

Hon Lisa Neville MP

Minister for Police and Emergency Services
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Director
Murray-Darling Basin Inquiry
Australian Competition and Consumer Commission
GPO Box 3131
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Ref: MBR041286



Dear Director

SUBMISSION TO THE ACCC MURRAY-DARLING BASIN WATER MARKETS INQUIRY

I write to make a submission from the Victorian Government to the Australian Competition and Consumer Commission (ACCC) Murray-Darling Basin water markets inquiry.

Victoria supports the ACCC inquiry. We have committed to work closely with the ACCC and share information to make sure that the inquiry leads to meaningful outcomes. This is an opportunity to ensure that water market settings support efficient markets, beneficial investment in our regional economies, and have appropriate controls to prevent potential misuse of market power or market distortion.


A detailed submission against matters raised in the inquiry's terms of reference is attached. Specifically, I call on the ACCC inquiry to:

- Pursue consistent water broker regulation, building on the approach taken by the Victorian broker audit;
- Consider the implications of foreign ownership of water entitlements;
- Review the appropriateness of the Murray-Darling Basin Plan Clause 12.23 given there is significant potential for market distortion by those who hold grandfathered tagged water access entitlements. This does not support a level playing field in the market and provides the opportunity to take advantage of arbitrage between trading zones;
- Consider the options and feasibility of a central trading platform, particularly for the connected southern Murray-Darling Basin water market;
- Address the different transaction fee structures in each state and region, and consider how these may act as barriers, or act to slow down trade; and
- Address concerns about potential monopoly behavior and speculation in the water market.

There have been significant changes over the last 10 years in the ownership of water resources, and where water is being used for irrigation and delivered for environmental objectives across the connected Murray-Darling Basin. Many water users are now more reliant on the water market and carryover to help meet their water needs. It is critical that water markets continue to work effectively to support our regional economies, communities and environment.

If you would like more information about the below responses, please contact Grace Mitchell, Executive Director, Water Resource Strategy, Water and Catchments Group, Department of Environment, Land, Water and Planning (DELWP) on (03) 9637 9448 or email grace.mitchell@delwp.vic.gov.au.

Yours sincerely


Hon Lisa Neville MP
Minister for Water

18/12/19

Encl. Victorian Government submission the ACCC Murray-Darling Basin water markets inquiry



Victorian Government submission the ACCC Murray-Darling Basin water markets inquiry

Terms of Reference 1: *market trends since 2012, including demand for water, changes in the location where water is used, the quantity of water traded, water availability, changes in water users and their communities, development of new trading products, and the number of participants and sectors participating in the water markets;*

Victoria is committed to making sure that the best possible information is made available to water users to inform effective decision making. The southern Murray-Darling Basin water market is increasingly complex, and the Victorian Government is exploring new ways to provide meaningful information to people about how water is owned, traded and used.

Victoria takes a leading role in monitoring and documenting short and longer-term trends in the water market. Water trading reports are publicly available at <https://waterregister.vic.gov.au/water-trading/trade-reports/> notably including:

- Water Market Trends reports which provide a long-term analysis of data in the Victorian Water Register on trends in the water market, trade patterns between different water users in recent seasons, providing important insights into current trends in water trade as well as factors impacting the price of allocation water. This report was originally produced in 2016 looking at the period from 2001-2015 and updated in 2019 with additional data up to 2018.
- Water trading annual reports that have been published every year since 2007/08. All are publicly available on the Victorian Water Register website.
- A 2018 statewide review of the effectiveness of Victoria's water markets conducted by independent consultants in collaboration with DELWP and a wide variety of stakeholders including water resource managers and market regulators (both state and Commonwealth); urban and rural water corporations; environmental water managers; Traditional Owner representatives; various industry representatives; and individual irrigators.

In response to recent community consultation about the transparency of water market information, Victoria has announced it will produce bi-annual public water market integrity reports from mid-2020 to share key findings about the water market and respond to areas of community concern.

Terms of Reference 2: *the role of carryover arrangements, and the trading of water allocations which have been carried over, on water markets;*

Carryover gives entitlement holders more flexibility in when they use the water they own and how they can manage their risks. The Victorian Government supports carryover as an important tool for water users to manage through dry conditions and drought. Carryover can reduce market price volatility between seasons and decrease the risk of insufficient water for the market to function effectively in very dry years.

There are strong and diverse views about carryover in the community, which reflects the diversity of water users. Victoria's carryover rules were reviewed in 2012 by a community-led committee appointed by the then Minister for Water. A number of changes to the rules were implemented as a result of this review to make sure the rules are equitable and working for all water users. The current and historic rules for carryover in Victoria and a number of resources are publicly available at waterregister.vic.gov.au/water-entitlements/carryover.

The limits on carryover and the spill rules in place since the 2012 review mean that carryover does not impact on the reliability of other people's entitlements. Spill rules prevent carryover from locking up space in the dam for new allocations and ensure that inflows for allocations through the season to existing entitlement holders get first preference when dam space is limited.

It is important to note that seasonal allocations would not be higher without carryover. Carryover simply allows people more flexibility about when to use the water that they own. While carryover means that less unused allocation is socialised at the end of the year, this is the same effect as if

people used their allocation during the season, as they are entitled to do. Particularly in the context of the increased value of water entitlements and allocations, if people could not carry over water, they would use it in the year it was allocated or trade it to someone else who could – to get the most value from their entitlements.

The Victorian Government continues to closely monitor market trends, including how water is being used, traded and carried over, to understand how people are using the market differently over time, and whether there is any evidence of anti-competitive behaviour or market distortions. We are committed to reporting any examples of these behaviours immediately to the ACCC.

The Victorian Government is committed to providing public information about how much water is being carried over, with an appropriate level of protection for irrigators commercial privacy, as well as volumes of water used and traded. From mid-2020, DELWP will provide greater transparency on the role of allocation accounts water markets without active use - including the volume of carried over by these accounts.

Terms of Reference 3: the role and practices of market participants, including water brokers, water exchanges, investment funds and significant traders of water allocations and entitlements;

The level of demand and sophistication in the water market is continuing to increase and there is an increasingly diverse range of participants and investors in the water market. We need to make sure that monitoring and controls for any potential anti-competitive or distortionary behaviour are appropriate and that no one has an unfair market advantage over other water market participants.

Water brokers and regulation

Victoria's broker portal is the quickest and most cost-efficient method to submit allocation trades in the southern Murray-Darling Basin water market. Access to the broker portal has become essential for water brokers businesses as it provides an immediate decision on their trade applications. In 2018/19, the majority (76%) of all allocation trades in northern Victoria were lodged through the broker portal.

DELWP has conducted an annual broker audit since the broker portal was established in November 2013. The audit is conducted by a third party which assesses water brokers' records against a number of agreed criteria and is a condition of ongoing access to the broker portal. The audit gives a degree of regulation to brokers' activities and is significant in that it covers the majority of allocation trades in northern Victoria. To date, a summary of the key findings of the audit has been made public each year on the Victorian Water Register website.

In response to the community consultation on transparency of the water market, Victoria has recently announced that it will start to publish the names of the water brokers who successfully meet the standards and requirements of the broker audit as a way of increasing transparency of water brokers dealings. We will also investigate expanding the broker audit requirements to include mandatory insurance and spot auditing the use of brokers' water accounts.

Victoria calls upon the ACCC to build on the approach taken by the Victorian broker audit and pursue broader water broker regulation. A consistent national approach, or at least across the connected southern Murray-Darling Basin, will have significant benefits for water market participants.

Foreign ownership of water

Victoria notes the Murray-Darling Basin Plan Trading Rules require that trade be free of any restrictions unless they can be justified for specific reasons, like not being able to deliver water, effects on third parties or effects on the environment.

Since 1 July 2017, foreign owners of water have been required to register their interests in water entitlements and contractual water rights through the Australian Tax Office. While the current level of foreign ownership of water in Victoria is low relative to other parts of the Murray-Darling Basin, it is an area of community concern.

Victoria calls on the ACCC to consider the implications of foreign ownership of water entitlements.

Accounts without use

The Victorian Trading Rules are consistent with the Murray-Darling Basin Plan Trading Rules requiring that trade be free of any restrictions unless they can be justified for specific reasons, like not being able to deliver water, effects on third parties or effects on the environment.

DELWP keeps close oversight over the Victorian water market to monitor how people are using the market differently over time. Data from the Victorian Water Register shows that while there is increasing activity of accounts without water use (i.e. trade or carryover only) in the water market, active irrigators remain the largest buyers of allocation in the northern Victorian market. The data shows that the majority of water being carried over by private accounts is tied to land (that is, by irrigators), and that carryover by investors is proportionally low.

The Victorian Government recognises there are benefits to irrigators when the allocation market is opened up for more people to take part. It draws capital from new sources through investors, such as water funds, investment funds and retired irrigators. Many irrigators rely on the services and products provided by these investors as part of their farm business model.

Community consultation on water market transparency in Victoria raised concerns about the increasing activity of investors in the water market and whether this represented unfair or distortionary behaviour. Responding to this concern, DELWP will provide more transparency on how accounts without use act in water markets from mid-2020 by:

- Publishing more information (without names) on the participation of accounts without use in water markets, how these accounts are used, including volume of carryover
- Pursue voluntary corporate reporting of water committed to products including leases and forward contracts.

Victoria calls on the ACCC to directly address community concerns about speculation in the water market, including by monitoring and publishing information about high volume trade accounts, and consider how to monitor activity of these traders across state borders.

Removing unfair advantages under Murray-Darling Basin Plan Trading Rule 12.23

The Murray-Darling Basin Plan Trading Rules give exemptions from restrictions for water users who set up 'tagged' water entitlements before 22 October 2010. That means these users can move water between valleys even when trade rules are closed.

This month, new restrictions were put in place in Victoria for tagged water use to make sure that all types of inter valley trade happen under the same rules, all the time.

Because of the Murray-Darling Basin Plan Trading Rules, there remains a number of water users in Victoria and across the Murray-Darling Basin that have an unfair advantage over all other water users in the market because they set up an administrative tagged arrangement before 2010.

These sorts of special deals are unacceptable in the current context of growing water scarcity and increased reliance on the water market by so many of our irrigation communities.

The ability for people to continue to move water out of valleys trade when trading is shut under allocation trade rules also puts the environment at risk, from unrestricted increases in how much water needs to be delivered downstream.

In the Goulburn River, running the river higher for longer over summer to deliver traded water is having damaging environmental impacts including on the river channel, vegetation and fish species, working against the objectives of the Murray-Darling Basin Plan.

It is Victoria's intention to remove the remaining permanent exemptions from trade rules, including for tagged entitlements "grandfathered" under Murray-Darling Basin Plan Trading Rules.

Victoria calls on the ACCC to review the appropriateness of the Murray-Darling Basin Plan Clause 12.23 given there is significant potential for market distortion and provides an unfair opportunity for those who hold these tagged water access entitlements the opportunity to take advantage of arbitrage between trading zones.

Terms of Reference 4: the availability to the public of information on water market activities and tradeable water right holdings;

Victoria provides a wealth of public water market information from the Victorian Water Register on the website - waterregister.vic.gov.au - including current, and in many cases live, information on the following topics:

- **Water shares and who owns them** – data is freely available on all water shares on issue and their attributes. Anyone can pay an administrative fee of \$14.50 online to get a copy of record of a water share with the owner's name and details of the entitlement;
- **Available allocation** – Free public information on the volume of water allocation available in each system, including aggregated information on how much has been carried over, allocated to, used and traded by private parties, water corporations and environmental water holders;
- **Water traded** - Free de-personalised information on all water trades, including the volume traded, price paid and where it was traded to. Summarised information on market prices and volumes traded is provided to help people to easily keep track of current market conditions;

Recent additions to improve the availability and accessibility of information have been made through the popular new tools:

- Where can I trade? - waterregister.vic.gov.au/TradingRules2019/ a new visualisation to help people understand Victoria's trade limits, how much trade opportunity is available and the factors that influence this; and
- Water Market Watch – a free mobile app where you can receive notifications on seasonal determinations, water trade limits and other trade information in real time on your phone.

In September 2019, DELWP released an options paper seeking community feedback on the level of water market information that should be made publicly available. Most people were overwhelmingly in favour of greater transparency in certain aspects of water markets with an appropriate level of protection for irrigators' commercial privacy.

There was support for publishing the names of larger holders of water. Responding to this, from early 2020, the names of companies who own 2% or more of water in a system will be published on the Victorian Water Register website, and the Victorian Government will pursue the required legal changes to enable the same reporting for individuals.

Victoria calls for the ACCC to consider how to guard against any undue market power or potential monopoly of larger holders of water, especially as water may be held by the same holders in different states.

Terms of Reference 5: the timeliness, accuracy, and completeness of public information released on water market activities and tradeable water right holdings, including true trade price reporting and the types of trade (for example, immediate purchases, forward contracts, leases);

Authoritative water market information is publicly available on the Victorian Water Register website.

Victoria's ability to provide timely water market information is possible due to a long-standing commitment to the provision of accurate and timely water use metering and efficient water market systems. Efficient water market operations in Victoria are supported by automation of trade limit checks, and automated approval of trades by brokers through the broker portal and by individuals through the MyWater portal. MyWater is an online portal where registered users have access to trade water from their allocation accounts and can view their own allocation account statements.

Accurate metering

In Victoria water corporations own, maintain and read meters, and they are responsible for selecting metering and telemetry systems. In Victoria the widespread use of telemetry means that a large proportion of water take is monitored daily and water corporations will investigate and take enforcement action shortly after unauthorised take of water is detected.

South Australia has comprehensive metering and high administrative penalties for overuse, but the metering processes and technology are different. The main differences being that in South Australia meters are privately owned and maintained, there are no or very few telemetered meters, and regulators rely on meter reads provided by the water user for compliance purposes.

In South Australia water users on the River Murray only need to balance their accounts every quarter, and the regulator relies on meter reads provided by water users to do this. This means enforcement action on unauthorised take or overuse is generally only taken at the end of every quarter. It also means it is easier to falsify meter reads, and that users can overuse during this three-month period with little chance of being subject to enforcement action.

This situation means Victorian water users are being held to higher standards of accountability. Given the high price of water there are concerns about how the capacity to overuse in a three-month window may be used by irrigators to game the market by taking water without authorisation and then buying water when the price is lower. This could affect the integrity of the water market and the confidence of water users, particularly in the tri-state region.

Another difference in Victoria's approach to metering with that of other basin states is that irrigation districts in northern Victoria have accurate meters, whereas in other states there has not been the same level of investment within districts, instead the focus is on accurate bulk water metering. Where there is trade from one of these districts to a different zone, the different standards in metering may mean that 'one person's megalitre doesn't equal another person's megalitre'.

Accurate price reporting and types of trade

Victoria recognises that water markets in the southern Murray-Darling Basin are becoming more sophisticated, and a greater range of products are now available for market participants to acquire allocation and manage their risks. Irrigators need more information about products such as forwards, carryover parking and leases. To provide this information, Victoria has announced that it will:

- Mandate that market participants must select a reason for each allocation trade to differentiate what price is paid for each type of market transaction – to include at a minimum: allocation spot trade, carryover parking, forward contract, and leasing; and
- Improve price reporting by market participants for water share transfers (that is, the price reported for water share transfers must exclude any allocation).

Community input to the water market transparency review clearly identified the two most important pieces of market information were how much water is available to buy (market depth) and real-time price of allocation. These two pieces of information are very difficult to accurately gauge – especially market depth – without a central trading platform or exchange. Feedback also recognised that such a platform would have to be carefully managed and well regulated, and that it would have most benefit if it were common across the connected southern Murray-Darling Basin water market.

Victoria has committed to further exploring options for a central trading platform and calls for the ACCC to consider the options and feasibility of a central trading platform for the southern Murray-Darling Basin water market within the scope of this inquiry.

Victoria will continue to work with the MDBA, NSW and SA to develop a common southern Murray-Darling Basin trade rules engine to improve allocation trade automation and transaction processing times.

Terms of Reference 6: barriers to entry, expansion and exit, including transaction costs;

Delivery shares and exit fees

Victoria recognises that the termination fees linked to delivery share may be considered to contribute to the barriers for irrigation district water users to exit the sector. We recognise that the ten-times multiple of annual charges that is currently used as a cap is set by the ACCC, with water corporations setting the specific fees under that cap.

With continuing rapid change in water availability, ownership and use, the need to reduce barriers to exit is acknowledged, though remains to be carefully balanced against ensuring irrigation districts remain viable and avoiding increasing prices which would increase barriers to entry and contribute to financial pressures on district irrigations and rural water corporations.

The Victorian government is actively investigating alternatives to termination fees for reducing delivery share and existing irrigation, consistent with the outcomes of the Delivery Share Review (2018).

Transaction costs

Low transaction costs and fast processing times are particularly important in the active allocation trade market. In Victoria, transaction costs are low – especially for trades via the online MyWater and broker portals. There are no additional tariffs on allocation traded out of regions or irrigation districts. In Victoria, individual's entitlements are defined as a share of the water system, and so can trade freely without additional requirements having to transform out of a bulk entitlement.

It is important that the ACCC inquiry address the different fee structures, and consider how these are barriers, or act to slow down trade.

Terms of Reference 7: the management of constraints on the storage or delivery of water, including adjustments made to give effect to trades and intervalley transfers.

There has been significant change over the last 10 years in where water is being used for irrigation and delivered for environmental objectives across the connected Murray-Darling Basin. This is changing how our rivers are operated, making it more challenging for river operators, and testing existing rules for how we manage and account for the trade and delivery of water between valleys.

Through Water for Victoria action 9.6, the Victorian Government committed to reviewing and improving trading rules in northern Victoria to make sure that they remain appropriate in these changing conditions.

Victoria has recently worked in partnership with New South Wales (NSW), South Australia (SA) and the Murray-Darling Basin Authority (MDBA) to improve how water trades are accounted between states, to better reflect the contemporary needs of the water market. This work has led to three new methods to manage trade adjustments – the accounting adjustments that are made to states' shares of water in storage in response to water users trading across state borders.

These improved methods will be trialed starting 1 July 2019 and will continue for three years. The changes better align trade adjustments with the location and the time of delivery of inter-state trade and are expected to create additional trade opportunities for water users and the environment while reducing potential third-party impacts.

This year, significant changes were announced to the management of trade from the Goulburn River this year to make sure that trade and river operational rules for the Goulburn appropriately protect the health of the lower Goulburn River and provide a level playing field for all water users in northern Victoria.

Three key actions will be rolled out over the next 12 months:

- An interim operational regime that achieves variable summer flows in the Goulburn well below recent volumes will be implemented before the high-risk period begins this summer.
- From 12 December 2019 all trades from the Goulburn system, including water use from tagged accounts, will be treated consistently with Victorian rules for inter-valley trade and in line with Murray-Darling Basin Plan Trading Rules.
- Public consultation will commence in January next year on long-term options to improve the current Goulburn to Murray trade rule to reflect the environmental thresholds of the lower Goulburn River and to maximise trade opportunities within these limits.

In July 2019, Victoria announced that all works licence applications in the lower Murray would be personally determined by the Minister for Water for the next 12 months to make sure risks to the environment and Victorian entitlement holders don't increase due to more extraction. Understanding and managing the changing risks to delivery of water in the River Murray downstream of the Barmah Choke is a critical challenge for all governments. This will be discussed again at the upcoming Ministerial Council meeting and Victoria will be reminding all jurisdictions of the importance of prioritising work on the River Murray Capacity and Delivery Risks work program.