environment and urban use should be protected. A water resource plan should specify the appropriate shares for irrigation, urban and environmental use.*

*This is in recognition of the third party, social and environmental impacts of unfettered water trade e.g. if Adelaide or Melbourne purchased all available water from the MDB in an extreme year.*

### Question 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 trading rules need to incorporate these factors. Both (a) physical constraints and (b) environmental limits must be specified in water resource plans and reviewed to ensure they are still relevant. Arrangements regarding "back trade" where a constraint has imposed a limit that has not been reached due to reverse directions of trade (e.g. Barmah Choke) should be explicit.*

*Arrangements regarding salinity zoning and levies should also be explicit and consistent across the MDB.*

### Question 6–B:

On what basis are water trading zones defined? Are there examples of where trading zones have been set too narrowly? Too broadly?

*Trading zones do not incorporate any environmental impact when dilution flows could exist e.g. significant movement of water upstream could reduce instream environmental values or water quality downstream. This needs to be considered in the development of water trading rules.*

### Question 6–C:

What scope is there to introduce trading zones where there are none already in place?

*Trading zones need to incorporate salinity hazard as per the Mallee Zone in Victoria. This*

*should be extended to other areas where similar salinity hazard exists.*

**Question 6–D:**

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

*Carryover rights should be unrestricted until dams spill. In this case, carryover should be spilt before “non carryover” seasonal allocation.*

**Question 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?

*Unless systems are shut down conveyance losses generally remain if water is traded out. Conveyance losses should be reported annually for each major supply system. If conveyance loss becomes a significant component of trade or systems close down, then it should be incorporated in water trading rules.*

**Question 6–F:**

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

*Time to approve trade can be excessive.*

**Question 6–G:**

How could tagging arrangements for 'permanent' trade be improved?

*Tagging maintains a complex mix of products. Some of these have a poorly defined reliability. Both long term and seasonal estimates of reliability of water products should be calculated and reported to the market.*

**Question 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?

*Shared aquifers for groundwater have not been addressed in interstate trade.*

**Question 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?

*Time taken to gain approval for trade of allocation can be excessive.*

**Question 6–J:**

Should trades/transfers between unregulated systems be permitted? If so, what measures could be taken to ensure that water reaches its intended recipient?

*Should be considered at a regional level in water resource plans. In some cases it can be allowed (low risk of third party or environmental impacts) in other areas it cannot.*

**Question 6–K:**

What are the advantages and disadvantages of permitting the trade/transfer of a water allocation:

(a) from a regulated system to a (connected) unregulated system?

(b) from an unregulated system to a (connected) regulated system?

Do these factors differ depending on which system is upstream? What arrangements would be necessary to facilitate these trades/transfers?

*As per Q6-J.*

**Question 6-L:**

Under what circumstances should a trade/transfer between a ground water system and a surface water system be permitted?

*As per Q6-J.*

**Question 6-M:**

Are there any issues of concern about changes in the location of water access rights within a regulated system?

*Back trade of water needs better defined arrangements. See Q6-A*

**Question 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?

*As per Q6-J.*

**Question 6-O:**

Are third party impacts adequately addressed in relation to changes in location within ground water systems?

*As per Q6-J*

**Question 6-P:**

How could the trade/transfer of ground water access rights be made more efficient?

*Through water trade zoning established by regional plans.*

**Question 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?

*No, see response to Q5-B. Restrictions should limit type of use but not location in or out of Basin and be subject to environment/salinity/third party rules. This can be covered with relevant water use approval licenses.*

**Question 7-A:**

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

*Advantages:- enable irrigators to charge water product to suit preferred risk profile.*

*Disadvantages:- there may be third party impacts if exchange rate adopted is different to actual annual allocation. Also added complexity of allowing conversions, when trade of tagged water products can achieve the same result for preferred irrigation risk profiles*

**Question 7-B:**

Does defining a specific purpose for a water access right create a barrier to trade?

*Yes, subject to response in Q5-B.*

**Question 7-C:**

Should there be any restrictions on the trade/transfer of water to urban areas within the MDB?  
*Yes, subject to response in Q5-B.*

**Question 7–D:**

Should it be possible to trade/transfer stock and domestic rights? If so, what conditions should apply?

*Yes, subject to response in Q5-B.*

**Question 7–E:**

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

*See response in Q5-B.*

*As well as buy water within specified limits. The environmental water allocations may also be used to sell back to the market in years it is not required.*

*Water trading rules for environmental water holders should be consistent with that for other users including treatment of carryover. See response to Q6-D.*

**Question 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?

*Should be maintained to ensure third party/environmental impacts are properly protected.*

**Question 7–G:**

To what extent, and in what way, should water trading rules attempt to address:

(a) salinity

(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)?

(a) *Salinity impacts of water trade need to be incorporated in the water trading rules in a consistent manner i.e. as per the MDB Agreement.*

(b) *Other environmental issues also need to be monitored and if appropriate addressed where water trade has a significant impact.*

**Question 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?

*No response.*

**Question 7–I:**

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

*Communities and local economies need time to adjust to rate of change created by water trade.*

**Question 7–J:**

Where water access rights are not currently tradeable, what are the advantages and disadvantages of requiring them to be made tradeable?

*No response.*

**Question 8–A:**

To what extent does the bundling of water delivery rights with either an irrigation right or a water access right present a barrier to, or restriction on, the trade/transfer of these rights?

*No response.*

**Question 8–B:**

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

*No response.*

**Question 8–C:**

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

*Trade in water delivery rights should be subject to rules that are based on physical and environmental constraints.*

**Question 8–D:**

What factors should govern the specification of areas within which water delivery rights may be traded/transferred?

*As for Q8-C.*

**Question 8–E:**

What are the advantages and disadvantages of requiring the development of arrangements to allow for the trade/transfer of water delivery rights?

*Could result in increased complexity.*

**Question 9–A:**

What requirements, if any, should be placed on IIOs so as to enhance the trade/transfer of irrigation rights?

*Explicit levels of service e.g. delivery share defined in ML/d capacity share for water delivery rights.*

**Question 9–B:**

What are the advantages and disadvantages of requiring more explicit separation of an irrigation right from a water delivery right, where these are currently bundled?

*Advantage:- it allows properties to optimise mix of water access rights and water delivery rights to their enterprise.*

*Disadvantage:- increased complexity and transactional cost.*

**Question 9–C:**

Are the policies and procedures of IIOs in relation to the trade/transfer of irrigation rights transparent and accessible to their customers?

*Currently these are complex and highly variable between IIOs.*

**Question 9–D:**

To what extent, and in what circumstances, is it appropriate for an IIO to impose restrictions on



the 'permanent' trade of an irrigation right to another person located **within** the IIO's area? What are the specific forms of any current restrictions, and their implications?

*Water delivery, environmental or third party constraints that are specified in a water resource plan.*

**Question 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?

*Water delivery, environmental or third party constraints that are specified in a water resource plan.*

**Question 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?

*Individual irrigators should be able to decide their own mixed irrigation rights within reasonable limits that are physically based and consistently implemented by the IIO.*

**Question 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 a location outside of the IIO's area? What are the specific forms of any current restrictions, and their implications?

*IIOs should not impose restrictions on trade unless there are specific environmental or physical capacity constraints that are specified in a water resource plan.*

**Question 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?

*As per Q9-G.*

**Question 10-A:**

What are the practical implications of multiple approval authorities involved in the approval of a trade/transfer?

*High transaction costs and long term delays in approval. Perhaps uniform water trading proformas should be developed.*

**Question 10-B:**

What are the advantages and disadvantages of enabling Basin state approval authorities to have direct access to each other's registers and/or accounts for the purposes of determining or giving effect to particular kinds of trade/transfer?

*Advantage if it reduces transaction costs and simplifies process of approval.*

**Question 10-C:**

What considerations are relevant when considering the form and manner of applications to trade/transfer tradeable water rights?

*See Q10-A.*

**Question 10–D:**

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

*No response.*

**Question 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?

Yes

**Question 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)?

*Advantages provided this does reduce transaction costs and time delays and doesn't add to the complexity.*

**Question 10–G:**

What factors can negatively influence approval times? What measures should be taken to address these factors?

*Unclear requirements and different authority requirements.*

**Question 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?

*Support maximum approval times as long as trade integrity is not compromised.*

**Question 10–I:**

What requirements are placed on intermediaries when dealing directly with approval authorities regarding an application to trade/transfer?

*No response.*

**Question 10–J:**

Do approval authorities recommend specific brokers or exchanges to water market participants? On what basis are such recommendations made?

*No response.*

**Question 10–K:**

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? If so, what is the justification for this?

*No response.*

**Question 10–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?

*No response.*

**Question 10–M:**

Are there examples of approval authorities with conflicts of interest? If so, are measures taken to address this possible conflict? Are these measures adequate?

*Unsure, but where other activities pose potential conflict of interest in trade approval then this should be conducted using "arms length" approach with appropriate corporate governance and procedures set out by MDBA.*

**Question 11-A:**

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

*Inconsistent terminology and unclear entitlement reliability of annual allocation and other characteristics such as transmission losses.*

**Question 11-B:**

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

*Highly relevant, particularly reliability of allocation over long term and within current season.*

**Question 11-C:**

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

*Yes, see Q11-B. Need to reduce confusion.*

**Question 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?

*Advantages outweigh disadvantages for consistent terminology.*

**Question 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?

*Advantages outweigh disadvantages for single point and templates.*

**Question 11-F:**

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

*Single website of trading rules to improve transparency.*

**Question 11-G:**

What are the advantages and disadvantages of providing information about water trading rules and requirements:

(a) at a single point (for example, a website)?

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

*Support single point of contact and standard templates.*

**Question 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?

## Horticulture Water Initiative

Ensuring access to water for responsible and profitable horticulture

*Intermediaries have important role in assisting irrigators. Part of this is caused by the complexity of current system.*

**Question 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?

*Publicly available pricing assists irrigators with budgeting and forward planning of risk.*

**Question 11-J:**

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

*Make it mandatory to report pricing and reporting should include medians not just averages as "internal water trade" within businesses is sometimes not reflective of market prices and this skews averages.*

**Question 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?

*Unsure. No comment.*

**Question 11-L:**

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

*Website of data available to market users.*

**Question 11-M:**

What concerns, if any, are there with the current approaches informing water market participants about allocation announcements?

*Inconsistent timetables for products on announcement dates. Should be fortnightly updates for all products.*

**Question 11-N:**

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

*Big advantage to assist in forward planning of growers. Should be done for all water products with uniform reporting timeframe on forecast probabilities.*

**Question 11-O:**

Is sufficient information available on how water allocations are calculated?

*No sufficient clarity and inconsistent information across different water products. Procedures should be documented and publicly available; with consistent process when procedures changed.*

**Question 11-P:**

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

*Enormous impacts. Should have consistent rules, procedures and timetables for reports to market.*

**Question 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)?

*Principles and procedures should be open, transparent and consistent with stock exchange.*

**Question 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?

*All information on water trades should be publicly available.*

**Question 11-S**

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

*Unclear what is meant by inter-operable registers. If this simplifies process then yes, but if complicates process not supported.*